FLAG

FILED

MAY 20 2008

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of FRANK JOSEPH FERRIS, Respondent.	No. H-3983 SAC

ORDER DENYING REINSTATEMENT OF LICENSE

On July 2, 2004, in Case No. H-3983 SAC, a Decision was rendered revoking the real estate broker license of Respondent effective August 2, 2004, but granting Respondent the right to the issuance of a restricted broker license. A restricted broker license was issued to Respondent on August 2, 2004, and Respondent has operated as a restricted licensee since that time.

On January 23, 2007, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

///

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted real estate broker license.

The burden of proving rehabilitation rests with the petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and integrity than an applicant for first time licensure. The proof must be sufficient to overcome the prior adverse judgment on the applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d 395).

The Department has developed criteria in Section 2911 of Title 10, California Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for reinstatement of a license. Among the criteria relevant in this proceeding are:

Section 2911(a). The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.)

On January 24, 2007, in the Superior Court of the State of California, County of Sacramento, Case No. 07T01057, Respondent was convicted upon Respondent's nolo contendere plea of the crime of Driving Under The Influence in violation of

Vehicle Code Section 23152(a), a misdemeanor and a crime that is substantially related to the qualifications, functions and duties of a real estate licensee.

Section 2911(n). Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following: (1) Testimony of applicant; (2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns. (3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments. (4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances. (5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

On November 2, 2007, the Deputy Real Estate Commissioner assigned to review Respondent's petition wrote Respondent requesting submission of two letters of reference and a completed RE 506A "Petition Application Supplement" to bring current the information submitted in Respondent's Petition. On January 24, 2008, the Deputy Real Estate Commissioner assigned to review Respondent's petition wrote Respondent requesting submission by February 18, 2008 of two letters of reference and a completed RE 506A "Petition Application Supplement" to bring current the information submitted in Respondent's Petition. Respondent did not respond to either of these two requests. In

fact, the information submitted with Respondent's petition was not current. On January 24, 2007, in the Superior Court of the State of California, County of Sacramento, Case No. 07T01057, Respondent was convicted upon Respondent's nolo contendere plea of the crime of Driving Under The Influence in violation of Vehicle Code Section 23152(a), a misdemeanor.

Consequently, I am not satisfied that Respondent is sufficiently rehabilitated to receive an unrestricted real estate broker license. Additional time and evidence of correction as a restricted real estate broker is necessary to establish that Respondent is rehabilitated.

NOW, THEREFORE, IT IS ORDERED that Respondent's petition for reinstatement of Respondent's real estate broker license is denied.

This Order shall become effective at 12 o'clock noon on JUN 10 2008, 2008.

DATED: 5-14, 2008

JEFF DAVI
Real Estate Commissioner

DEPARTMENT OF REAL ESTATE
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

FILED
JUL 12 2004
DEPARTMENT OF REAL ESTATE
By Laurie A. [illegible]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of FRANK JOSEPH FERRIS, Respondent.	DRE No. H-3983 SAC OAH No. N-2004050050 STIPULATION AND AGREEMENT

It is hereby stipulated by and between Respondent FRANK JOSEPH FERRIS and the Complainant, acting by and through James L. Beaver, Counsel for the Department of Real Estate (herein "the Department"), as follows for the purpose of settling and disposing of the Accusation filed on April 19, 2004 in this matter (herein "the Accusation"):

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondents at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act (APA), shall instead and in place thereof be

submitted solely on the basis of the provisions of this Stipulation and Agreement.

2. Respondent has received, read and understands the Statement to Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department in this proceeding.

3. On April 21, 2004, Respondent filed a Notice of Defense pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent acknowledges that Respondent understands that by withdrawing said Notice of Defense Respondent will thereby waive Respondent's right to require the Real Estate Commissioner (herein "the Commissioner") to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that Respondent will waive other rights afforded to Respondent in connection with the hearing such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

4. Respondent, pursuant to the limitations set forth below, hereby admits that the factual allegations in the Accusation are true and correct and the Real Estate Commissioner shall not be required to provide further evidence of such allegations.

