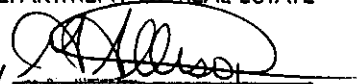


FILED

APR 11 2011

DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of  
CARLOS ANGEL PADILLA,  
Respondent.

NO. H-2473 FR  
CAH NO. 2010070673

ORDER DENYING RECONSIDERATION


On February 16, 2011, a Decision was rendered in the above-entitled matter to become effective March 10, 2011 (herein "the Decision").

On March 3, 2011, Respondent requested a stay for the purpose of filing a petition for reconsideration of the Decision, and on March 8, 2011 the Real Estate Commissioner filed an "Order Staying Effective Date" which stayed the effective date of the Decision until 12:00 noon on April 11, 2011.

I have given due consideration to this matter, and I find no good cause to reconsider the Decision. Reconsideration is hereby denied.

IT IS HEREBY ORDERED 4-11-11

JEFF DAVI  
Real Estate Commissioner



FILED  
MAR 08 2011

DEPARTMENT OF REAL ESTATE

By: 

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of

CARLOS ANGEL PADILLA,

Respondent.

No. H-2473 FR

OAH No. 2010070673

ORDER STAYING EFFECTIVE DATE

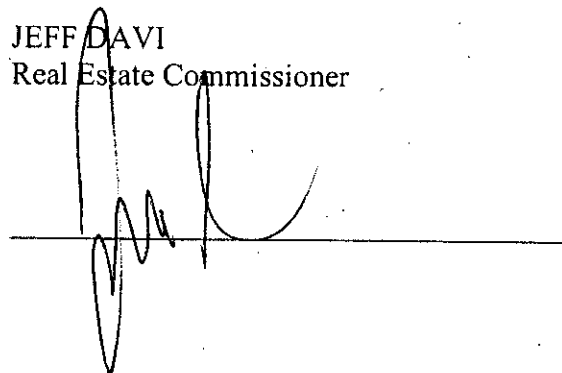
On February 16, 2011, a Decision was rendered in the above-entitled matter to become effective March 10, 2011.

IT IS HEREBY ORDERED that the effective date of the Decision of the Real Estate Commissioner of February 16, 2011, is stayed for a period of thirty (30) days.

The Decision of the Real Estate Commissioner of February 16, 2011, shall become effective at 12 o'clock noon on April 11, 2011.

DATED: 3/7/11

JEFF DAVI  
Real Estate Commissioner



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
FFR 17 2011

DEPARTMENT OF REAL ESTATE

By 

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In the Matter of the Accusation of )  
 )  
CARLOS ANGEL PADILLA, )  
 )  
Respondent. )  
\_\_\_\_\_ )

NO. H-2473 FR  
OAH NO. 2010070673

DECISION

The Proposed Decision dated January 18, 2011, 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.

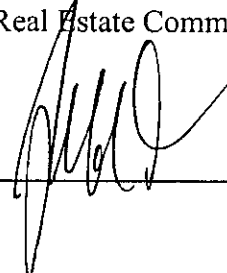
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on **MAR 10 2011**

IT IS SO ORDERED \_\_\_\_\_ 2/16/2011

JEFF DAVI  
Real Estate Commissioner

  
\_\_\_\_\_

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CARLOS ANGEL PADILLA,

Respondent.

Case No. H-2473 FR

OAH No. 2010070673

**PROPOSED DECISION**

Administrative Law Judge Catherine B. Frink, State of California, Office of Administrative Hearings, heard this matter in Fresno, California on November 30, 2010.

Complainant was represented by Jason D. Lazark, Counsel, Department of Real Estate (Department).

Carlos Angel Padilla (respondent) was present and was represented by Edgardo Gonzalez, Attorney at Law.

Evidence was received and the matter was submitted for decision on November 30, 2010.

**FACTUAL FINDINGS**

*Procedural Background*

1. The complainant, Luke Martin, a Deputy Real Estate Commissioner of the State of California, acting in his official capacity, filed the Accusation in this matter on April 5, 2010, and the First Amended Accusation on November 5, 2010.

2. Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate salesperson. Respondent's license was in full force and effect at all times relevant herein, and will expire on September 1, 2013, unless renewed.

