

1 Department of Real Estate  
2 P.O. Box 187007  
3 Sacramento, CA 95818-7007  
4 Telephone: (916) 227-0789

**FILED**  
FEB 16 2007  
DEPARTMENT OF REAL ESTATE  
By K. Mar

7 **DEPARTMENT OF REAL ESTATE**  
8 **STATE OF CALIFORNIA**

10 *In the Matter of the Application of*

11  
12 **DAVID PATRICK POWELL**

13  
14 Respondent

)  
) No. H- 1995 FR  
)  
)

) **STIPULATION AND**  
) **WAIVER**  
)  
)

15 It is hereby stipulated by and between DAVID PATRICK POWELL (hereinafter "Respondent") and  
16 Respondent's attorney, LIBBIE STULL, and the Complainant, acting by and through JEANINE K.  
17 CLASEN, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing  
18 of the Statement of Issues filed on DECEMBER 4, 2006 in this matter:

19 Respondent acknowledges that Respondent has received and read the Statement of Issues and the  
20 Statement to Respondent filed by the Department of Real Estate in connection with Respondent's  
21 application for a real estate salesperson license. Respondent understands that the Real Estate Commissioner  
22 may hold a hearing on this Statement of Issues for the purpose of requiring further proof of Respondent's  
23 honesty and truthfulness and to prove other allegations therein, or that he may in his discretion waive the  
24 hearing and grant Respondent a restricted real estate salesperson license based upon this Stipulation and  
25 Waiver. Respondent also understands that by filing the Statement of Issues in this matter the Real Estate  
26 Commissioner is shifting the burden to Respondent to make a satisfactory showing that Respondent meets  
27 all the requirements for issuance of a real estate salesperson license. Respondent further understands that by

1 entering into this stipulation and waiver Respondent will be stipulating that the Real Estate Commissioner  
2 has found that Respondent has failed to make such a showing, thereby justifying the denial of the issuance  
3 to Respondent of an unrestricted real estate salesperson license.

4 Respondent hereby admits that the allegations of the Statement of Issues filed against Respondent are  
5 true and correct and requests that the Real Estate Commissioner in his discretion issue a restricted real  
6 estate salesperson license to Respondent under the authority of Section 10156.5 of the Business and  
7 Professions Code. Respondent understands that any such restricted license will be issued subject to and be  
8 limited by Section 10153.4 of the Business and Professions Code.

9 Respondent is aware that by signing this Stipulation and Waiver, Respondent is waiving Respondent's  
10 right to a hearing and the opportunity to present evidence at the hearing to establish Respondent's  
11 rehabilitation in order to obtain an unrestricted real estate salesperson license if this Stipulation and Waiver  
12 is accepted by the Real Estate Commissioner. However, Respondent is not waiving Respondent's right to a  
13 hearing and to further proceedings to obtain a restricted or unrestricted license if this Stipulation and  
14 Waiver is not accepted by the Commissioner.

15 Respondent further understands that the following conditions, limitations, and restrictions will attach  
16 to a restricted license issued by the Department of Real Estate pursuant hereto:

- 17 1. The license shall not confer any property right in the privileges to be exercised including the  
18 right of renewal, and the Real Estate Commissioner may by appropriate order suspend the right  
19 to exercise any privileges granted under this restricted license in the event of:
  - 20 a. The conviction of Respondent (including a plea of nolo contendere) to a crime which bears  
21 a substantial relationship to Respondent's fitness or capacity as a real estate licensee; or
  - 22 b. The receipt of evidence that Respondent has violated provisions of the California Real  
23 Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or  
24 conditions attaching to this restricted license.
- 25 2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license  
26 nor the removal of any of the conditions, limitations or restrictions attaching to the restricted  
27

1 license until two years have elapsed from the date of issuance of the restricted license to  
2 Respondent.

- 3 3. With the application for license, or with the application for transfer to a new employing broker,  
4 Respondent shall submit a statement signed by the prospective employing broker on a form  
5 approved by the Department of Real Estate wherein the employing broker shall certify as  
6 follows:


- 7 a. That broker has read the Statement of Issues which is the basis for the issuance of the  
8 restricted license; and  
9 b. That broker will carefully review all transaction documents prepared by the restricted  
10 licensee and otherwise exercise close supervision over the licensee's performance of acts  
11 for which a license is required.

