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OCT - 7 2008

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Application of  
ZAKI SIWAN SKARIA,  
Respondent.

No. H-1663 FR

ORDER DENYING REMOVAL OF RESTRICTIONS ON LICENSE

On July 1, 2004, a Decision was rendered herein denying Respondent's application for a real estate salesperson license but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on August 30, 2004, and Respondent has been licensed as such since that time.

On March 12, 2008, Respondent petitioned for removal of the restrictions on said real estate salesperson 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).

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1 I have considered Respondent's petition and the evidence and arguments in  
2 support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has  
3 undergone sufficient rehabilitation to warrant the removal of restrictions from Respondent's real  
4 estate salesperson license at this time. This determination has been made in light of Respondent's  
5 history of acts which are substantially related to the qualifications, functions and duties of a real  
6 estate licensee. That history includes that Respondent's September 6, 2002 application for a real  
7 estate salesperson license was denied pursuant to the provisions of Sections 480(a) and 10177(b)  
8 of the Code on the grounds that:

9 (a) In May 1990, in the Circuit Court, County of Waukesha, State  
10 of Wisconsin, Respondent was convicted of the crime of Driving Under The Influence  
11 in violation of Section 346.63 (1)(a) of Wisconsin statutes, a misdemeanor.

12 (b) On March 13, 1995, in the Circuit Court, County of Waukesha, State  
13 of Wisconsin, Respondent was convicted of the crime of Driving Under The Influence  
14 in violation of Section 346.63 (1)(a) of Wisconsin statutes, a misdemeanor.

15 (c) On June 29, 1995, in the Circuit Court, County of Waukesha, State  
16 of Wisconsin, Respondent was convicted of the crime of Driving Under The Influence  
17 With Priors in violation of Section 346.63 (1)(a) of Wisconsin statutes, a misdemeanor.

18 (d) On May 25, 2001, in the Circuit Court, County of Waukesha, State of  
19 Wisconsin, Respondent was convicted of the crime of Driving Under The Influence With One  
20 Prior in violation of Section 346.63 (1)(a) of Wisconsin statutes, a misdemeanor.

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

24 Section 2911(f) Abstinence from the use of controlled substances or alcohol for  
25 not less than two years if the conduct which is the basis to deny the departmental action sought is  
26 attributable in part to the use of controlled substances or alcohol.

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1 On March 5, 2008, in the Superior Court of the State of California, County of  
2 Stanislaus, Case No. 1241715, Respondent was convicted of the crime of Driving With Blood  
3 Alcohol over .08% in violation of Vehicle Code Section 23152(b) a misdemeanor. Respondent's  
4 Blood Alcohol was measured in excess of .15%. Respondent was placed on probation for 36  
5 months, fined \$1,621, ordered to complete a Drinking Driver's course and ordered to serve 7  
6 days in custody. This demonstrates Respondent's failure to abstain from alcohol after suffering  
7 denial of his license application because of 4 drinking driver convictions.

8 Section 2911(l). Significant or conscientious involvement in community, church  
9 or privately-sponsored programs designed to provide social benefits or to ameliorate social  
10 problems.

11 Respondent has provided no evidence of qualifying community service activities.

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

21 Respondent's petition was incomplete and inaccurate. In Response to item 3 in the  
22 petition ("Have you ever been convicted of any violation of law?... All convictions must be  
23 disclosed") Respondent disclosed two of his Wisconsin drinking driver convictions but failed to  
24 disclose the conviction he suffered in March, 2008 and two of his earliest Wisconsin convictions.  
25 In response to item 4(a) of the petition ("Have you any past debts, outstanding judgments, or  
26 have you filed Bankruptcy?") Respondent answered "no". This was inaccurate. Respondent  
27 elsewhere provided information indicating that on May 16, 2007, in the United States

1 Bankruptcy Court, Eastern District of California, Case No. 07-90506-D-7, Respondent filed for  
2 relief under Chapter 7 of the Bankruptcy Code.

3 On May 30, 2008 and on September 4, 2008, the Department left voice mail  
4 messages for Respondent at the telephone number provided by Respondent, asking Respondent  
5 to return the call to provide additional information in support of Respondent's petition. No  
6 response was ever received to these communications.