### *License History*

3. Respondent was issued a conditional salesperson license pursuant to Business and Professions Code section 10153.4<sup>1</sup> as of July 22, 2005. On August 17, 2005, respondent's license was activated in the employ of Watson Realty Services, Inc. (Watson Realty), in Bakersfield, California. Respondent's conditional salesperson license expired on January 22, 2007, and his employment with Watson Realty was discontinued as of that date. Respondent's conditional salesperson license was suspended indefinitely pursuant to section 10153.4, subdivision (c), as of January 23, 2007. On January 30, 2007, respondent's salesperson license was reinstated from conditional suspended status, upon proof of completion of the educational requirements set forth in section 10153.4. Respondent's employing broker was Watson Realty, as of January 30, 2007. Respondent's salesperson license expired on July 21, 2007, and his employment with Watson Realty was discontinued as of that date. Respondent's salesperson license was renewed late as of September 2, 2009, and his employing broker was Watson Realty as of that date. Respondent remained employed at Watson Realty as of the date of hearing.

### *August 18, 2009 Criminal Conviction*

4. On August 18, 2009, in the Kern County Superior Court, State of California, Case No. BM739883A, respondent was convicted, upon his plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (a), driving while under the influence of alcohol (DUI), a misdemeanor. Respondent admitted that he willfully refused to submit to chemical testing of his blood or breath for the purpose of determining the alcohol content of his blood, within the meaning of Vehicle Code section 23612, and he admitted having been convicted of a prior DUI on September 11, 2002.

5. The circumstances underlying the conviction are that, on September 28, 2008, respondent drove a vehicle while under the influence of alcohol. According to respondent, he and some friends attended a college football game on September 27, 2008. Respondent consumed alcohol at the game. After the game, respondent and some friends went to a bar, where respondent continued to drink. He began to feel ill, and decided to drive to a restaurant a couple of blocks away to get something to eat. On his way back to the bar, at about 2:15 a.m., a California Highway Patrol (CHP) officer observed respondent driving at a slow rate of speed, with an open beer can in the center console, and another open beer can in the rear cup holder of the back seat. The report of CHP officer B. Menta, dated September 29, 2008, reflects that respondent's vehicle "began straddling the #1 and #2 lanes." After initiating an enforcement stop, Officer Menta smelled a strong odor of alcohol emitting from respondent's breath. Respondent performed poorly on several field sobriety tests, and he was placed under arrest for DUI. At 3:00 a.m., respondent gave a breath sample and was determined to have a blood alcohol content (BAC) of .18 percent. Respondent refused a blood or chemical test.

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<sup>1</sup> All statutory references are to the California Business and Professions Code, unless otherwise stated.

6. Imposition of sentence was suspended, and respondent was placed on informal probation for three years, subject to terms and conditions. Respondent was ordered to serve 20 days in the county jail, with credit for time served of two days; pay fines and fees of about \$1,759, to be paid in installments of \$85 per month, after an initial payment of \$200; abstain from the use of intoxicants; submit to a blood, breath or urine test at the request of any peace of probation officer; attend and complete the SB 38 (18-month) Drinking Driver Program; not operate a motor vehicle unless properly licensed and insured; and comply with other standard terms and conditions. Respondent was referred to a work release program. His California driver's license was suspended. Respondent completed payment of the fine on October 1, 2010. He performed 12 days of work release at the Kern County Fairgrounds, which he completed in December 2009. Respondent enrolled in the Traffic and Alcohol Awareness School of Kern, Inc. (TAASK) on September 1, 2010. As of the date of hearing, respondent had attended six two-hour education sessions, and six two-hour group sessions. Respondent believes he will be able to obtain a restricted driver's license after January 2011, and an unrestricted license after he completes the 18-month program. Respondent's criminal probation is due to expire on August 18, 2012.

*July 16, 2008 Criminal Conviction*

7. On July 16, 2008, in the Kern County Superior Court, State of California, Case No. BM733785A, respondent was convicted, upon his plea of nolo contendere, of violating Penal Code section 647, subdivision (f) (drunk in public), a misdemeanor.

8. The circumstances underlying the conviction are that, on June 22, 2008, respondent was out drinking with friends at Randolph's Night Club. Respondent was observed by a police officer urinating on the ground in the parking lot of the night club. When the officer approached and spoke to respondent, his speech was slow and slurred. He was unsteady on his feet and his eyes were red and watery. The officer smelled a strong odor of an alcoholic beverage about his breath and person. The officer determined that respondent was too intoxicated to care for his safety or the safety of others, and placed respondent under arrest.

