

FILED
NOV 30 2005

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By *[Signature]*

* * *

In the Matter of the Application of)
ALFREDO GARCIA LOPEZ,) NO. H-1804 FRESNO
Respondent.) OAH NO. N-2005070245

DECISION

The Proposed Decision dated November 3, 2005, 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, but the right to a restricted real estate salesperson license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon
on DEC 21 2005.

IT IS SO ORDERED

11/26/05

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

ALFREDO GARCIA LOPEZ,

Respondent.

Case No. H-1804 FR

OAH No. N2005070245

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on September 12, 2005, in Sacramento, California.

David B. Seals, Counsel, appeared on behalf of John Sweeney, a Deputy Real Estate Commissioner (complainant).

Alfredo Garcia Lopez (respondent) appeared on his own behalf.

Evidence was received on September 12, 2005. Submission of this matter was deferred so that complainant could obtain and file with the Office of Administrative Hearings a certified translation of Exhibit A. On October 17, 2005, complainant filed a certified translation of Exhibit A. That certified translation was marked for identification as Exhibit 4. Respondent was afforded the opportunity to submit by October 28, 2005, any written objection he might have to Exhibit 4. Respondent did not submit any written objection to Exhibit 4 by the close of business on October 28, 2005. Exhibit 4 was admitted into evidence. The record was closed and the matter was submitted on October 28, 2005.

FACTUAL FINDINGS

1. On July 29, 2005, complainant, in his official capacity, made the First Amended Statement of Issues, which was filed with the Department of Real Estate (Department) on August 11, 2005.

2. On June 2, 2004, respondent filed an application with the Department for a real estate salesperson license.

3. On August 15, 1989, the Insurance Commissioner of the State of California licensed respondent to act as a fire and casualty broker-agent. Respondent did business as Seal Insurance Brokerage. In December 2000, the Insurance Commissioner filed an Accusation (Insurance Accusation) against respondent, which alleged that: (1) respondent was married to Maria Lopez (ML), who performed, without supervision, over 90 percent of the daily activities of respondent's insurance agency, although she had never been licensed by the Insurance Commissioner; (2) respondent knew or should have known that ML was performing tasks at his insurance agency for which a license was required; (3) in 1993 and 1994, ML took money from clients of respondent's insurance agency and, instead of using that money to purchase insurance coverage, converted that money for her own use; and (4) these wrongful acts by ML occurred with the actual or constructive knowledge of respondent.

Respondent did not contest the Insurance Accusation. Instead, he agreed to settle the matter by executing a "Special Notice of Defense," dated March 8, 2001, in which he: (1) waived his right to a hearing; (2) admitted all the allegations set forth in the Insurance Accusation; (3) accepted the revocation of his fire and casualty broker-agent license and the issuance of a restricted license; and (4) agreed to reimburse the Commissioner for his costs in investigating and prosecuting the matter and to pay a monetary penalty. On June 26, 2001, the Insurance Commissioner issued an "Order of Revocation of Unrestricted License and for Issuance of Restricted License, and for Monetary Penalty and Reimbursement" (Insurance Order), which ordered the terms and conditions of the settlement to which respondent had agreed in the Special Notice of Defense.

In addition, respondent fully reimbursed his clients for all the money that ML had converted.

4. Respondent explained that he is not legally married to ML, but they have a child together. Beginning in 1992, ML worked for respondent at his office in Los Angeles, and continued to work for him when he moved his office to Fresno in 1997. Initially, respondent did not work full-time at his insurance agency. In 1997, he returned to full-time work at his agency. It was then that he first learned of ML's wrongful actions.

Respondent conceded that he did not properly supervise ML while she worked at his insurance agency. He asserted, however, that he was not aware of ML's wrongful actions at the time they were committed. He admitted all the allegations in the Insurance Accusation as part of his settlement agreement with the Insurance Commissioner in order to reach a quick resolution. He employed ML at his insurance agency to perform administrative work until 2000, when the Insurance Commissioner issued a cease and desist order against her. When that order was issued, respondent asked ML to leave his insurance agency.

5. The Insurance Commissioner has renewed respondent's restricted fire and casualty broker-agent license through August 31, 2007. On November 4, 2003, the Department of Insurance notified respondent that its benchmark for removing restrictions is five years from the date of the order imposing the restrictions. Because respondent's license was restricted by the Insurance Order on June 26, 2001, he may petition for removal of the restrictions in May 2006. Respondent asserted that he has fully complied with all the laws and regulations governing the sale of fire and casualty insurance since he resolved the Insurance Accusation, and no further complaints have been lodged against his insurance license. Respondent accepted full responsibility for the wrongful actions that occurred at his insurance agency in 1993 and 1994. He recognized that those wrongful actions occurred because he failed to properly supervise ML and allowed her to perform his responsibilities and duties. Respondent's expression of remorse appeared to be sincere.

