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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

MAY 23 2008

DEPARTMENT OF REAL ESTATE

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By R. Henry

In the Matter of the Application of )  
RICK JACOBS, )  
Respondent. )

NO. H-2169 FR  
OAH NO. 2007100873

DECISION

The Proposed Decision dated April 14, 2008, 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 JUN 13 2008.

IT IS SO ORDERED 5-23-08

JEFF DAVI  
Real Estate Commissioner

[Signature]

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

RICK JACOBS,

Respondent.

Case No. H-2169 FR

OAH No. 2007100873

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Michael Jacobs, California Office of Administrative Hearings, on March 14, 2008, in Sacramento, California.

Michael B. Rich, Counsel, Department of Real Estate, represented complainant John W. Sweeney, Deputy Real Estate Commissioner.

Rick Jacobs appeared at the hearing and represented himself.

The parties presented evidence and submitted the matter for decision on March 14, 2008.

**FACTUAL FINDINGS**

1. Respondent applied to the Department of Real Estate (Department) for a real estate salesperson license on May 2, 2006.
2. On September 24, 2007, complainant John W. Sweeney, acting in his official capacity, filed a Statement of Issues alleging the revocation of respondent's vehicle salesperson license by the California Department of Motor Vehicles (DMV) in 2004 constitutes cause for denial of respondent's real estate license application under Business and Professions Code section 10177, subdivision (f). The Statement of Issues further alleges that respondent's acts that resulted in the revocation of his DMV license constitute acts which if done by a real estate licensee would warrant disciplinary action under Business and Professions Code sections 480, subdivision (a) (2), and 10177, subdivision (j) [act involving dishonesty, fraud, or deceit], 480, subdivision (a) (3) [any act which if done by licentiate of

business or profession in question would constitute grounds for suspension or revocation of license], 10177, subdivision (g) [negligence or incompetence in performing act for which license required].

3. Respondent filed a timely Notice of Defense, requesting a hearing and the opportunity to establish his qualifications for a salesperson license. The matter was set for an evidentiary hearing before an administrative law judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

*DMV's disciplinary action against respondent's vehicle salesperson license*

4. On July 16, 2004, the California Director of Motor Vehicles revoked respondent's vehicle salesperson license (No. S-160540) under the following circumstances.

On November 30, 2001, DMV initiated an administrative adjudicatory hearing against respondent by filing an accusation in case number S-01-0563, charging respondent with acts or omissions constituting grounds to suspend or revoke his vehicle salesperson license.<sup>1</sup> On the same date, DMV filed an accusation in case number D-01-0564 against Autosmart, Inc. (Autosmart), a licensed corporate vehicle dealership owned by respondent, alleging grounds to suspend or revoke its dealer's license.<sup>2</sup> The accusations alleged numerous specific instances of wrongful conduct by respondent and Autosmart in the sale of vehicles in the years 2000 and 2001. During that period, respondent had a one-third ownership interest in Autosmart and served as its corporate president and business representative.<sup>3</sup>

In June 2004, DMV entered into compromise settlement agreements with respondent in case S-01-0563 and with Autosmart in case D-01-0564. The settlement agreements included factual stipulations and proposed orders imposing sanctions against respondent's and Autosmart's DMV licenses. Respondent executed the settlements on his own behalf and on behalf of Autosmart, as its representative. Respondent and Autosmart were represented by an attorney, who also signed the settlement agreements. Under the terms of the settlement agreements, respondent and Autosmart waived the right to a hearing and to an appeal.

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<sup>1</sup> As required by Vehicle Code section 11808, DMV's disciplinary proceeding against respondent's salesperson license complied with the formal hearing procedures of the Administrative Procedure Act (APA) (Gov. Code, § 11500, et seq.)

<sup>2</sup> DMV's disciplinary proceeding against Autosmart's dealer license complied with APA's formal hearing procedures, as mandated by Vehicle Code section 11705, subdivision (c).

<sup>3</sup> Vehicle Code section 236 defines business representative as "a proprietor, a limited or general partner, a managerial employee, a stockholder, a director, or an officer who is active in the management, direction, and control of that part of a business which is a licensed activity."