9. As a consequence of the conviction, probation was denied, and respondent was ordered to pay a \$400 fine. Respondent paid the fine in full.

*September 9, 2005 Criminal Conviction*

10. On September 9, 2005, in the Kern County Superior Court, State of California, Case No. BM677024A, respondent was convicted, upon his plea of nolo contendere, of violating Penal Code section 415 (disturbing the peace), a misdemeanor.

11. The circumstances underlying the conviction are that, on July 3, 2005, at about 1:15 a.m., respondent was contacted by a Kern County sheriff's deputy at the Rockin Rodeo Bar, where he had been drinking with friends at a birthday party. Respondent had refused to leave the bar, after having been asked to do so several times by security personnel. The

deputy noted that respondent had a strong odor of an alcoholic beverage about his breath and person, and that his speech was slow and slurred. He was unsteady on his feet and his eyes were red and watery. Respondent was arrested and taken into custody.

12. As a consequence of the conviction, respondent was ordered to pay a \$300 fine. Respondent paid the fine in full.

*Matter in Aggravation - September 11, 2002 Criminal Conviction*

13. On September 11, 2002, in the Kern County Superior, State of California, Case No. BM625330A, respondent was convicted of violating Vehicle Code section 23152, subdivision (a), driving while under the influence of alcohol (DUI), a misdemeanor.

14. The circumstances underlying this conviction are that, on August 18, 2002, a CHP officer observed respondent driving his vehicle at 65 miles per hour in a 45 mile-per-hour zone. The officer initiated a traffic stop, and when he contacted respondent, he smelled an odor of alcohol on his breath. Respondent's eyes were bloodshot and his speech was slurred. Respondent submitted to a breath test and was determined to have a BAC of .12 percent. Respondent was 19 years old at the time of this incident. He had consumed alcohol at a friend's house before going to a club. He was driving to another bar when he was stopped by the CHP officer.

15. As a consequence of the conviction, imposition of sentence was suspended, and respondent was placed on informal probation for three years, subject to various terms and conditions. Respondent was ordered to refrain from further violations of the law; pay a fine of \$1,258; serve two days in custody, with credit for time served of one day; submit to blood, breath, or urine tests to determine BAC; enroll and participate in a licensed alcohol education program (TAASK DUI school) for six months or more; and participate in the victim impact panel. Respondent's California driver's license was suspended for one year. He was ordered not to indulge in the use of intoxicants or visit any places where they are sold as a primary income or business. Respondent completed a three-month DUI course and paid his fine in full. However, as a result of his arrest on July 3, 2005, his probation was revoked on August 19, 2005. On September 9, 2005, respondent's probation was reinstated, with all previously ordered terms and conditions to remain in effect. Respondent completed probation on September 11, 2005.

*Respondent's License Renewal Application*

16. On September 2, 2009, respondent filed his application to renew his real estate salesperson license (Application). Application Question 3 states:

**WITHIN THE PAST FOUR YEAR PERIOD, HAVE YOU  
BEEN CONVICTED OF ANY VIOLATION OF LAW?  
CONVICTIONS EXPUNGED UNDER PENAL CODE  
SECTION 1203.4 MUST BE DISCLOSED. HOWEVER,**

**YOU MAY ONLY OMIT MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE.**

**IF YES, COMPLETE ITEMS 15-16 ON PAGE 2.**

(Emphasis in original.)

17. Respondent answered "NO" to Application Question 3.
18. Application Question 15 is listed under the heading CONVICTION DETAILS, and follows an explanation regarding the manner in which such information must be provided, as follows:

"Convicted" as used in Item 3 includes a verdict of guilty by judge or jury, a plea of guilty or of nolo contendere, or a forfeiture of bail in municipal, superior, or federal court. All convictions must be disclosed whether or not the plea or verdict was set aside, the conviction against you was dismissed or expunged, including expungements per Section 1203.4 of the Penal Code, or if you have been pardoned.

