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AUG 04 2011

DEPARTMENT OF REAL ESTATE

By [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of

MOISES CONTRERAS,

Respondent.

No. H-1960 FR

ORDER GRANTING UNRESTRICTED LICENSE

On November 6, 2006, 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 January 25, 2007, and Respondent has operated as a restricted licensee since that time.

On January 10, 2011, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

I have considered Respondent's petition and the evidence submitted in support thereof including Respondent's record as a restricted licensee. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of

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1 an unrestricted real estate salesperson license and that it would not be against the public interest  
2 to issue said license to Respondent.

3 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal of  
4 restrictions is granted and that a real estate salesperson license be issued to Respondent if  
5 Respondent satisfies the following requirements:

- 6 1. Submits a completed application and pays the fee for a real estate  
7 salesperson license within the 12 month period following the date of this Order; and
- 8 2. Submits proof that Respondent has completed the continuing education  
9 requirements for renewal of the license sought. The continuing education courses must be  
10 completed either (i) within the 12 month period preceding the filing of the completed  
11 application, or (ii) within the 12 month period following the date of this Order.

12 This Order shall become effective immediately.

13 IT IS SO ORDERED

7/5/11

14 BARBARA J. BIGBY  
15 Acting Real Estate Commissioner

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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

FILED  
NOV 13 2006

DEPARTMENT OF REAL ESTATE

*[Signature]*

In the Matter of the Application of )  
MOISES CONTRERAS, ) NO. H-1960 FRESNO  
Respondent. ) OAH NO. N-2006080692  
\_\_\_\_\_ )

DECISION

The Proposed Decision dated October 26, 2006, 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 - 4 2006.

IT IS SO ORDERED 11-6-06.

JEFF DAVI  
Real Estate Commissioner

*[Signature]*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

MOISES CONTRERAS,

Respondent.

Case No. H-1960 FRESNO

OAH No. N2006080692

**PROPOSED DECISION**

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on September 25, 2006.

David B. Seals, Counsel, Department of Real Estate, represented Complainant John Sweeney, Deputy Real Estate Commissioner.

Respondent Moises Contreras represented himself.

The record closed on September 25, 2006.

**FACTUAL FINDINGS**

1. Complainant John Sweeney filed the Statement of Issues in his official capacity as a deputy real estate commissioner for the Department of Real Estate, State of California (Department).
2. On July 22, 2005, Moises Contreras (Respondent) submitted an application to the Department of Real Estate for a real estate salesperson license. Any license issued pursuant to that application would be subject to the provisions of Business and Professions Code section 10153.4. The Department denied Respondent's application and this hearing followed.
3. The Department's application forms require the disclosure of all criminal convictions. Respondent fully complied with the requirement by providing very detailed information concerning seven convictions.

### *Criminal convictions*

4. On July 12, 1994, in the Fresno Municipal Court, Respondent was convicted by his plea of guilty of a misdemeanor violation of Vehicle Code section 23103, subdivision (a), alcohol-related reckless driving. This violation is commonly referred to as a "wet reckless." Respondent was given a three-year conditional sentence and ordered to attend a driving while intoxicated class and pay fines and fees.

5. On January 17, 1996, in the West Covina Municipal Court, Respondent was convicted by jury verdict of a misdemeanor violation of Penal Code section 425, subdivision (2), disturbing the peace by making a loud noise. Respondent was placed on summary probation for three years, ordered to serve ten days in county jail and to pay \$920 in fines and fees or complete 19 days of community service.

This case arose from an incident that occurred on November 5, 1995. The police report states that the complaining witness in the matter had filed numerous previous complaints against Respondent for playing music excessively loudly. On this occasion, the witness reported that Respondent had been playing a stereo loudly for about fifteen minutes.

6. On January 15, 1997, in the South Bay Municipal Court, Respondent was convicted by his plea of nolo contendere of a misdemeanor violation of Vehicle Code section 23152, subdivision (b), driving with 0.08 percent or more of blood alcohol. Respondent was placed on summary probation for three years and ordered to serve 248 hours in county jail, to pay fines and fees of \$1,334 and to complete an 18-month alcohol treatment program.