///

///

5. It is understood by the parties that the Real Estate Commissioner may adopt the Stipulation and Agreement as his or her decision in this matter, thereby imposing the penalty and sanctions on Respondent's real estate license and license rights as set forth in the "Order" set forth below. In the event that the Commissioner in his or her discretion does not adopt the Stipulation and Agreement in Settlement, it shall be void and of no effect, and Respondent shall retain the right to a hearing and proceeding on the Accusation under all the provisions of the APA and shall not be bound by any admission or waiver made herein.

6. The Order or any subsequent Order of the Real Estate Commissioner made pursuant to this Stipulation and Agreement in Settlement shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department of Real Estate with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.

DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions and waivers and solely for the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed that the following Determination of Issues shall be made:

///

///

I

The acts and omissions of Respondent FRANK JOSEPH FARRIS as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent under the provisions of the Section 10177(f) of the California Business and Professions Code (herein "the Code").

ORDER

I

All licenses and licensing rights of Respondent FRANK JOSEPH FERRIS under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to said Respondent pursuant to Section 10156.5 of the Business and Professions Code if, within 90 days from the effective date of the Decision entered pursuant to this Order, the Respondent, prior to and as a condition of the issuance of said restricted license, makes application for the restricted license and pays to the Department of Real Estate the appropriate fee therefor.

The restricted license issued to such Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to such Respondent may be suspended prior to hearing by Order of the Real Estate

Commissioner in the event of the Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to such Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that the Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine months from the effective date of the Decision, present evidence satisfactory to the Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent

presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondent shall, within six (6) months from the issuance of the restricted license, take and pass the Professional Responsibility Examination administered by the Department, including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until Respondent passes the examination.

06-24-04
DATED

JAMES L. BEAVER, Counsel
Department of Real Estate

* * *

I have read the Stipulation and Agreement and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

6-24-04
DATED

FRANK JOSEPH FERRIS
Respondent

* * *

The foregoing Stipulation and Agreement is hereby adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on AUGUST 2, 2004.

IT IS SO ORDERED July 2, 2004.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

FILED

MAY 10 2004

DEPARTMENT OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

FRANK JOSEPH FERRIS,

Respondent

Case No. H-3983 SAC

OAH No. N-2004050050

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, 560 J STREET, SUITE 340/360, SACRAMENTO, CA 95814** on **THURSDAY, JUNE 24, 2004**, at the hour of **9:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: MAY 10, 2004

By James L. Beaver

JAMES L. BEAVER, Counsel

JAMES L. BEAVER, Counsel (SBN 60543)
Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789
-or- (916) 227-0788 (Direct)

FILED
APR 19 2004
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of FRANK JOSEPH FERRIS, Respondent.	No. H-3983 SAC ACCUSATION

The Complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against FRANK JOSEPH FERRIS (hereinafter "Respondent"), is informed and alleges as follows:

I

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "Code") as a real estate broker.

II

The Complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondent in his official capacity.

III

Effective on or about October 31, 2003, after giving Respondent fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act, Respondent's license as an attorney in the State of California was suspended for nine months by the Supreme Court of the State of California, said suspension was stayed, and said license was placed on probationary status for a period of two years, upon an express finding of violation of Rule 4-100(A) and Rule 4-100(B)(3), California State Bar Rules of Professional Conduct, for acts which, if done by a California real estate licensee, would be grounds for the suspension or revocation of a California real estate license pursuant to the provisions of Section 10176(e), Section 10177(g), and/or Section 10145 in conjunction with Section 10177(d) of the Code.

IV

The facts described in Paragraph III, above, constitute cause under Section 10177(f) of the Code for suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

///

///

///

///

///

///

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other provisions of law.

CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 5th day of April, 2004.