**15. DETAILED EXPLANATION OF ITEM 3**

COMPLETE ONE LINE FOR EACH VIOLATION AND PROVIDE EXPLANATION BELOW. IF YOU ARE UNABLE TO PROVIDE THIS INFORMATION, A DETAILED EXPLANATION MAY SUFFICE. IF THE CONVICTION STATUS HAS BEEN SUBSEQUENTLY CHANGED OR REDUCED, NOTE THAT FACT IN THE AREA PROVIDED FOR ADDITIONAL INFORMATION. ATTACHMENTS FOR ADDITIONAL INFORMATION: SPECIFY WHICH LINES YOU ARE REFERRING TO.

**EACH ADDITIONAL SHEET MUST BE SIGNED BY APPLICANT AND EMPLOYING BROKER, IF APPLICABLE.**

\*CODE SECTION VIOLATED (i.e., 1014, 484 ETC.)

\*\*CODE VIOLATED (i.e., U.S. CODE, PENAL CODE, ETC.)

\*\*\*DISPOSITION (i.e., PROBATION, PAROLE, FINE, LENGTH OF TERM, etc.)



Included as part of Question 15 is a chart with columns to provide information concerning court of conviction, arresting agency, date of conviction, code section violated, code violated, disposition, and case number. The application includes an example of how to complete the chart. There are blank lines below the chart for additional information (15A – 15B). Question 15C states: "ADDITIONAL INFORMATION: SPECIFY WHICH LINES YOU ARE REFERRING TO," followed by several blank lines for additional information.

19. Respondent did not disclose any information concerning his 2005, 2008, or 2009 criminal convictions in response to Application Question 15.

20. To complete the Application, respondent signed a Salesperson Certification which stated, in pertinent part: "*I certify under penalty of perjury that the answers and statements given in this application are true and correct and that if licensed I will not violate any provisions of the Real Estate Law nor abuse the privileges of a real estate licensee. . . .*"

21. On September 2, 2009, respondent certified the Application under penalty of perjury "via eLicensing."

22. On November 5, 2009, respondent prepared a Confidential—Interview Information Statement (RE 515) and a Conviction Detail Report (RE 515D), which were received by the Department on November 10, 2009. Question 20 of the RE 515 stated:

**20. CRIMINAL CONVICTIONS AND/OR PENDING ACTIONS SUMMARY.** Please summarize each and every pending criminal action and/or conviction you have suffered, providing the information requested below. You must then complete a Conviction Detail Report (RE 515D) for each conviction listed in this summary.

23. In response to Question 20, respondent listed his 2002 and 2009 DUI convictions. He did not list his 2008 drunk in public conviction, or his 2005 disturbing the peace conviction. He indicated that he had disclosed the 2002 conviction on his real estate license application, but had not disclosed the 2009 conviction. Under Question 21, APPLICANT/LICENSEE REMARKS, respondent stated:

At the age of 19, I was arrested for a DUI. I completed a 3 month course, probation and paid off my fines. I did well and did not get into trouble after. I started working in Real Estate as an assistant and worked to get my license in 2005. I worked hard to build my career as a real estate agent. Last year in 2008 I had a problem with alcohol which led to a DUI. I hired an attorney and was convicted 8-18-2009. I was giving [sic] Work Release and 18 month course with fines.

24. Respondent completed one RE 515D, in which he provided information about his 2009 DUI conviction.

25. The RE 515 contained the following “**APPLICANT/LICENSEE CERTIFICATION:**”

*The foregoing record of my pending criminal actions and convictions has been read by me and said record is true and correct. I hereby admit the truth of all facts and statements contained herein, and consent that this record may be introduced by the Department of Real Estate as proof of said pending criminal actions and convictions, and any other facts hereinabove set forth, at any hearing held in connection with my application, or other agency hearing.*

26. Respondent signed the RE 515 under penalty of perjury on November 5, 2009.

27. At hearing, respondent stated that he filed the 2009 Application online, with the assistance of a secretary at Watson Realty. He claimed that he was under time pressure to complete the application, because the filing deadline was approaching. The secretary was typing the information onto the electronic form. She asked respondent if he had any convictions, and he said he “no.” He did not tell the secretary of his prior convictions because he was embarrassed and did not want her to tell other people at the office about his criminal background.