In the settlement agreement respondent executed as an individual licensee, he admitted the truth of factual allegations contained in the accusation "for the purpose of imposing discipline" and further, "for the purpose of establishing prior wrongful conduct, without the necessity of further evidence or proof, in any later administrative licensing proceeding between the parties." The accusation DMV filed against respondent as an individual alleges that he, as Autosmart's business representative, "committed, participated in, and/or was responsible for" vehicle sales by Autosmart involving fraud, deceit, and intentional misrepresentation, as detailed in the accusation against Autosmart in case D-01-0564.<sup>4</sup>

On July 16, 2004, the Director of Motor Vehicles issued a decision adopting the terms of the compromise settlement agreements between DMV and respondent and DMV and Autosmart. The decision against respondent revoked his vehicle salesperson license, stayed revocation for a period of four years, and imposed terms and conditions that included a ten-day license suspension, four-year probationary period, and a monetary penalty of \$7,500 plus fees and costs of \$1,300. The decision further ordered respondent to resign as a corporate officer of Autosmart for a period of not less than two years. The decision provides that upon respondent's successful completion of probation, the stayed license revocation shall be rescinded and respondent issued an unrestricted license, if he is otherwise eligible for a license.

*Respondent's involvement in Autosmart's unlawful sales practices*

5. Respondent was a credible witness. His testimony established he had no contemporaneous actual knowledge of the fraudulent and deceptive sales practices engaged in by Autosmart's salespeople. During the period when the unlawful sales activity occurred, respondent worked full time as general manager of Liberty Chrysler in Hanford, California, approximately 16 miles distant from Autosmart's sales lot in Selma, California. He visited the Autosmart sales lot only occasionally. One of Autosmart's three owners, corporate vice president Pat Pisciotta, had an office next door to the Autosmart lot. Respondent testified that he and Autosmart's third owner, Dwight Nelson, had relied on Pisciotta to supervise Autosmart's day-to-day operations.

Respondent learned through a customer's complaint that Autosmart salespeople had engaged in unlawful sales practices. Respondent testified he then spent "weeks" auditing Autosmart's sales transaction records to determine whether his sales staff had committed

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<sup>4</sup> In his settlement agreement with DMV, respondent admitted responsibility for unlawful sales practices in violation of the following statutes: Civil Code sections 2981.9 [conditional sales contract shall contain all agreed terms in a single document], 2982, subdivision (a) (3) [conditional sales contract shall disclose agreed aggregate amount of insurance premiums], 2982, subdivision (c) [deferred down payment shall be reflected in the payment schedule pursuant to Regulation Z]; and Vehicle Code sections 11705, subdivision (a) (10) [grounds for suspension or revocation of DMV dealer license], 11806, subdivision (d) [grounds for suspension or revocation of a vehicle salesperson license], 11705, subdivision (a) (12) [conditional sales contract requirements], and 11705, subdivision (a) (14) [causing a person to suffer loss by reason of fraud or deceit in the course of the licensed activity]. The victims of Autosmart's fraudulent and deceptive practices included financing agencies to which Autosmart submitted falsified credit applications and 39 individuals who purchased vehicles from Autosmart.

additional violations. Respondent's audit revealed additional unlawful sales practices and he submitted his findings to DMV. Respondent fired the salespeople who had engaged in fraudulent and deceptive practices and cooperated with DMV in its investigation of Autosmart's violations.

6. At the hearing, respondent acknowledged responsibility for Autosmart's fraudulent and deceptive practices by failing to exercise reasonable supervision over Autosmart's operations and activities of his salespeople.

7. The evidence establishes respondent did not engage in acts of fraud, deceit, or misrepresentation in connection with vehicle sales at Autosmart and that DMV's disciplinary action against his license was predicated on respondent's failure as Autosmart's owner and business representative to exercise reasonable supervision and control over Autosmart's licensed activities, including the activities of Autosmart's vehicle salespersons.

### *Respondent's Rehabilitation*

8. Business and Professions Code section 482 requires the Department to take into account all competent rehabilitation evidence furnished by the applicant when considering denial of a license under section 480 of the code.

9. The Department's rehabilitation criteria are contained in California Code of Regulations, title 10, section 2911, which provides in relevant part:

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 . . . [an] act committed by the applicant:

(a) The passage of not less than two years since the most recent . . . 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.) . . .

¶ . . . ¶

(e) Successful completion or early discharge from probation or parole. . . .

¶ . . . ¶

(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 educational or vocational training courses for economic self-improvement. . . .

¶. . . ¶

(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.

10. DMV records show the most recent of the 39 deceptive or fraudulent sales transactions cited in DMV's accusations against respondent and Autosmart occurred in December 2001.

11. Respondent timely paid the monetary penalty and costs ordered by DMV.

12. Under the terms of DMV's decision, respondent's vehicle salesperson license will remain on probationary status until July 16, 2008.

13. Respondent enjoys a stable family life. He has been married since 1973 and he and his wife have two adult children and two grandchildren.