7 No evidence has been submitted from psychiatrists or other persons competent to  
8 testify with regard to any neuropsychiatric or emotional disturbances associated with his alcohol  
9 problems.

10 Respondent has failed to submit proof that Respondent has satisfied the criteria of  
11 Section 2911(n), of Chapter 6, Title 10, California Code of Regulations.

12 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal of  
13 restrictions on Respondent's real estate salesperson license is denied.

14 This Order shall become effective at 12 o'clock noon on **OCT 28 2008**

15 IT IS SO ORDERED 10-6-08

16  
17 JEFF DAVI  
18 Real Estate Commissioner  
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**JUL - 9 2004**

**DEPARTMENT OF REAL ESTATE**

By Laurie P. Egan

In the Matter of the Application of  
ZAKI SIWAN SKARIA,  
Respondent.

The Proposed Decision dated June 22, 2004, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a real estate salesperson license is denied. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon  
on JULY 30, 2004.

IT IS SO ORDERED July 1, 2004.

JOHN R. LIBERATOR  
Acting Real Estate Commissioner

John R. Liberator

**BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues  
Against:

ZAKI SIWAN SKARIA,

Respondent.

Case No. H-1663 FRESNO

OAH No. N2004030910

**PROPOSED DECISION**

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California heard this matter in Sacramento, California on June 4, 2004.

David B. Seals, Counsel, represented the Department of Real Estate.

Zaki Siwan Skaria appeared in pro per.

The record remained open by mutual consent of the parties until June 11, 2004 for Mr. Skaria to submit a letter of support from his employer. The employer was ill at the time of the evidentiary hearing and was not able to travel to Sacramento to testify in person. The documents were submitted on June 9, 2004, and were made part of the record. The matter was submitted on June 10, 2004.

**FACTUAL FINDINGS**

1. John Sweeney made the allegations contained in the Statement of Issues in his official capacity only as a Deputy Real Estate Commissioner, Department of Real Estate (the Department), State of California. The Statement of Issues was filed on March 10, 2004. Zaki Siwan Skaria timely filed a Notice of Defense on Application in response to the Statement of Issues. The Department has jurisdiction to issue, deny the issuance of, or issue on a restricted basis any real estate salesperson license in the State of California.<sup>1</sup>

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<sup>1</sup> Business and Professions Code sections 480, 10152 and 10156.

2. Zaki Siwan Skaria filed an application for a real estate salesperson's license with the Department on September 6, 2002. Question 25 on the application asks the applicant whether he or she has ever been convicted of a violation of law, excepting minor traffic offenses, even if expunged. Mr. Skaria truthfully answered Question 25 "Yes" and fully disclosed the details of all three of his criminal convictions in the space provided at Question 27.

3. The Department notified Mr. Skaria in writing on August 8, 2003 that he has successfully completed all three of the courses required by the provisions of Business and Professions Code section 10153.4.

4. Mr. Skaria was convicted upon his plea of no contest on May 25, 2001 in the Circuit Court, County of Waukesha, State of Wisconsin of the crime of violation of Wisconsin Statutes section 346.63(1) (A), driving under the influence, third offense, a misdemeanor. Mr. Skaria was sentenced to serve 30 days in the County work release program. Mr. Skaria's driver's license was revoked for 24 months. An ignition interlock was placed on his vehicle for 24 months. He was ordered to submit to alcohol assessment and to pay \$1163.00 in fines and penalties. The Waukesha County Circuit Court's records in evidence do not indicate that probation was imposed.

5. The events leading to the conviction occurred on December 11, 2000. Mr. Skaria went to a Christmas party given by friends. He had several alcoholic drinks at the party. He thought he could drive home without any problem, since it was a short distance to his home. His front license plate was missing, and he was detained by Waukesha County Sheriff's Deputies just before 2 a.m. He was tested and found to be under the influence of alcohol. He told the deputies he had one and one half drinks of Scotch. His blood alcohol tested at .138 per cent alcohol by volume, well over the Wisconsin legal limit. Deputies located a partially consumed alcoholic drink in Mr. Skaria's vehicle.