28. Respondent’s explanation for his failure to disclose his 2009, 2008, and 2005 convictions is not convincing. With respect to the purported urgency to file the Application, as set forth in Finding 3, respondent’s license had expired six weeks earlier; thus, there was no “deadline approaching,” as respondent claimed. The Application’s definition of “conviction” and its explicit instructions to disclose all convictions is not ambiguous. Respondent had an obligation to insure the accuracy of the Application, which he signed under penalty of perjury. By failing to disclose all of his convictions, respondent knowingly made material misstatements on the Application for renewal of his license, and he procured or attempted to procure a real estate license by fraud, misrepresentation or deceit, including by making material misstatements of fact in said Application.

29. As set forth in Findings 22 through 25, respondent failed to fully disclose his convictions on the RE 515, when given the opportunity to do so; instead, he only disclosed his two DUI convictions. Respondent’s statement in the RE 515 that he “did well and did not get into trouble after” his 2002 DUI is misleading, in that respondent had two criminal convictions thereafter (in 2005 and 2008), both of which involved the excessive use of alcohol. Respondent’s continued failure to fully disclose his convictions, despite his claim that he “did not deliberately try to mislead” the Department when he filed the Application, is considered as a factor in aggravation of the penalty herein.

### *Respondent's Evidence*

30. Respondent believes that he "was an alcoholic, but is not anymore." He began drinking at age 15 or 16 with family and friends. After his 2002 DUI, he attended a three-month first offender program, and cut back on his drinking. However, alcohol was always around him, at family functions and with friends, and his drinking became worse again. After his 2008 DUI arrest, it "hit [him] more that drinking could get [him] into trouble," and he decided to "change [his] environment." He greatly curtailed his drinking after his arrest in September 2008, and he took his last drink on his birthday, December 6, 2009. He has been sober for almost a year as of the date of hearing. Instead of going out for drinks after work, as he used to do before his 2008 DUI arrest, he has a smaller circle of friends who understand his situation and support him.

31. Respondent has completed the drug and alcohol education classes that are part of the 18-month TAASK program. In those classes, respondent learned about the effects of alcohol on the body, and the effects of alcohol abuse on personal relationships. In the group sessions, which meet twice per month, respondent has had the chance to talk to others, and hear about the problem people face through the abuse of alcohol.

32. Respondent has never attended Alcoholics Anonymous (AA) and does not attend any other 12-step program. He believes that the TAASK program follows the principles of AA. He does not believe he needs AA because he was able to stop drinking on his own, and the TAASK program helps him to "recognize [his] potential without alcohol."

33. Respondent stated that he began attending Cornerstone Church in Bakersfield a few months prior to the hearing, and underwent a "spiritual awakening," in which he "asked for help, and was able to stop" his drinking. Respondent has also involved himself in martial arts for exercise and mental discipline.

34. Silvia Espinoza testified on respondent's behalf at the administrative hearing. She is self-employed as a transaction coordinator, providing assistance to real estate salespersons in the maintenance of escrow files. She met respondent in 2004 or 2005, when she was an administrative assistant at Watson Realty. They currently attend the same church, partly as a result of Ms. Espinoza having "ministered to" respondent. Ms. Espinoza was aware of respondent's 2009 DUI conviction, but was not aware of his other criminal convictions. She had not personally witnessed respondent consuming alcohol. She has observed a "big change" in respondent's life in the past two years, and she has noticed that he seems more responsible and has different friends. She considers respondent to be "honest" and a "loyal friend."

35. Respondent's mother, Connie Hawatmeh, testified on respondent's behalf at the administrative hearing. She is a loan consultant with Westchester Home Loans. She is in regular contact with respondent, and is fully aware of respondent's problems with alcohol and his convictions. She has not seen respondent consume alcohol in the past year. She has

observed that his current friends are more business oriented and have been a more positive influence on respondent.

36. Respondent has been active in volunteer work in his community. He submitted two letters of support confirming his participation, which were received in evidence and considered to the extent permitted under Government Code section 11513, subdivision (d).<sup>2</sup> In a letter dated October 11, 2010, from Mike George, the owner of Agape Mortgage, Mr. George stated that respondent has been on the CanTree Committee for the Bakersfield Association of Realtors for three years. This committee works year-round to plan and execute events to raise food and funds for the needy, through its support Golden Empire Gleaners. Mr. George describes respondent as a "very active, helpful and committed committee member." In a letter dated November 23, 2010, from Linda S. Vernon, on behalf of the Bakersfield Association of Realtors, Ms. Vernon confirmed that respondent was a member in good standing of that organization, and that he has been active in the CanTree Committee to benefit the hungry in Bakersfield.