6. Respondent did not submit sufficient documentation to the Department to show that he has successfully completed all the courses required pursuant to Business and Professions Code section 10153.4.¹

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivision (f), provides that an applicant may be denied a real estate license if the applicant has:

Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or has ... had a license issued by another agency of this state ... revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act ..., and only upon an express finding of a violation of law by the agency or entity.

¹ Business and Professions Code section 10153.4, in relevant part, provides:

(a) Every person who is required to comply with Section 10153.3 to obtain an original real estate salesperson license shall, prior to the issuance of the license, or within 18 months after issuance, submit evidence, satisfactory to the commissioner, of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance, or advanced real estate appraisal.

In *Berg v. Davi* (2005) 130 Cal.App.4th 223, a disbarred attorney was denied a real estate salesperson license under section 10177, subdivision (f), based upon the finding that he had been disbarred for acts that constituted fraud and dishonest dealing and would be grounds for revocation of a real estate license. The California Supreme Court disbarred the attorney after summarily denying his petition for review of the State Bar Court's disbarment recommendation. The disbarred attorney challenged the Department's reliance upon the Supreme Court's decision and the State Bar Court's recommendation to deny his application for a real estate salesperson license.

In *Berg, supra*, 130 Cal.App.4th at p. 230, the court found that section 10177, subdivision (f),

does not always require proof of the underlying bad conduct; it is sufficient to show another license was revoked due to bad conduct. The facts and opinions were not used to prove that Berg committed acts of fraud and dishonest dealing, only to explain the basis of the disbarment. Because the facts of the opinions were admitted only to explain other properly admitted evidence, such use of hearsay was proper in an administrative proceeding under Government Code section 11513, subdivision (d).²

The court in *Berg* concluded that, under section 10177, subdivision (f), to establish cause to deny a real estate salesperson license application, it is sufficient for the Department to show that another licensing agency denied a license application for asserted misconduct, without proving that the asserted misconduct actually occurred.

The reasoning set forth in *Berg* applies in this case. The Insurance Commissioner revoked respondent's unrestricted fire and casualty broker-agent license upon an express finding of a violation of the law governing insurance licenses. The acts alleged in the Insurance Accusation and admitted by respondent in the Special Notice of Defense, if done by a real estate licensee, would be grounds for suspension or revocation of a California real estate license. (See Business and Professions Code section 10177, subdivision (g), which permits revocation of a real estate license for "negligence or incompetence in performing any act for which he or she is required to hold a license," and subdivision (h), which permits revocation of a real estate broker license for failure to "exercise reasonable supervision over the activities of his or her salespersons.") As reflected in the Special Notice of Defense, respondent was given fair notice of the charges and afforded all the due process protections of the Administrative Procedure Act, including an opportunity for a hearing, which he

² Government Code section 11513, subdivision (d), provides:

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration.

waived. The Insurance Accusation, Special Notice of Defense and Insurance Order, therefore, establish cause to deny respondent's application for a real estate salesperson license pursuant to section 10177, subdivision (f). Respondent is bound by these documents and cannot collaterally attack them.

Respondent may, however, offer evidence of mitigating circumstances with respect to the violations found by the Insurance Commissioner. (See *Richards v. Gordon* (1967) 254 Cal.App.2d 735, 742-743.) Respondent persuasively testified to his lack of awareness of ML's wrongful acts. In addition, he took full responsibility for his failure to properly supervise ML and prevent her from performing work for which a license was required. These factors may be considered as mitigating circumstances in this case.

2. California Code of Regulations, title 10, section 2911 sets forth criteria for determining whether an applicant who has engaged in wrongful conduct has sufficiently rehabilitated to support the issuance of a license.³

³ California Code of Regulations, title 10, section 2911, provides as follows:

Criteria of Rehabilitation (Denial).

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:

- (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.

Respondent has met many of the rehabilitation criteria set forth in section 2911. It has been more than two years since the Insurance Commissioner restricted his fire and casualty broker-agent license. He paid restitution to the clients who suffered losses through his wrongful acts and omissions. He also paid the costs and penalty assessed by the Insurance Commissioner. Since June 2001, he has been conducting his insurance business under a restricted fire and casualty broker-agent license, apparently without any complaints.

Respondent's allowing an unlicensed employee to perform his licensed duties and responsibilities, and continuing to employ that unlicensed employee for three years after he learned of her wrongful conduct raise some concerns. These concerns are, however, outweighed by his recognition that he was fully responsible for his employee's wrongful conduct and his expressions of remorse.