14. Respondent and his business partners initiated a number of significant measures to protect consumers and correct the deceptive business practices that resulted in DMV's disciplinary action. Respondent now provides salespeople with a manual prepared by attorneys that details legal requirements applicable to vehicle sales and finance. He also gives copies of pertinent new laws to employees, who must sign an acknowledgement that they received a copy. Respondent also posts in the dealership conference room new laws and important material he receives at industry training courses, including an annual course he attends concerning truth in advertising law.

As a safeguard against deceptive practices, respondent directs salespeople to allow customers, not the salesperson, to complete credit applications. Respondent said that previously, at both Autosmart and at Liberty Chrysler, the salesperson filled out the credit application for the customer, exposing unwary customers to a greater risk of fraud. Respondent also instituted a three-step review of credit applications. Each application is reviewed for accuracy and legal compliance by the salesperson, the manager, and then by the finance department.

15. Respondent attends professional training classes to improve his knowledge and skills and to stay current with regulatory changes in the vehicle sales industry.

16. Respondent testified he does not participate in community volunteer activities or social benefit programs. Since 1991, he has worked five and one-half days a week and he spends his nonworking time with his family.

17. The most relevant change in respondent's business relationships at Autosmart was his firing the salespeople who had engaged in deceptive sales practices.

18. Respondent acknowledged his failure to fulfill his duty to oversee Autosmart's sales operations. Since DMV's disciplinary action, respondent has changed his attitude and approach toward fulfilling his supervisory duties as a business owner and manager. His change in attitude is evident from the actions he has taken to accomplish those objectives. He has conscientiously established and enforced procedures designed to promote compliance with legal requirements and thereby protect consumers.

## LEGAL CONCLUSIONS

*No cause exists to deny respondent's license application under Business and Professions Code sections 480, subdivision (a) (2), or 10177, subdivision (j)*

1. Business and Professions Code section 480, subdivision (a) (2), authorizes the Department to deny a license where the applicant has "[d]one any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another . . . ." Section 10177, subdivision (j) similarly authorizes denial where an applicant has engaged in any conduct "which constitutes fraud or dishonest dealing."

The evidence does not support a finding that respondent has engaged in fraud or dishonest dealing, as discussed in Factual Findings 5 through 7. Thus, no cause exists to deny respondent's license application under Business and Professions Code sections 480, subdivision (a) (2), or 10177, subdivision (j).

*Cause exists to deny respondent's application for a real estate license under Business and Professions Code sections 480, subdivision (a) (3), and 10177, subdivisions (f) and (g)*

2. Business and Professions Code section 480, subdivision (a) (3), provides the Department may deny a license to an applicant who has "[d]one any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license."

In relevant part, Business and Professions Code section 10177, subdivision (f), authorizes the Real Estate Commissioner to deny a license to an applicant who has had a license revoked or suspended, upon an express finding of a violation of law, by another state agency for acts that would constitute grounds for suspension or revocation of a real estate license, provided the other agency afforded the licensee due process protections comparable to those accorded under the Administrative Procedure Act (Gov. Code, § 11370, et. sec.).

3. The Director of Motor Vehicles issued an adjudicatory decision revoking respondent's vehicle salesperson license upon an express finding of violations of law, as set forth in Factual Finding 4.<sup>5</sup>

4. As set forth in Factual Finding 4, DMV's disciplinary proceeding against respondent's vehicle salesperson license complied with formal hearing procedures prescribed by the APA and respondent was accorded the due process protections mandated by the APA's Administrative Adjudication Bill of Rights (Gov. Code, § 11425.10, et seq.).

5. As Autosmart's corporate president and business representative, respondent had a duty to manage, direct, and control Autosmart's licensed activities, including the activities of its salespeople, analogous to the duties of a corporate real estate broker's designated officer under Business and Professions Code section 10159.2, subdivision (a), which provides:

The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons

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<sup>5</sup> The APA defines "decision" in an adjudicatory proceeding as "an agency action of specific application that determines a legal right, duty, privilege, immunity, or other legal interest of a particular person."



licensed to the corporation in the performance of acts for which a real estate license is required.

6. Under Business and Professions Code section 10177, the Department has authority to suspend or revoke the real estate license of a corporation where “[a]n officer, director, or person owning or controlling 10 percent or more of the corporation’s stock has done any of the following: . . . ¶ (h) As broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.”

7. The decision of the Director of Motor Vehicles revoking respondent’s license resulted from respondent’s failure as Autosmart’s owner and business representative to exercise reasonable supervision and control over Autosmart’s licensed activities. Thus, DMV revoked respondent’s vehicle salesperson license for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license.