This case arose from Respondent's arrest on December 15, 1996. The police report states that Respondent was clocked traveling over 60 miles per hour in a posted 35 miles per hour zone. When stopped, it was discovered that he was under the influence of alcohol.

7. On July 21, 1997, in the Kings County Superior Court, Respondent was convicted by his plea of guilty/no contest of a misdemeanor violation of Vehicle Code section 14601.5, subdivision (a), driving while license suspended or revoked for driving under the influence. Respondent was granted a conditional release without probation department supervision for three years and ordered to pay fines and fees of \$945.

8. On September 11, 1997, in the West Covina Municipal Court, Respondent was convicted by his plea of nolo contendere of a misdemeanor violation of Vehicle Code section 14601.2, subdivision (a), driving while license suspended or revoked for driving under the influence. Respondent was placed on summary probation for three years and ordered to serve ten days in jail and to pay fines and fees of \$981.

9. On July 21, 1998, in the Fresno County Superior Court, Respondent was convicted by his plea of nolo contendere of a misdemeanor violation of Penal Code section 647, subdivision (f), public intoxication. Respondent was given a conditional sentence for three years that included 30 days in custody, stayed.

On April 10, 2000, the case was dismissed pursuant to Penal Code section 1203.4.

10. On February 13, 2003, in the Tulare County Superior Court, Respondent was convicted by his plea of nolo contendere of a misdemeanor violation of Penal Code section 32, accessory to a felony (grand theft). Respondent was placed on probation for 36 months and ordered to serve 30 days in custody through the SWAP. He was also ordered to pay fines and fees.

On August 13, 2004, the case was dismissed pursuant to Penal Code section 1203.4.

*Respondent's evidence*

11. Respondent testified about his criminal history in a forthcoming manner. He acknowledged a problem with alcohol, which is now in the past. As to the driving without a license convictions, Respondent was having trouble getting to and from work without driving his own vehicle. Nonetheless, he described his decisions to drive as poor choices.

12. Respondent's 2003 conviction arose from an incident that occurred following a golf game with a friend, George Vera, on June 22, 2002. Unbeknownst to Respondent, Vera had taken someone else's golf clubs and placed them in the trunk of Respondent's car. Vera told Respondent about it while they were driving and also said that he would return the clubs the next day. Vera did not do so. When Respondent learned about this about one week later, he picked Vera up and drove him to the golf course, where Vera left the clubs at the pro shop. Respondent then telephoned the shop, and without identifying himself, stated that the stolen clubs were there.

At the time, Respondent was employed as a school teacher and he was fearful of what could happen to his career as a result of his involvement. He knows that what he did was wrong – that he should have immediately driven back to the golf course upon learning that stolen clubs were in his trunk.

13. In 2005 Respondent was the subject of a hearing before the Commission on Teacher Credentialing as a result of the 2003 conviction. The Commission suspended his credential for 30 days. On March 24, 2006, Respondent was awarded a Professional Clear Multiple Subject Teaching Credential.

14. Respondent graduated from UCLA in 2005. He also married that year and he and his wife have a five-month-old son. Respondent's wife teaches kindergarten. Respondent has been teaching school for about six years, most recently in the Fairfax School District, where he taught computers to middle school aged children. This year Respondent is not teaching, as he is taking care of his son.

Respondent plans to begin working as a realtor with broker Dan T. Shanyfelt. He would have a different work schedule than his wife, which would accommodate their son's child care needs.

15. Respondent's wife, Leticia Pacheco Contreras, testified on his behalf. She has known Respondent for five years and believes him to be very trustworthy. Contreras was "shocked to hear about the golf course incident." She believes it was very out of character. In addition, Contreras stated that Respondent has no problems with alcohol use.

16. Dan T. Shanyfelt, a licensed real estate broker with offices in Bakersfield, wrote a letter in support of Respondent. Shanyfelt, who has known Respondent about five years, wrote that Respondent shared his criminal convictions and the Department's denial of licensure with him. He feels that Respondent is "of strong ethical character and a great role model to his child and to the children he mentored when he was a teacher." He looks forward to employing Respondent.

17. Joel T. Andreesen, an attorney, is a personal friend of Respondent's. He wrote a reference letter that describes Respondent as highly intelligent, honest and hardworking.

### LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), provides that a license application may be denied if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of the profession for which application is made. The Department has developed criteria (Cal. Code Regs., tit. 10, § 2910) to be used in considering whether a crime is substantially related to the qualifications, functions and duties of a real estate licensee.

2. Taken together, Respondent's seven criminal convictions are substantially related to the qualifications, functions, and duties of a real estate licensee under section 2910, subdivision (a)(10), conduct demonstrating a pattern of repeated and willful disregard of law. Respondent's wet reckless, driving under the influence, and drunk in public convictions all involved the use of alcohol and are therefore collectively substantially related under section 2910, subdivision (a)(11), two or more convictions involving the consumption of alcohol, at least one of which involves driving. Respondent's wet reckless and driving under the influence convictions are substantially related under section 2910, subdivision (a)(8), in that drinking and driving involve the threat of doing substantial injury to the person or property of another. Respondent illegally drove while under specific orders not to do so, acts that are substantially related under section 2910, subdivision (a)(9). And, Respondent's conviction for accessory to a felony was grounded in theft, which is substantially related under section 2910, subdivision (a)(1). Therefore, cause for denial of Respondent's application exists pursuant to Business and Professions Code section 480, subdivision (a).

3. Business and Professions Code section 10177, subdivision (b), provides that a real estate license may be denied if the applicant has been convicted of a felony or a crime of moral turpitude. As Respondent's seven convictions are all misdemeanors, in order to provide cause for denial they must be crimes of moral turpitude.

Moral turpitude is a concept difficult to define. It has been described 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" and as "innately a relative concept depending upon both contemporary moral values and the degree of its inimical quality." (*Rice v. Alcoholic Beverage Control Appeals Board* (1979) 89 Cal.App.3d, 30, 306.) Crimes that do not involve moral turpitude *per se* may be so defined by reason of the circumstances surrounding their commission. None of Respondent's first six convictions resulted from conduct sufficiently egregious to support the conclusion that they involved moral turpitude as committed.

However, Respondent's conviction for accessory to a felony grand theft, an act involving dishonesty, was clearly of a crime involving moral turpitude. Cause for denial of Respondent's application thereby exists pursuant to Business and Professions Code section 10177, subdivision (b), for this conviction.

4. As legal cause for denial exists, the next question to be addressed is whether Respondent has demonstrated rehabilitation. Department regulations (Cal. Code Regs., tit. 10, § 2911) also contain criteria to assist in the difficult assessment of rehabilitation and consequent risk to the public safety presented by an applicant who has been convicted of a crime. Measured against the criteria and other relevant considerations, evidence of Respondent's rehabilitation was persuasive.

A primary purpose of the licensing scheme for real estate professionals is to protect the public from dishonest and unscrupulous licensees; hence, it is particularly important that real estate salespersons possess the character traits of honesty and integrity. Respondent's 2003 conviction provides evidence that Respondent does not possess these traits, however, the evidence demonstrated that the incident was an aberrant one that was not indicative of Respondent's true character. Respondent was forthcoming about his past and presented evidence that he has made a significant change of attitude and lifestyle. He has graduated from college, earned a teaching credential, married and established a stable family life. It is therefore concluded that the public interest would be sufficiently protected by the issuance of a restricted salesperson license.

## ORDER

The application of Moises Contreras for a real estate sales license is denied;  
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



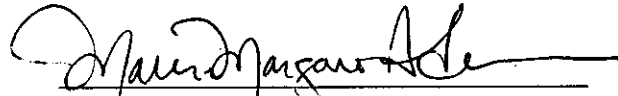
suspend the right to exercise any privileges granted under this restricted license in the event of:

- 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 or the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two 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 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 aspects of real estate, advanced real estate finance or 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.

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: October 26, 2006

A handwritten signature in cursive script, appearing to read "Mary-Margaret Anderson", written over a horizontal line.

MARY-MARGARET ANDERSON  
Administrative Law Judge  
Office of Administrative Hearings

1 DAVID B. SEALS, Counsel (SBN 69378)  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007  
5  
6 Telephone: (916) 227-0789  
7 -or- (916) 227-0792 (Direct)

FILED  
JUL 12 2008

DEPARTMENT OF REAL ESTATE

By *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Application of )  
12 MOISES CONTRERAS, )  
13 Respondent. )

No. H-1960 FRESNO  
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 MOISES CONTRERAS (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 July 22, 2005 with the knowledge and  
23 understanding that any license issued as a result of said  
24 application would be subject to the conditions of Section  
25 10153.4 of the California Business and Professions Code.