6. Mr. Skaria was convicted upon his plea of no contest on June 29, 1995 in the Circuit Court, County of Waukesha, State of Wisconsin of the crime of violation of Wisconsin Statutes section 346.63(1)(A), driving under the influence, second offense, a misdemeanor. Mr. Skaria was sentenced to serve 20 days in the County work release program, consecutive to the time imposed for his first conviction, as set forth below. Mr. Skaria's driver's license was revoked for 16 months. An ignition interlock was placed on his vehicle for 24 months. He was ordered to pay \$696.00 in fines and penalties. The Waukesha County Circuit Court's records in evidence do not indicate that probation was imposed.

7. The events leading to the conviction occurred on December 19, 1994, just before 2:00 a.m. Waukesha County Sheriff's Deputies detained Mr. Skaria as he drove home on local highways and Interstate 94 in Delafield, Wisconsin, after leaving a get-together with friends at a local bar. The New Jersey license plates on Mr. Skaria's car were expired and his rear window was completely frosted over. Mr. Skaria was carrying no identification. Mr. Skaria falsely identified himself verbally to the deputies as Joseph S. Skaria and told officers that the car belonged to his brother Zaki. He also told the officers he was just

visiting from California. Officers were aware that Mr. Skaria's Wisconsin driver's license was suspended, but Mr. Skaria also had a valid New Jersey driver's license. The deputies recognized Mr. Skaria and his vehicle from an earlier arrest and advised him that if he did not tell them the truth, he would be arrested for obstruction of justice. Mr. Skaria then admitted his true identity and acknowledged the vehicle belonged to him. Mr. Skaria was under the influence of alcohol. His blood alcohol tested at .16 per cent alcohol by volume.

8. Mr. Skaria was convicted on March 13, 1995, in the Circuit Court, County of Waukesha, State of Wisconsin, of the crime of violation of Wisconsin Statutes section 346.63(1) (A), driving under the influence, a misdemeanor. There are no separate records of this conviction in the record. Mr. Skaria advised the Department in his application that he was sentenced to serve 60 days combined time with his June 1995 sentence in the County work release program, to participate in alcohol abuse counseling and was ordered to pay fines and penalties.

9. Mr. Skaria has actually suffered a fourth DUI conviction in Waukesha County Circuit Court in May 1990. The Department did not know of this conviction until Mr. Skaria disclosed it in his application. The Waukesha County Circuit Court records in evidence do not refer to the 1990 conviction. Mr. Skaria disclosed that he was sentenced to serve 45 days in the County work program, had his driver's license suspended for two years, and was required to participate in alcohol abuse counseling.

10. Mr. Skaria has two or more convictions involving the consumption or use of alcohol where at least one of the convictions involves driving and the use or consumption of alcohol. Therefore, by the Department's Regulations, his convictions are deemed substantially related to the qualifications, functions and duties of a real estate salesperson licensee.<sup>2</sup> Mr. Skaria did not dispute the allegations that the convictions involved moral turpitude. He expressed gratitude to God that he did not get into any accidents or hurt anyone when he was driving intoxicated.

11. Mr. Skaria has successfully completed all his criminal court sentence obligations.

12. Mr. Skaria received a college degree in finance in 1975. He worked for John Hancock Financial Services for more than 20 years following graduation, living predominately in New Jersey. He was and is still currently licensed as a Certified Life Underwriter (CLU), as a Life Agent, a Health and Disability agent, and a Property and Casualty Agent. The agency issuing these licenses was not clear in the evidence, but it appeared to be the State of New Jersey's insurance agent licensing authority. Mr. Skaria obtained and continues to hold two licenses from the Securities and Exchange Commission to sell securities and mutual funds. Mr. Skaria testified that none of his licenses have been affected or disciplined as a result of his convictions, and there was no evidence to the contrary.

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<sup>2</sup> Title 10, California Code of Regulations (CCR) section 2910(a)(11).



13. Mr. Skaria moved to Wisconsin in 1990. He went through a very traumatic divorce in 1993-1994. He changed careers and began working as a loan officer, originating loans secured by real estate. Wisconsin does not require a license to work as a mortgage loan officer. He was quite successful, particularly after joining The Mortgage House, Inc. in 1997. His employer submitted a letter in evidence indicating Mr. Skaria was one of the firm's top loan officers and that his work was excellent. His employer found him trustworthy, diligent and reliable. The letter expressed sorrow that Mr. Skaria left the firm in May 2002, and made it clear Mr. Skaria would be welcome to return to work for them at any time.

