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DEPARTMENT OF REAL ESTATE

[Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

JAMES FRANK ANZALONE,

Respondent.

No. H-1711 FR

ORDER GRANTING REINSTATEMENT OF LICENSE

On April 14, 2005, in Case No. H-1711 FR, a Decision was rendered revoking the real estate broker license of Respondent effective May 11, 2005.

On February 3, 2009, 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 the petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate broker license and that it would not be against the public interest to issue said license to Respondent.

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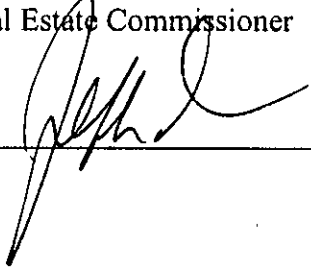
NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
reinstatement is granted and that a real estate broker license be issued to Respondent if
Respondent satisfies the following conditions within twelve (12) months from the date of this
order:

1. Respondent shall qualify for, take and pass the real estate broker license
examination.
2. Submittal of a completed application and payment of the fee for a real
estate broker license.

This Order shall become effective immediately.

DATED: 11-9-2000

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JAMES FRANK ANZALONE,

Respondent.

Case No. H-1711 FR

OAH No. N2004110355

PROPOSED DECISION

This matter was heard by David A. Peters, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California, on February 22, 2005.

Truly Sughrue, Counsel, Department of Real Estate, State of California, represented the complainant.

James Frank Anzalone (respondent) was present and was represented by Ian G. Loveseth, Attorney at Law.

Evidence was received, the record was closed and the matter was submitted on February 22, 2005.

FACTUAL FINDINGS

1. On June 23, 2004, Complainant John W. Sweeney, a Deputy Real Estate Commissioner, Department of Real Estate, (Department), State of California, signed the Accusation against respondent in his official capacity. The Accusation was filed on August 20, 2004.

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

3. On January 30, 2004, in the Superior Court of California, County of San Francisco, respondent was convicted, on his guilty plea, of a violation of Vehicle Code

section 23153, subdivision (b) (driving with a .08 percent or higher blood alcohol level - causing bodily injury), a felony.

4. The facts and circumstances of respondent's criminal conduct that led to the January 30, 2004 conviction arose on September 28, 2002. On that date, respondent, after drinking beer at a wedding reception, attempted to drive home while inebriated. Respondent attempted to merge his vehicle onto the freeway and collided with a vehicle stopped in front of him. The four occupants of the vehicle, hit by respondent, suffered physical injuries as a result of the collision. The California Highway Patrol officer investigating the collision determined that respondent was under the influence of an alcoholic beverage and arrested him for driving under the influence of alcohol and causing bodily injury.

5. At his felony plea hearing on January 30, 2004, respondent admitted that on the date of the incident he was driving with a blood alcohol level of .20 percent or more. Respondent also admitted to a prior conviction on August 13, 1998, for violation of Vehicle Code section 23152, subdivision (b) (driving with a .08 percent or higher blood alcohol level), and a prior conviction on March 2, 1999, for violation of Vehicle Code section 23152, subdivision (b) (driving with a .08 percent or higher blood alcohol level with a prior). The San Francisco Superior Court sentenced respondent to, among other things: one year of county jail time (served through an electronic monitoring program), an 18-month substance abuse program, fines and fees of \$3,400, restitution of approximately \$95,000, and five years formal probation. Respondent continues to be subject to electronic monitoring, is participating in a substance abuse program through Sierra Recovery Center, and remains on formal probation. Respondent has not made any payments toward the fines and fees totaling \$3,400. Restitution, in the approximate amount of \$95,000, to the persons injured in the collision was covered by respondent's insurance.

6. Respondent's conviction for violation of Vehicle Code section 23152, subdivision (b) (driving with a .08 percent or higher blood alcohol level - causing bodily injury), a felony, in combination with the two previous convictions in 1998 and 1999 for alcohol related driving violations, manifests a pattern of criminal behavior involving moral turpitude.

The concept of "moral turpitude" is extensively discussed in *Rice v. Alcoholic Beverage Control Appeals Board* (1979) 89 Cal.App.3d 30. The *Rice* court conveyed that "[t]he elusive concept of 'moral turpitude' has long been the subject of judicial scrutiny; our courts have grappled with the amorphous term in a variety of factual contexts largely involving disciplinary proceedings. (Citations omitted.) . . . For nearly 40 years our highest court has defined moral turpitude as an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted or customary rule of right and duty between man and man." (Citations omitted) or "everything done contrary to justice, honesty, modesty or good morals." "Moral

turpitude demonstrates a “level of ethical transgression so as to render the actor unfit or unsuitable to serve the interests of the public in [a] licensed activity” (*Rice v. Alcoholic Beverage Control Appeals Board, supra*, 89 Cal.App.3d at pp. 36-37.)