When all the factors set forth above are weighed and balanced, it would not be contrary to the public interest or welfare to issue respondent a conditional restricted real estate salesperson license at this time.

(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.

ORDER

Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to 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 said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence 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 this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two (2) years have elapsed from the date of issuance of the restricted license to respondent.

3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

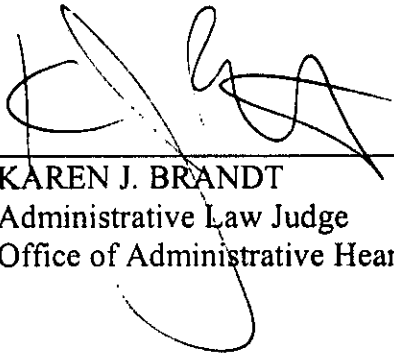
(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in 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 timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, respondent has submitted the required evidence of course completion and the Commissioner has given written notice to respondent of lifting of the suspension.

5. Pursuant to Section 10154, if respondent has not satisfied the requirements for an unqualified license under Section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

DATED: 11/3/05



KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings

1 DEIDRE L. JOHNSON, Counsel
2 SBN 66322
3 Department of Real Estate
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FILED
AUG 11 2005

DEPARTMENT OF REAL ESTATE

By K. Contreras

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)

12 ALFREDO GARCIA LOPEZ,)

13 Respondent.)
14

NO. H-1804 FR

FIRST AMENDED
STATEMENT OF ISSUES

15 The Complainant, JOHN SWEENEY, a Deputy Real Estate
16 Commissioner of the State of California, for cause of First
17 Amended Statement of Issues against ALFREDO GARCIA LOPEZ, alleges
18 as follows:

19 I

20 ALFREDO GARCIA LOPEZ (hereafter Respondent), pursuant
21 to the provisions of Section 10153.3 of the Business and
22 Professions Code (hereafter the Code), made application to the
23 Department of Real Estate of the State of California for a real
24 estate salesperson license on or about May 14, 2003, with the
25 knowledge and understanding that any license issued as a result
26 of said application would be subject to the conditions of Section
27 10153.4 of the Code.

1 II

2 Complainant, JOHN SWEENEY, a Deputy Real Estate
3 Commissioner of the State of California, makes this First Amended
4 Statement of Issues in his official capacity and not otherwise.

5 III

6 Effective June 26, 2001, in Case No. SF 15380-AP (AR),
7 before the Insurance Commissioner of the State of California, the
8 insurance license and licensing rights of Respondent as a fire
9 and casualty broker-agent, doing business as Seal Insurance
10 Brokerage, was revoked with the right to issuance of a restricted
11 license pursuant to Section 1742 of the California Insurance Code
12 on specified terms and conditions, pursuant to the following:

- 13 1. Insurance Code section 1727 (failure to retain
14 specified transaction records);
- 15 2. Insurance Code sections 1668(b) and 1738
16 (against the public interest to continue
17 licensure);
- 18 3. Insurance Code sections 1668(c) and 1738 (does
19 not intend actively and in good faith to carry
20 on licensed business);
- 21 4. Insurance Code sections 1668(d) and 1738 (is
22 not of a good business reputation);
- 23 5. Insurance Code sections 1668(e) and 1738
24 (lacking in integrity);
- 25 6. Insurance Code sections 1668(i) and 1738
26 (engaged in a fraudulent practice or act or
27 has conducted business in a dishonest manner);

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2 The grounds for disciplinary action as alleged in
3 Paragraph III above were based, in whole or in part, upon acts
4 which, if done by a real estate licensee, would be grounds for
5 the suspension or revocation of a California real estate license,
6 including but not limited to the following:

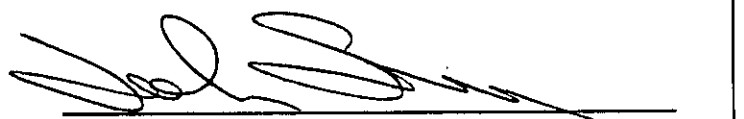
- 7 1. Sections 10148 of the Code (failure of the
8 licensee to retain specified transaction
9 records);
- 10 2. Section 10176(a) of the Code (making by a
11 licensee in a transaction requiring a license
12 any substantial misrepresentation);
- 13 3. Section 10176(i) of the Code (conduct by a
14 licensee in a transaction requiring a license
15 constituting fraud or dishonest dealing);
- 16 4. Section 10177(i) of the Code (other conduct
17 constituting fraud or dishonest dealing)
- 18 5. Section 10177(d) of the Code (willfully
19 disregarded or violated the Real Estate Law);
- 20 6. Section 10177(g) of the Code (demonstrated
21 negligence or incompetence in performing any
22 act that requires a license); and/or
- 23 7. Section 10177(h) of the Code (as a licensee
24 responsible for the company [e.g. broker],
25 failed to exercise reasonable supervision over
26 the activities of his or her agents/employees
27 [e.g. salespersons].