14. Mr. Skaria did not deny any of the criminal activity that led to his convictions. He frankly and openly acknowledged that he had and has a significant alcohol abuse problem. He testified that he was told in alcohol abuse counseling that he had intermediate stage alcoholism. He acknowledged his awareness that this stage of alcoholism is advanced, where liver and brain damage begins to occur, and that his sensitivity to the effects of alcohol is heightened as a result. He testified that his alcohol abuse became significant during the stress of his divorce, with the two 1994 offenses flanking the finality of his divorce in November 1994. He thought he had gained some control of his substance abuse after having completed 13 weeks of out-patient treatment and group alcohol abuse therapy at the Wank Health Service after his two 1995 convictions. He also participated in Alcoholics Anonymous (AA), attending 2 meetings per week and working up to the 9<sup>th</sup> step. But he quietly backslid as time passed. He began to give himself permission to have social drinks on occasion. He thought his social drinking was not significant enough to be a problem when he went to the Christmas party in late 2000.

15. Mr. Skaria moved to California in June 2001 to live with and attend to the needs of his infirm mother. He continues to reside with and care for her in her home in Modesto, California. He has obtained employment as a mortgage loan processor with Cal State Financial, where he remains employed to date. His licensed broker employer submitted a letter of support in evidence, attesting to his opinion that Mr. Skaria is a trustworthy and honest employee, and has considerable professional skills. The broker appreciates Mr. Skaria's excellent experience in the mortgage brokerage field, and wants to put him to work originating loans.

16. Mr. Skaria has excellent family and friend support in Modesto. He has become a very active member of St. Zaia Assyrian Church of the East, a form of Eastern Catholicism. Mr. Skaria's priest, Father Kandu, provided impressive and persuasive testimony in support of Mr. Skaria at the evidentiary hearing. Father Kandu expressed his unqualified support for Mr. Skaria. Father Kandu detailed Mr. Skaria's family stability and support in the church and in their small Assyrian community. Father Kandu's opinion of Mr. Skaria's good character is based on significant personal and group contact with Mr. Skaria, his mother and their extended family, and was persuasive. He indicated Mr. Skaria's false representations to the Sheriff's deputies in 1994 was very much out of character and expressed his opinion that stress and fear produced this behavior. His credibility was

enhanced when he expressed his deep concern that Mr. Skaria still has an occasional glass of wine. He expressed his opinion that Mr. Skaria must stop all drinking permanently.

17. Mr. Skaria expressed embarrassment and genuine remorse for his driving while intoxicated convictions. He provided an accurate and bluntly frank appraisal of the current stage of his alcoholism. He appeared to have an epiphany of sorts late in the evidentiary hearing. It appeared to begin when he responded to questions probing his awareness of the physical and mental damage he will be doing to himself if he continues to even have an occasional drink. Father Kandu's poignant but firm expression of deep concern for him if he continues to even have an occasional drink, and his blunt advice to Mr. Skaria to stop drinking altogether appeared to have a significant impact.

18. Mr. Skaria's continuing battle with his intermediate stage alcoholism is a concern. However, unlike his life in Wisconsin, Mr. Skaria is now living in a closely knit community where he has a great deal of support. Mr. Skaria testified he now avoids parties, bars and client functions. He has determined his best defense against drinking is to avoid places where he might be tempted to have one. He spends most all his spare time caring for his mother or participating in church and church activities. His evidence of honesty and truthfulness is persuasive, as his professional competence in the field of mortgage brokerage. Mr. Skaria realizes his battle with alcoholism and his choice to drink and drive in the past reflects very poorly upon his judgment. There has been no incidence of an alcohol related offense, or any offense at all since 2000. There is significant evidence that his drinking and driving was at least in part a product of an environment where he did not successfully cope with stress and he had no meaningful support. On balance, despite the ongoing concern regarding Mr. Skaria's problem with alcohol, the record contains significant evidence of good character and persuasive evidence of partial rehabilitation.

