



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

BRETT LEROY COX,

Respondent.

Case No. H-1919 FRESNO

OAH No. N2006051006

**PROPOSED DECISION**

This matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings, in Sacramento, California, on July 26, 2006.

David B. Seals, Staff Counsel, Department of Real Estate, State of California, represented complainant John Sweeney.

Brett Leroy Cox appeared and represented himself.

Evidence was received and the matter deemed submitted on July 26, 2006.

**FACTUAL FINDINGS**

1. On April 21, 2006, John Sweeney, Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California, filed the Statement of Issues in his official capacity against Brett Leroy Cox (respondent).

2. On August 19, 2005, respondent submitted an executed Broker License Application to the Department. Said application for licensure is pending.

3. On August 3, 2001, in a matter before the Superior Court of California, County of Fresno, respondent, then 37 years old, was convicted of violating Penal Code section 550, subdivision (b)(3) (insurance fraud), a misdemeanor and crime of moral turpitude substantially related to the functions, duties and qualifications of a Department licensee. The facts and circumstances underlying respondent's conviction are that during 1997 and 1998, he failed to disclose prior insurance claims incident to an application for insurance with another company. Respondent was sentenced to a three-year term of probation.

4. Respondent, age 42 readily admits his conviction. He ascribes its commission to poor judgment arising from prior associations, specifically his former wife and her girlfriend, an insurance agent, who facilitated the crime.

*Circumstances in Mitigation*

5. Respondent acknowledges his conviction and errant conduct. He demonstrates insight into the import of his conduct and professional obligations as a Department licensee.

6. Respondent, a State of California employee with the Department of Transportation, seeks Department licensure to supplement his income and better provide for himself and his family. He is a new Christian who serves as a youth minister. He focuses his attentions on his new wife and family.

7. Respondent successfully paid all fines and restitution, completed his probation and obtained Penal Code section 1203.4 relief.

8. The facts and circumstances underlying respondent's conviction occurred more than five years ago.

*Circumstances in Aggravation*

9. Respondent, a former police officer, embarked on a course of conduct in the commission of his criminal conviction that involved moral turpitude.

10. Respondent's court probation concluded less than two years ago.

11. Respondent characterizes the conduct underlying his criminal conviction as arising primarily from a failure to properly answer an application for new insurance. The investigative report indicates that respondent's errant conduct involved more than just a lapse of judgment in the completion of an application for insurance. Rather, with the complicity of others, respondent repeatedly submitted claims for insurance recovery for a series of burglaries. His claims covered a period well beyond the period set forth in his criminal conviction. When queried by the Department's staff counsel, respondent, claiming the investigative report overstated his errant conduct, was not responsive in setting forth where the report was inaccurate. Although admitting culpability for errant conduct, respondent was not fully forthcoming in this proceeding in setting forth the scope and extent of his criminal misconduct.

12. Respondent's evidence of recent rehabilitation was limited to uncorroborated self-serving testimony. No letters of reference or other testimony or documentation was proffered that would competently establish respondent's rehabilitation as sustained.<sup>1</sup>

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<sup>1</sup> Character testimony and reference letters are significant in establishing reformation. (*In re Andreani* (1939) 14 Cal.2d 736, 749 - 750.)

## LEGAL CONCLUSIONS

1. Cause exists to deny the application of Respondent for licensure as a real estate broker for a criminal conviction pursuant to the provisions of Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), in conjunction with California Code of Regulations, title 10, sections 2910 and 2911, and as set forth in Findings 2 through 3.