- 12 4. Respondent's restricted real estate salesperson license is issued subject to the requirements of  
13 Section 10153.4 of the Business and Professions Code, to wit: Respondent is required, within  
14 eighteen (18) months of the issuance of the restricted license, to submit evidence satisfactory to  
15 the Commissioner of successful completion, at an accredited institution, of two of the courses  
16 listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate,  
17 advanced real estate finance, or advanced real estate appraisal. If Respondent fails to timely  
18 present to the Department satisfactory evidence of successful completion of the two required  
19 courses, the restricted license shall be automatically suspended effective eighteen (18) months  
20 after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of  
21 the restricted license, Respondent has submitted the required evidence of course completion and  
22 the Commissioner has given written notice to Respondent of the lifting of the suspension.

- 23 5. Pursuant to Section 10154, if Respondent has not satisfied the requirements for an unqualified  
24 license under Section 10153.4, Respondent shall not be entitled to renew the restricted license,  
25 and shall not be entitled to the issuance of another license which is subject to Section 10153.4  
26 until four years after the date of the issuance of the preceding restricted license.  
27

1/17/07

Dated

  
JEANINE K. CLASEN, Counsel, Department of Real Estate

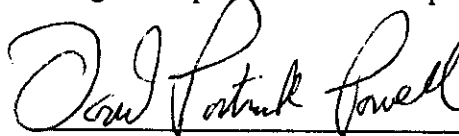
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I have read the Stipulation and Waiver, have discussed it with my counsel, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of a hearing on the Statement of Issues at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

Respondent can signify acceptance and approval of the terms and conditions of this Stipulation and Waiver by faxing a copy of the signature page, as actually signed by respondent, to the Department at fax number (916) 227-9458. Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of his actual signature as it appears on the Stipulation and Waiver, that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation and Waiver.

1/12/2007

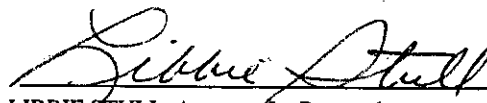
Dated

  
DAVID PATRICK POWELL, Respondent

*I have reviewed the Stipulation and Waiver as to form and content and have advised my client accordingly.*

1-12-07

Dated

  
LIBBIE STULL, Attorney for Respondent

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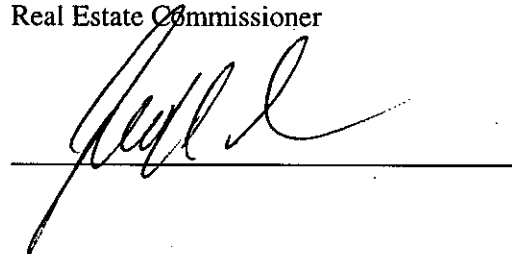
I have read the Statement of Issues filed herein and the foregoing Stipulation and Waiver signed by Respondent. I am satisfied that the hearing for the purpose of requiring further proof as to the honesty and truthfulness of Respondent need not be called and that it will not be inimical to the public interest to issue a restricted real estate salesperson license to Respondent.

Therefore, IT IS HEREBY ORDERED that a restricted real estate salesperson license be issued to Respondent, if Respondent has otherwise fulfilled all of the statutory requirements for licensure. The restricted license shall be limited, conditioned, and restricted as specified in the foregoing Stipulation and Waiver.

This Order is effective immediately.

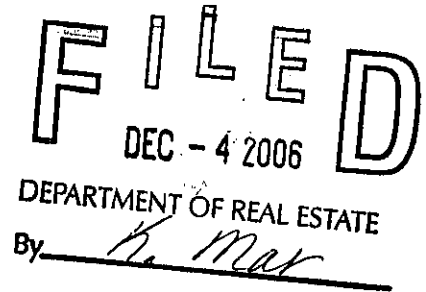
IT IS SO ORDERED 12/14/07

Jeff Davi  
Real Estate Commissioner



1 JEANINE K. CLASEN, Counsel (SBN 164404)  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0868 (Direct)  
7



8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Application of )  
12 DAVID PATRICK POWELL, )  
13 Respondent. )

No. H-1995 FR

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 DAVID PATRICK POWELL, (herein "Respondent"), alleges as  
18 follows:

19 I

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

23 II

24 On or about March 9, 2006, Respondent made application  
25 to the Department of Real Estate of the State of California  
26 (herein "the Department") for a real estate salesperson license  
27 with the knowledge and understanding that, pursuant to the

1 provisions of Section 10153.3 of the Business and Professions  
2 Code, any license issued as a result of said application would  
3 be subject to the conditions of Section 10153.4 of the  
4 California Business and Professions Code (herein "the Code").