In *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, the court of appeal set out that “driving under the influence of alcohol . . . shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society . . . Repeated convictions involving alcohol use . . . reflects poorly on [the licensee’s] common sense and professional judgment” *Griffiths v. Superior Court, supra*, 96 Cal.App.4th at 770-771.

7. Respondent’s conviction, for driving with a .08 percent or higher blood alcohol level – causing bodily injury, bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee based on the Department’s Criteria of Substantial Relationship, California Code of Regulations, title 10, section 2910, subdivision (a)(8) (Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another), section 2910, subdivision (a)(10) (Conduct which demonstrates a pattern of repeated and willful disregard of law), and section 2910, subdivision (a)(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).

A clear nexus is established between respondent’s driving and the functions or duties of a real estate licensee. Real estate licensees often drive clients to and from real estate parcels on the market. Real estate licensees whose work is limited to mortgage lending also drive to and from places where customers are situated. Repeated instances of drinking and driving create a potential for harm to clients. “The protection of the public, the primary purpose of licensing statutes, does not require harm to a client before licensing discipline can take place. ‘Repeated criminal conduct and the circumstances surrounding it, are indications of alcohol abuse that is adversely affecting [respondent’s] private life. [The Department] cannot and should not sit back and wait until [respondent’s] alcohol abuse problem begins to affect [his] practice of [real estate sales].’” (In *re Kelly* (1990) 52 Cal.3d 487; *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 773.)

8. Respondent is 55 years of age. He is not married and has no children. Respondent became a licensed real estate salesperson on May 1, 1978. He became a licensed real estate broker on March 8, 1988. Respondent is currently the designated broker-officer of American One Mortgage And Financial Services, Inc. in Modesto, California. Respondent lives in South Lake Tahoe, California, and goes to the Modesto office two or three times per month. Respondent is the broker of record for the corporation, but is not the owner. He employs 14 sales agents engaged exclusively in mortgage loan brokerage activities, including new loans and refinance loans. Respondent also manages an apartment building in South Lake Tahoe, California owned by an associate.

9. Respondent testified that he is currently licensed to drive in California. He attends meetings once per week at the Sierra Recovery Center, where he meets with counselors as part of his sentence, and attends Alcoholics Anonymous once per week on his own. He has an Alcoholics Anonymous sponsor and is working on the 4th step of the 12-step program. Respondent admits that he is an alcoholic and recognizes that he can never drink again. Respondent testified that the last time he consumed any alcohol (a couple of beers) was in March of 2004, after his arrest, but prior to his most recent conviction. Respondent testified that he began drinking alcohol in high school, but does not believe drinking became a negative influence until he was 46 years of age. Respondent testified that he did not realize he had a serious drinking problem until after the incident resulting in his March 12, 2004, criminal conviction.

Aggravation

10. In aggravation, on August 13, 1998, in the Municipal/Superior Court, County of Stanislaus, State of California, respondent was convicted of a violation of Vehicle Code section 23152, subdivision (b), (driving with a .08 percent or higher blood alcohol level), and on March 2, 1999, in the Municipal Court, County of San Joaquin, State of California, respondent was convicted of a violation of Vehicle Code section 23152, subdivision (b) (driving with a .08 percent or higher blood alcohol level with a prior), crimes which bear a substantial relationship under California Code of Regulations, title 10, section 2910, to the qualifications, functions, or duties of a real estate licensee.

11. The facts and circumstances leading to respondent's August 13, 1998, conviction are that on undetermined date prior to his conviction, respondent had several beers at his nephew's graduation party. Respondent drove from the graduation party, fell asleep at the wheel and crashed into a fence. Respondent was arrested for driving under the influence. He was sentenced by the Stanislaus County Municipal/Superior Court to: several months of community service, a fine of \$1,000, restitution of \$900, a 6-month first offender DUI program, and was placed on three years probation. Respondent completed his community service, paid the fine and restitution and completed the first offender DUI program. Prior to completing his probation, respondent was again arrested for driving under the influence of alcohol.

12. The facts and circumstances leading to respondent's March 2, 1999 conviction are that on December 13, 1998, respondent was observed driving erratically and was stopped by a Tracy, California, police officer, who arrested respondent for driving under the influence of alcohol. Respondent had been drinking wine prior to his arrest. He admitted to his prior conviction and was sentenced by the San Joaquin County Municipal Court to: community service, a fine \$1,100, an 18-month multiple offender DUI program and three years probation. Respondent completed all of the terms of his sentence.

LEGAL CONCLUSIONS

1. Business and Professions Code section 490, provides:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or 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 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.

2. Business and Professions Code section 10177(b), provides:

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

3. Grounds for discipline exist pursuant to Business and Professions Code sections 490 and 10177(b), criminal convictions, by reason of Finding 3.
4. The criteria for rehabilitation is found in California Code of Regulations, title 10, section 2912:

The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts 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 licensee.