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27 ///

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.

5 III

6 On or about July 12, 1994, in the Municipal Court -  
7 Consolidated Fresno Judicial District, Respondent was convicted  
8 of violation of California Vehicle Code Section 23103(a)  
9 pursuant to Section 23103.5 (Wet Reckless), a crime involving  
10 moral turpitude and/or which is substantially related under  
11 Section 2910, Title 10, California Code of Regulations  
12 (hereinafter the "Regulations") to the qualifications, functions  
13 or duties of a real estate licensee.

14 IV

15 On or about January 17, 1996, in the Municipal Court  
16 of California, County of Los Angeles, West Covina Courthouse  
17 Judicial District, Respondent was convicted of violation of  
18 California Penal Code Section 415(2) (Disturbing the Peace -  
19 Loud and Unreasonable Noise), a crime involving moral turpitude  
20 and/or which is substantially related under Section 2910 of the  
21 Regulations to the qualifications, functions or duties of a real  
22 estate licensee.

23 V

24 On or about January 15, 1997, in the Municipal Court  
25 of California, County of Los Angeles, South Bay Judicial  
26 District, Respondent was convicted of violation of California  
27 Vehicle Code Section 23152(b) (Driving With 0.08% or More Blood

1 Alcohol), a crime involving moral turpitude and/or which is  
2 substantially related under Section 2910 of the Regulations to  
3 the qualifications, functions or duties of a real estate  
4 licensee.

5 VI

6 On or about July 21, 1997, in the Superior Court of  
7 the State of California, County of Kings, Respondent was  
8 convicted of violation of California Vehicle Code Section  
9 14601.5(a) (Driving Class M1 or M2 Vehicle While License  
10 Suspended or Revoked), a crime involving moral turpitude and/or  
11 which is substantially related under Section 2910 of the  
12 Regulations to the qualifications, functions or duties of a real  
13 estate licensee.

14 VII

15 On or about September 11, 1997, in the Municipal Court  
16 of California, County of Los Angeles, West Covina Courthouse  
17 Judicial District, Respondent was convicted of violation of  
18 California Vehicle Code Section 14601.2(a) (Driving While  
19 License Suspended or Revoked for Driving Under the Influence), a  
20 crime involving moral turpitude and/or which is substantially  
21 related under Section 2910 of the Regulations to the  
22 qualifications, functions or duties of a real estate licensee.

23 VIII

24 On or about October 19, 1998, in the Superior Court of  
25 California, County of Fresno, Respondent was convicted of  
26 violation of California Penal Code Section 647(f) (Disorderly  
27 Conduct - Under the Influence of Alcohol or Drugs), a crime

1 involving moral turpitude and/or which is substantially related  
2 under Section 2910 of the Regulations to the qualifications,  
3 functions or duties of a real estate licensee.

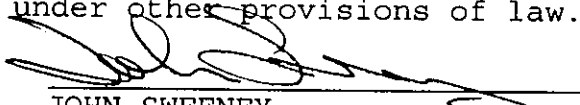
4 IX

5 On or about October 19, 1998, in the Tulare County  
6 Superior Courts District, Visalia Division, State of California,  
7 Respondent was convicted of violation of California Penal Code  
8 Section 32 (Accessory After the Fact - Grand Theft), a crime  
9 involving moral turpitude and/or which is substantially related  
10 under Section 2910 of the Regulations to the qualifications,  
11 functions or duties of a real estate licensee.

12 X

13 Respondent's criminal convictions, as alleged in  
14 Paragraphs III through IX above, constitute cause for denial of  
15 Respondent's application for a real estate license under  
16 Sections 480(a) and 10177(b) of the California Business and  
17 Professions Code.

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

24   
25 JOHN SWEENEY  
Deputy Real Estate Commissioner

26 Dated at Fresno, California,  
27 this 7<sup>th</sup> day of July, 2006.