5 III

6 On or about September 7, 1986, in the Superior Court  
7 of the State California, Kern County, Respondent was convicted  
8 of the crime of Driving Under the Influence of Alcohol in  
9 violation of Vehicle Code Section 23152(a), a misdemeanor and a  
10 crime involving moral turpitude which bears a substantial  
11 relationship, under Section 2910, Title 10, California Code of  
12 Regulations, (herein "the Regulations"), to the qualifications,  
13 functions or duties of a real estate licensee.

14 IV

15 On or about May 1, 1987, in the Superior Court of the  
16 State of California, Kern County, Respondent was convicted of  
17 the crime of Driving Under the Influence of Alcohol in violation  
18 of Vehicle Code Section 23152(a), and the crime of Driving With  
19 a Blood-Alcohol Level of .08% Or Greater in violation of Vehicle  
20 Code Section 23152(b), each a misdemeanor and a crime involving  
21 moral turpitude which bears a substantial relationship, under  
22 Section 2910 of the Regulations, to the qualifications,  
23 functions or duties of a real estate licensee.

24 V

25 On or about May 8, 1987, in the Municipal Court of the  
26 State of California, Kern County, Respondent was convicted of  
27 the crime of Battery in violation of Penal Code Section 242, a

1 misdemeanor and a crime involving moral turpitude which bears a  
2 substantial relationship, under Section 2910 of the Regulations,  
3 to the qualifications, functions or duties of a real estate  
4 licensee.

5 VI

6 On or about July 10, 1987, in the Superior Court of the  
7 State of California, Kern County, Respondent was convicted of the  
8 crime of Driving With a Suspended License in violation of Vehicle  
9 Code Section 14601.1, and the crime of Driving Under the  
10 Influence of Alcohol in violation of Vehicle Code Section  
11 23152(a), each a misdemeanor and a crime involving moral  
12 turpitude which bears a substantial relationship, under Section  
13 2910 of the Regulations, to the qualifications, functions or  
14 duties of a real estate licensee.

15 VII

16 On or about December 10, 1987, in the Superior Court of  
17 the State of California, Kern County, Respondent was convicted of  
18 the crime of Driving With a Suspended License in violation of  
19 Vehicle Code Sections 14601 and 12500(a), and the crime of  
20 Driving Under the Influence of Alcohol in violation of Vehicle  
21 Code Section 23152(a), each a misdemeanor and a crime involving  
22 moral turpitude which bears a substantial relationship, under  
23 Section 2910 of the Regulations, to the qualifications, functions  
24 or duties of a real estate licensee.

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VIII

On or about March 25, 1991, in the Superior Court of the State of California, Kern County, Respondent was convicted of the following crimes, each involving moral turpitude and bearing a substantial relationship under Section 2910 of the Regulations to the qualifications, functions or duties of a real estate licensee:

(a) the crime of Resisting Arrest in violation of Penal Code Section 148, a misdemeanor;

(b) the crime of Driving With a Suspended License in violation of Vehicle Code Section 14601.2(a), a misdemeanor;

(c) the crime Driving Under the Influence of Alcohol With a Prior Offense in violation of Vehicle Code Sections 23152(a) and 23175, a felony; and

(d) the crime of Driving With a Blood-Alcohol Level of .08% or Greater in violation of Vehicle Code Sections 23152(b) and 23175, a felony.

IX

Respondent's criminal convictions, as described in Paragraphs III through VIII, above, constitute cause for denial of his application for a real estate license under Sections 10177(b) of the Code, as modified by Sections 480(a) of the Code.


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1           WHEREFORE, Complainant prays that the above-entitled  
2 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 in the premises.

7  
8   
9           JOHN SWEENEY  
          Deputy Real Estate Commissioner

10       Dated at Sacramento, California,  
11 this 1<sup>st</sup> day of December, 2006.