2. The objective of a disciplinary proceeding is to protect the public, the licensed occupation, maintain integrity, high standards, and preserve public confidence in Department licensure.<sup>2</sup> In particular, the statutes relating to Department licensure are designed to protect the public from any potential risk of harm.<sup>3</sup> The law looks with favor upon those who have been properly reformed.<sup>4</sup> To that end, respondent bears a burden, against a crime of moral turpitude, to establish his reformation. He has not met such burden. Indeed, licensure does not rest merely on knowledge as evinced by passage of an examination but also character. "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee." (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) "If appellant's offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson." (*Harrington, supra*, at p. 402; *Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.) "The Legislature intended to insure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear." (*Harrington, supra*, at p. 402; *Ring v. Smith* (1970) 5 Cal.App.3d 197, 205.) Honesty and trustworthiness are qualities of utmost importance in a real estate licensee, who must frequently act in a fiduciary capacity. Respondent's misconduct, balanced with his recent criminal history against a law enforcement history, warrants Department scrutiny. Giving due consideration to the facts and circumstances underlying the Statement of Issues (Legal Conclusion 1) and the circumstances in mitigation (Findings 5 through 8) and aggravation (Findings 9 through 12), the undersigned concludes that the public interest will be harmed by the issuance of a real estate salesperson's license, at this time,<sup>5</sup> to respondent.

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<sup>2</sup> *Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 816.

<sup>3</sup> *Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.

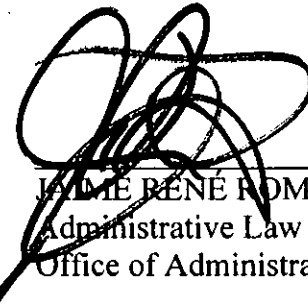
<sup>4</sup> *Resner v. State Bar* (1967) 67 Cal.2d 799, 811.

<sup>5</sup> Although this Decision and Order are adverse to respondent, he must not lose heart from the issuance of this Decision. It is clear that he is embarking on a path of rehabilitation sufficient to compel his future licensure. To that end, he should continue with such efforts.

ORDER

The application of respondent Brett Leroy Cox licensure as a real estate broker by the Department of Real Estate, State of California, is denied.

Dated: July 27, 2006



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JAIME RENÉ ROMÁN  
Administrative Law Judge  
Office of Administrative Hearings

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FILED  
APR 29 2006

DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Application of )  
12 BRETT LEROY COX, ) No. H-1919 FRESNO  
13 Respondent. ) STATEMENT OF ISSUES

14  
15 The Complainant, John Sweeney, a Deputy Real Estate  
16 Commissioner of the State of California, for Statement of Issues  
17 against BRETT LEROY COX (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 broker  
22 license on or about August 19, 2005.

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.

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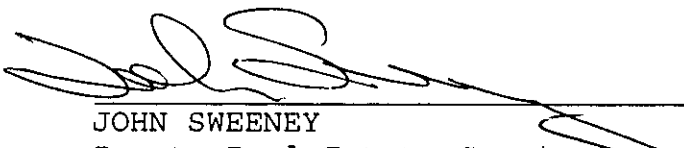
1 III

2 On or about August 3, 2001, in the Superior Court of  
3 California, County of Fresno, Respondent was convicted of  
4 violation of California Penal Code Section 550(b)(3) (Making  
5 False or Fraudulent Claims - Insurance), a crime involving moral  
6 turpitude and/or which is substantially related under Section  
7 2910, Title 10, California Code of Regulations (herein after the  
8 "Regulations"), to the qualifications, functions or duties of a  
9 real estate licensee.

10 IV

11 The crime for which Respondent was convicted, as  
12 alleged in Paragraph III above, constitutes cause for denial of  
13 Respondent's application for a real estate license under  
14 Sections 480(a) and 10177(b) of the California Business and  
15 Professions Code.

16 WHEREFORE, the Complainant prays that the above-  
17 entitled matter be set for hearing and, upon proof of the  
18 charges contained herein, that the Commissioner refuse to  
19 authorize the issuance of, and deny the issuance of, a real  
20 estate broker license to Respondent, and for such other and  
21 further relief as may be proper under other provisions of law.

22  
23   
24 JOHN SWEENEY  
Deputy Real Estate Commissioner

25 Dated at Fresno, California,  
26 this 21<sup>st</sup> day of April, 2006.