8. The Director of Motor Vehicles revoked respondent’s vehicle salesperson license for acts and omissions resulting in the fraudulent taking, obtaining, appropriating, or retaining of funds or property belonging to another person, as set forth in Factual Finding 4. Respondent’s acts and omissions as detailed in the decision of the Director of Motor Vehicles are therefore deemed to be substantially related to the qualifications, functions, or duties of a licensee of the Department pursuant to California Code of Regulations, title 10, section 2910, subd. (a) (1).

9. Cause therefore exists under Business and Professions Code sections 480, subdivision (a) (3), and 10177, subdivision (f), to deny respondent’s application for a real estate salesperson license.

10. As set forth in Factual Finding 4, further cause to deny respondent’s application exists under Business and Professions Code section 11077, subdivision (g), which authorizes the Department to deny issuance of a license to an applicant who “[d]emonstrated negligence in performing an act for which he or she is required to hold a license.”

*Respondent qualifies for a restricted salesperson license*

11. Respondent demonstrated significant rehabilitation since DMV’s disciplinary action against his license and he produced sufficient evidence of his good character to warrant the issuance of a restricted salesperson license. In weighing evidence of respondent’s rehabilitation with the facts involved in respondent’s DMV license suspension and stayed revocation, the present probationary status of his DMV license, and the potential risks to the public and clients if respondent receives a real estate license, it is concluded it

would not be contrary to the public interest to allow respondent to hold a restricted salesperson license under the terms of the following order.

### 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 the 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 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.

DATED: April 14, 2008

  
MICHAEL JACOBS  
Administrative Law Judge  
Office of Administrative Hearings

1 MICHAEL B. RICH, Counsel  
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5 Sacramento, CA 95818-7000  
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**FILED**  
SEP 24 2007

DEPARTMENT OF REAL ESTATE  
By K. Mar

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8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

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11 In the Matter of the Application of )  
12 RICK JACOBS, ) NO. H-2169 FR  
13 ) STATEMENT OF ISSUES  
14 Respondent. )

15 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate  
16 Commissioner of the State of California, for Statement of Issues  
17 against RICK JACOBS (hereinafter "Respondent"), is informed and  
18 alleges as 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 May 2, 2006.

23 II

24 Complainant, JOHN W. SWEENEY, a Deputy Real Estate  
25 Commissioner of the State of California, makes this Statement of  
26 Issues in his official capacity and not otherwise.

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1 III

2 Effective July 16, 2004, before the Department of  
3 Motor Vehicles of the State of California, in case number S-01-  
4 0563, Respondent's vehicle salesperson license was revoked and  
5 said revocation suspended for a period of four (4) years subject  
6 to terms and conditions, including a ten (10) day actual  
7 suspension, license probation for four (4) years, and payment of  
8 a monetary penalty of \$7,500.00 plus fees and costs totaling  
9 \$1,300.00 to the Department of Motor Vehicles. Said discipline  
10 was imposed for Respondent's commission of, participation in, or  
11 responsibility for acts of fraud, deceit and misrepresentation  
12 in violation of California Civil Code Sections 2981, 2982(a)(3),  
13 2982(c), and Vehicle Code Sections 11705(a)(10), (a)(12) and  
14 (a)(14) committed by Autosmart, Inc., licensed by the Department  
15 of Motor Vehicles as a vehicle dealer, while Respondent was an  
16 officer and vice president of Autosmart, Inc.

17 IV

18 Respondent's acts which resulted in the revocation  
19 order described in Paragraph III, above, are acts which if done  
20 by a real estate licensee would be grounds for the denial,  
21 suspension or revocation of a California Real Estate License  
22 under Sections 480(a)(2), 480(a)(3), 10177(g), and 10177(j) of  
23 the Business and Professions Code.

24 V

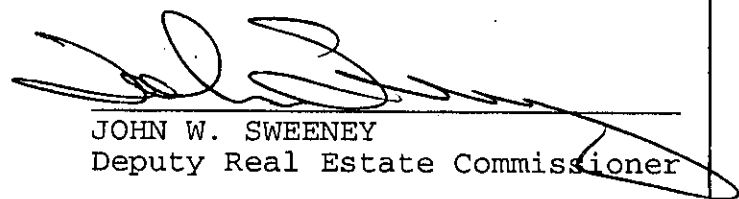
25 The revocation of Respondent's vehicle salesperson  
26 license as described in Paragraph III, above, constitutes cause

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1 for denial of Respondent's application for a real estate license  
2 under Section 10177(f) of the Business and Professions Code.

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

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JOHN W. SWEENEY  
Deputy Real Estate Commissioner

Dated at Fresno, California,  
this 18<sup>th</sup> day of September, 2007.