## LEGAL CONCLUSIONS

1. The burden of proof is upon the applicant to prove his or her fitness for issuance of the license he or she seeks.<sup>3</sup> The burden of proof is a preponderance of the evidence.

"A board may deny a license regulated by this code on the grounds that the applicant has done one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or a verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on

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<sup>3</sup> Business and Professions Code section 485, Government Code section 11504, *Martin v. Alcoholic Beverage Appeals Board* (1950) 52 Cal.2d 259, 265.

appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of section 1203.4 of the Penal Code.”

“...”

“The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.”<sup>4</sup>

2. “(a) When considering whether a license should be denied, suspended, or revoked on the basis of the conviction of a crime, or on the basis of an act described in section 480(a) (2) or 480 (a) (3) of the Code, the crime or act shall be deemed substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of sections 480 and 490 of the Code if it involves:

“...”

“(11) Two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs.”<sup>5</sup>

3. Mr. Skaria has been convicted of four driving under the influence misdemeanors between 1990 and 2000. Proof of a violation of section 480 does not require proof that the conviction involves moral turpitude, but does require proof the conviction is substantially related to Mr. Skaria’s fitness for licensure. As set forth in the Factual Findings, the offenses meet the criteria set forth in section 2910(a) (11) and are thus substantially related to the qualifications, functions or duties of a real estate salesperson licensee. Therefore, legal cause exists within the meaning of section 480 for the Department to refuse to issue Mr. Skaria a real estate salesperson license.

4. Business and Professions Code section 10177 provides, in pertinent part, “The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation’s stock has done any of the following:

“...”

“(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order

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<sup>4</sup> Business and Professions Code section 480, in pertinent part.

<sup>5</sup> Title 10, California Code of Regulations (CCR) section 2910(a) (11).

granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information..."

5. A determination of whether a crime or conduct involves moral turpitude is a two part analysis; determination of whether the crime "necessarily" involves moral turpitude, as evaluated by reference to the least adjudicated elements of the crime, and, if not, whether the underlying circumstances nevertheless reveal moral turpitude.<sup>6</sup> In deciding whether a conviction necessarily involved moral turpitude, a court must first look to the statutory definition of the particular crime.<sup>7</sup> An offense necessarily involves moral turpitude if the conviction would in every case evidence bad moral character.<sup>8</sup> "Moral turpitude has been defined as an act of baseness, vileness or depravity in the private and social duties which man owes to his fellowman..."<sup>9</sup> "[M]oral turpitude" is broader than dishonesty.<sup>10</sup>

6. Mr. Skaria has been convicted of four separate instances of driving under the influence. These offenses involve moral turpitude, as set forth in the Factual Findings. The offenses each involve very poor judgment and a disregard for the safety of those required to share the road with him each time he drove intoxicated. He recognized it was fortuitous that no one was injured. Each offense is substantially related to the qualifications, functions or duties of a real estate licensee, as set forth above. Therefore, separate legal cause exists within the meaning of Business and Professions Code section 10177(b) for the Department to deny the issuance of a real estate license to Mr. Skaria.

7. The applicant's burden of proof is to produce persuasive evidence that the applicant is rehabilitated and is a person of good character such that the license should issue, despite the existence of legal cause to deny issuance of the license. Proof of satisfactory rehabilitation is the means by which good character, honesty and fitness for licensure are proved.

8. The Department has enacted a nonexhaustive list of criteria against which to weigh and evaluate an applicant's evidence of rehabilitation.

"The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

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<sup>6</sup> *People v. Forster* (1994) 29 Cal.App. 4<sup>th</sup> 1746, 1757.

<sup>7</sup> *Id.*

<sup>8</sup> *In re Hallinan* (1954) 43 Cal. 2d 243, 249.

<sup>9</sup> *Cartwright v. Board of Chiropractic Examiners* (1976) 16 Cal. 3d 762, 767, *Yakov v. Board of Medical Examiners* (1968) 68 Cal. App. 2d 67, 73.

<sup>10</sup> *People v. Castro* (1975) 38 Cal.3d 301, 317.