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

(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 criminal conviction was attributable in part to the use of a controlled substance or alcohol.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts 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 the licensee's previous conduct and with 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, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

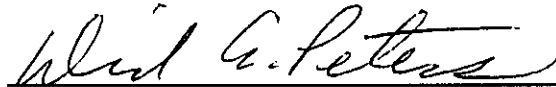
(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question."

5. Applying the relevant criteria for rehabilitation and in consideration of Factual Findings 3 through 12, respondent has not demonstrated adequate rehabilitation to continue to be a licensed real estate broker. Over the years, since 1998, respondent has demonstrated an inability to conform his conduct to societal rules. Respondent is an alcoholic, who has chosen on several occasions to put others at risk by driving while under the influence of alcohol. Respondent's first driving under the influence conviction resulted from an incident in which he drove his vehicle into a fence. While on probation for his first conviction, he again drove a vehicle while under the influence of alcohol. Despite two previous convictions, respondent most recently drove under the influence of alcohol, causing physical injuries to the occupants of another vehicle. Respondent remains on probation, has not completed his court ordered substance abuse program at Sierra Recovery Center, and has made no payments toward the fines and fees totaling \$3,400 ordered as part of his sentence. When a person is on criminal probation or parole, rehabilitation efforts are accorded less weight, "[s]ince persons under direct supervision of correctional authorities are required to behave in an exemplary fashion . . ." In *Re Gossage*, (2000) 23 Cal.4th1080, 1099. An insufficient amount of time has passed to fully assess respondent's rehabilitation, in light of his history of disregard for the safety of others. Respondent has not demonstrated that he can continue to be licensed at this time, without risk to the public.

ORDER

The real estate broker license and all license rights of respondent JAMES FRANK ANZALONE under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) are REVOKED.

Date: March 25, 2005



DAVID A. PETERS
Administrative Law Judge
Office of Administrative Hearings

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

DEPARTMENT OF REAL ESTATE

By *Carrie Mauer*

In the Matter of the Accusation of

JAMES FRANK ANZALONE

}
}

Case No. H-1711 FR

OAH No. 2004110355

Respondent

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 **TUESDAY, FEBRUARY 22, 2005**, at the hour of **2:30 P.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 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.

DEPARTMENT OF REAL ESTATE

Dated: DECEMBER 15, 2004

By *Truly Sughrue*
TRULY SUGHRUE, Counsel

TS:as

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AUG 20 2004

DEPARTMENT OF REAL ESTATE

By Truly Sz

1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007
6
7 Telephone: (916) 227-0781

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Accusation of)	No. H-1711 FR
12	JAMES FRANK ANZALONE,)	<u>ACCUSATION</u>
13	Respondent.)	

14
15 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against JAMES FRANK ANZALONE (hereinafter "Respondent"), is
18 informed and alleges as follows:

19 I

20 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation in
22 his official capacity.

23 II

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

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III

1 On or about March 12, 2004, in the Municipal and
2 Superior Court, County of San Francisco, Respondent was convicted
3 of a violation of Section 23152(B) of the California Vehicle Code
4 (Driving with a 0.08 or Higher Blood Alcohol - Causing Bodily
5 Injury), a crime involving moral turpitude which bears a
6 substantial relationship under Section 2910, Title 10, California
7 Code of Regulations, to the qualifications, functions, or duties
8 of a real estate licensee.
9

10 MATTERS IN AGREAVATION

11 IV

12 On or about March 2, 1999, in the Municipal Court,
13 County of San Joaquin, Respondent was convicted of a violation of
14 Section 23152(B) of the California Vehicle Code (Driving with a
15 0.08 or Higher Blood Alcohol with Prior), a crime involving moral
16 turpitude which bears a substantial relationship under Section
17 2910, Title 10, California Code of Regulations, to the
18 qualifications, functions, or duties of a real estate licensee.
19

20 V

21 On or about August 13, 1998, in the Municipal/Superior
22 Court, County of San Stanislaus, Respondent was convicted of a
23 violation of Section 23152(B) of the California Vehicle Code
24 (Driving with a 0.08 or Higher Blood), a crime involving moral
25 turpitude which bears a substantial relationship under Section
26 2910, Title 10, California Code of Regulations, to the
27 qualifications, functions, or duties of a real estate licensee.

IV

1 The facts alleged above constitute cause under Sections
2 490 and 10177(b) of the Code for suspension or revocation of all
3 licenses and license rights of Respondent under the Real Estate
4 Law.
5

6 WHEREFORE, Complainant prays that a hearing be
7 conducted on the allegations of this Accusation and that upon
8 proof thereof, a decision be rendered imposing disciplinary
9 action against all licenses and license rights of Respondent
10 under the Real Estate Law (Part 1 of Division 4 of the Business
11 and Professions Code), and for such other and further relief as
12 may be proper under the provisions of law.
13

14 
15 JOHN W. SWEENEY
16 Deputy Real Estate Commissioner

16 Dated at Sacramento, California,
17 this 23rd day of June, 2004
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