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VI

The disciplinary action against Respondent as alleged above constitutes cause for denial of Respondent's application for a real estate license under Section 10177(f) of the Code.

WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of a real estate salesperson license to Respondent, and for such other and further relief as may be proper in the premises.



JOHN SWEENEY
Deputy Real Estate Commissioner

Dated at Fresno, California
this 29th day of July, 2005.

1 DEIDRE L. JOHNSON, Counsel
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FILED
JUN 10 2005

DEPARTMENT OF REAL ESTATE

By Jean Dumont

8 BEFORE THE

9 DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Application of)
13 ALFREDO GARCIA LOPEZ,)
14 Respondent.)
15 _____)

NO. H- 1804FR
STATEMENT OF ISSUES

16 The Complainant, JOHN SWEENEY, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Statement
18 of Issues against ALFREDO GARCIA LOPEZ, alleges as follows:

19 I

20 ALFREDO GARCIA LOPEZ (hereafter Respondent), pursuant
21 to the provisions of Section 10153.3 of the Business and
22 Professions Code (hereafter the Code), made application to the
23 Department of Real Estate of the State of California for a real
24 estate salesperson license on or about June 2, 2004, with the
25 knowledge and understanding that any license issued as a result
26 of said application would be subject to the conditions of
27 Section 10153.4 of the Code.

1 II

2 Complainant, JOHN SWEENEY, a Deputy Real Estate
3 Commissioner of the State of California, makes this Statement of
4 Issues in his official capacity and not otherwise.

5 III

6 Effective June 26, 2001, in Case No. SF 15380-AP (AR),
7 before the Insurance Commissioner of the State of California,
8 the insurance license and licensing rights of Respondent as a
9 fire and casualty broker-agent, doing business as Seal Insurance
10 Brokerage, was revoked with the right to issuance of a restricted
11 license pursuant to Section 1742 of the California Insurance Code
12 on specified terms and conditions. The grounds for disciplinary
13 action were based, in whole or in part, upon acts which, if done
14 by a real estate licensee, would be grounds for the suspension
15 or revocation of a California real estate license, pursuant to
16 the following:

- 17 1. Insurance Code section 1727 (failure to
18 retain specified transaction records);
19 2. Insurance Code sections 1668(b) and 1738
20 (against the public interest to continue
21 licensure);
22 3. Insurance Code sections 1668(c) and 1738
23 (does not intend actively and in good faith
24 to carry on licensed business);
25 4. Insurance Code sections 1668(d) and 1738 (is
26 not of a good business reputation);
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- 5. Insurance Code sections 1668(e) and 1738 (lacking in integrity);
- 6. Insurance Code sections 1668(i) and 1738 (engaged in a fraudulent practice or act or has conducted business in a dishonest manner);
- 7. Insurance Code sections 1668(j) and 1738 (demonstrated incompetence or untrustworthiness in the conduct of business or exposed the public or those dealing with him to the danger of loss);
- 8. Insurance Code sections 1668(k) and 1738 (knowingly misrepresented the terms or effect of an insurance policy or contract);
- 9. Insurance Code sections 1668(l) and 1738 (failed to perform a duty expressly enjoined upon him by a provision of the Insurance Code or committed an act expressly forbidden by such a provision);
- 10. Insurance Code sections 1668(n) and 1738 (aided or abetted a person in an act or omission that would constitute grounds for discipline or refusal of a license to the person aided or abetted); and
- 11. Insurance Code sections 1668(o) and 1738 (permitted a person in his employ to violate a provision of the Insurance Code).

1 IV

2 Some or all of the facts alleged in Paragraph III above
3 constitute cause for denial of Respondent's application for a
4 real estate license under Section 10177(f) of the Code.

5 WHEREFORE, the Complainant prays that the above-entitled
6 matter be set for hearing and, upon proof of the charges
7 contained herein, that the Commissioner refuse to authorize the
8 issuance of, and deny the issuance of a real estate salesperson
9 license to Respondent, and for such other and further relief as
10 may be proper in the premises.

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14 
15 JOHN SWEENEY
16 Deputy Real Estate Commissioner
17

18 Dated at Fresno, California
19 this 7th day of June, 2005.
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