- (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.)
- (b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.
- (c) Expungement of criminal convictions resulting from immoral or antisocial acts.
- (d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.
- (e) Successful completion or early discharge from probation or parole.
- (f) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.
- (g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.
- (h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.
- (i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.
- (j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.
- (k) Correction of business practices resulting in injury to others or with the potential to cause such injury.
- (l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- (m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.
- (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."<sup>11</sup>

9. Mr. Skaria presented persuasive evidence of partial rehabilitation, as evaluated by the Department's criteria set forth above. Mr. Skaria's most recent conviction is more than three years old, and the next most recent is almost 10 years old. The conduct leading to the convictions is even more remote. Mr. Skaria has successfully completed all his obligations to the criminal court. The convictions have not been expunged. Mr. Skaria has not been involved in any alcohol related incidents since late 2000. He has satisfied all his criminal court obligations. He is not on probation. Mr. Skaria's employer is fully informed about Mr. Skaria's driving under the influence convictions. He has found Mr. Skaria to be trustworthy and seeks to continue to employ him if a license is issued.

Despite being advised in treatment that he has developed intermediate stage alcoholism, and fully understanding the serious negative health implications, Mr. Skaria has not yet completely abandoned alcohol consumption. He acknowledged to still having an occasional glass of wine at home. This is the only significant problem with Mr. Skaria's rehabilitation. Mr. Skaria acknowledged that his alcoholism was florid when he was living in Wisconsin. He finally fled that environment. He is now in a completely different environment, with considerable support and close community accountability, surrounded with persons like his mother and Father Kandu who are very concerned that he not drink at all. The small community Father Kandu shepherds is very close knit and people are aware of the comings and goings of one another. Mr. Skaria is separated by almost the width of a continent from the environment where he allowed drinking to encroach so significantly upon his life and health. He has new business and social relationships, a steady job with considerable responsibility, and a good deal of experience in the endeavor for which he seeks the license. Mr. Skaria expressed awareness of what is at risk with his health and career if he continues to give himself permission to drink, even an occasional glass of wine at home.

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<sup>11</sup> 10 CCR Section 2911.

10. Mr. Skaria is approaching his last clear chance to avoid allowing his alcoholism, apparently in remission now, from destroying his health and career. He is now entering a zero tolerance environment with a restricted license. A future conviction for an alcohol related offense or an alcohol related incident involving licensed real estate practice may well spell the end of his opportunity to ever work again as a licensee in the mortgage lending business.

11. Under the totality the circumstances proved, there is sufficient evidence of rehabilitation and good character present such that issuance of a real estate salesperson license to Mr. Skaria, on a restricted basis, would not be contrary to the interests of the public in having its real estate professionals be honest, sober and trustworthy persons.

### ORDER

The application of Zaki Siwan Skaria to the Department of Real Estate for the issuance of a real estate salesperson license is DENIED, for the violations proved in the Legal Conclusions. However, a restricted real estate salesperson license shall be issued to Zaki Siwan Skaria pursuant to section 10156.5 of the Business and Professions Code, if he makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Zaki Siwan Skaria 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 respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of 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. The Commissioner may, in his or her discretion, suspend the restricted license prior to hearing upon receipt of notice by the Commissioner that respondent has been arrested for any public offense involving alcohol consumption involving driving or that is substantially related to the qualifications, functions or duties of a real estate licensee.

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that 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 nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three (3) years have elapsed from the effective date of this Decision.

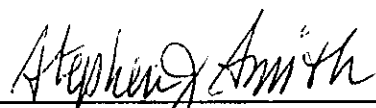
4. Respondent shall submit with any application for license under any employing broker, including this restricted license with his present employer, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within eighteen (18) months of the issuance of the restricted license under the provisions of section 10153.4 of the Business and Professions Code, submit evidence satisfactory to the Real Estate Commissioner of successful completion, at an accredited institution, of two of the courses listed in Business and Professions Code section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to present satisfactory evidence of successful completion of these courses, the restricted license shall be automatically suspended effective eighteen (18) months after issuance of the restricted license. The suspension shall not be lifted until respondent has submitted the required evidence of course completion and the Commissioner has given written notice to the respondent of the lifting of the suspension.

DATED: June 18, 2004

  
\_\_\_\_\_  
STEPHEN J. SMITH  
Administrative Law Judge  
Office of Administrative Hearings



**BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

**FILED**  
APR 20 2004

DEPARTMENT OF REAL ESTATE

*In the Matter of the Application of*

**ZAKI SIWAN SKARIA,**

Case No. H-1663 FRESNO

OAH No. N-2004030910

*Respondent*

**FIRST AMENDED  
NOTICE OF HEARING ON APPLICATION**

***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 **FRIDAY, JUNE 4, 2004**, at the hour of **10:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Statement of Issues 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.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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 subpoenas 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.

*Dated:* APRIL 20, 2004

DEPARTMENT OF REAL ESTATE

By

*David B. Seals*  
DAVID B. SEALS, Counsel

**BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

**FILED**  
**APR 09 2004**

DEPARTMENT OF REAL ESTATE

*In the Matter of the Application of*

**ZAKI SIWAN SKARIA**

By Shelly Ely

Case No. H-1663 FR

OAH No. N2004030910

Respondent

**NOTICE OF HEARING ON APPLICATION**

***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, SUITES 340/360, SACRAMENTO, CALIFORNIA 95814** on **THURSDAY--MAY 27, 2004**, at the hour of **10:00 AM**, or as soon thereafter as the matter can be heard, upon the Statement of Issues 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.

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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.

***Dated:*** APRIL 9, 2004

By

DEPARTMENT OF REAL ESTATE

DAVID B. SEALS, Counsel

1 DAVID B. SEALS, Counsel (SBN 69378)  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0792 (Direct)

FILED  
MAR 10 2004

DEPARTMENT OF REAL ESTATE

By Laurie A. Zini

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Application of )

No. H-1663 FRESNO

12 ZAKI SIWAN SKARIA, )

STATEMENT OF ISSUES

13 Respondent. )  
14

15 The Complainant, John Sweeney, a Deputy Real Estate  
16 Commissioner of the State of California, for Statement of Issues  
17 against ZAKI SIWAN SKARIA (hereinafter "Respondent") alleges as  
18 follows:

19 I

20 Respondent made application to the Department of Real  
21 Estate of the State of California for a real estate salesperson  
22 license on or about September 6, 2002.

23 II

24 Complainant, John Sweeney, a Deputy Real Estate  
25 Commissioner of the State of California, makes this Statement of  
26 Issues in his official capacity.

27 ///

1 III

2 On or about June 29, 1995, in the Circuit Court,  
3 Waukesha County, State of Wisconsin, Respondent was convicted of  
4 violation of Wisconsin Statutes Section 346.63(1)(A) (Operate  
5 Automobile While Intoxicated), a crime involving moral turpitude  
6 and/or which is substantially related under Section 2910, Title  
7 10, California Code of Regulations (hereinafter the  
8 "Regulations"), to the qualifications, functions or duties of a  
9 real estate licensee.

10 IV

11 On or about May 25, 2001, in the Circuit Court,  
12 Waukesha County, State of Wisconsin, Respondent was convicted of  
13 violation of Wisconsin Statutes Section 346.63(1)(A) (Operate  
14 Automobile While Intoxicated), a crime involving moral turpitude  
15 and/or which is substantially related under Section 2910 of the  
16 Regulations, to the qualifications, functions or duties of a real  
17 estate licensee.

18 V

19 The crimes for which Respondent was convicted, as  
20 alleged in Paragraphs III and IV above, constitute cause for  
21 denial of Respondent's application for a real estate license  
22 under Sections 480(a) and 10177(b) of the California Business and  
23 Professions Code.


24 ///

25 ///

26 ///

27 ///

1           WHEREFORE, the Complainant prays that the above-  
2 entitled matter be set for hearing and, upon proof of the charges  
3 contained herein, that the Commissioner refuse to authorize the  
4 issuance of, and deny the issuance of, a real estate salesperson  
5 license to Respondent, and for such other and further relief as  
6 may be proper under other provisions of law.

7  
8   
9           JOHN SWEENEY  
          Deputy Real Estate Commissioner

10 Dated at Fresno, California,  
11 this 8<sup>th</sup> day of March, 2004.