37. In addition to his volunteer work to help the hungry, respondent has assisted with fundraising events to benefit the American Cancer Society (Relay for Life) in 2009 and 2010, and the National MS Society (MS Walk) in 2010.

38. Respondent graduated from high school in 2001. He has taken classes at Bakersfield Community College, but does not have a college degree. Respondent has received training through his employer, and he completed continuing education courses required for renewal of his license in August 2009, including a three-hour course in ethics.

39. Kenneth Carter is respondent's employing broker. Watson Realty employs approximately 180 agents. Judy Camp is the General Manager and respondent's direct supervisor. There was no evidence to indicate that respondent's alcohol consumption affected his work performance. He has received several Certificates of Achievement for being the "top agent of the month," and the President's Plaque for being among the top 30 agents in the company.

40. Respondent's employing broker, Kenneth Carter, testified on respondent's behalf at the administrative hearing. He has known respondent since 2004 or 2005, when respondent first became employed as an assistant at Watson Realty. Mr. Carter was generally aware of the fact that respondent had criminal convictions in his past, but did not know the specifics of the arrests or convictions. He was also aware of the fact that respondent had failed to disclose his most recent convictions on his salesperson license renewal application. He did not become aware of these matters until Watson Realty received

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<sup>2</sup> Government Code section 11513, subdivision (d) states in pertinent part, "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. ..."

a copy of the Accusation from the Department. He characterized respondent's "skirmishes with law enforcement" as "isolated incidents" which did not reflect respondent's overall character. He stated that, if respondent were to be granted a restricted license, Watson Realty would provide whatever supervision and training the Department required. Respondent's immediate supervisor, Judy Camp, is licensed by the Department, and she would be the person responsible for any heightened supervision required by the Department.

41. Respondent is currently in compliance with his criminal probation. He has not sought to have his prior convictions expunged pursuant to Penal Code section 1203.4.

## LEGAL CONCLUSIONS

### *Cause for Discipline – Criminal Convictions*

1. At all times pertinent herein, Business and Professions Code section 490 stated:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding

in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

2. Business and Professions Code section 493 states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

3. Business and Professions Code section 10177, subdivision (b), states:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following: [¶]

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate

licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

4. California Code of Regulations, title 10, section 2910, subdivisions (a)(8), (a)(10), (a)(11), and (c), state:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves: [¶]

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

[¶] . . . [¶]

(10) Conduct which demonstrates a pattern of repeated and willful disregard of law.

(11) Two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs.

[¶] . . . [¶]

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

5. Respondent's 2009 DUI conviction was substantially related to the qualifications, functions and duties of a real estate salesperson within the meaning of California Code of Regulations, title 10, section 2910, subdivision (a)(8), doing of any unlawful act with the intent or threat of doing substantial injury to the person or property of another.<sup>3</sup> Taken together, respondent's 2009 DUI conviction, and his 2008 drunk in public conviction, are substantially related to the qualifications, functions and duties of a real estate salesperson within the meaning of California Code of Regulations, title 10, section 2910, subdivision (a)(11), two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs. Taken together with respondent's 2005 conviction for disturbing the peace and his 2002 DUI conviction, respondent's 2008 and 2009 criminal convictions were substantially related to the qualifications, functions and duties of a real estate licensee as defined in California Code of Regulations, title 10, section 2910, subdivisions (a)(10), conduct which demonstrates a pattern of repeated and willful disregard of law.

6. Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent's license and licensing rights pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), by reason of Findings 4, 5, 7, and 8, and Legal Conclusion 5, in that respondent has been convicted of crimes that are substantially related to the qualifications, functions and duties of a real estate salesperson.<sup>4</sup>

*Cause for Discipline/Denial – Falsification of License Renewal Application*

7. Business and Professions Code section 490, subdivision (c), states that, “[a] board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.”

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<sup>3</sup> “In proscribing *driving* while under the influence, the statute's legislative purpose is to *protect the public* and guard against the threat of injury to others.” (*People v. Canty* (2004) 32 Cal.4th 1266, 1279.) (Emphasis in original.) As the California Supreme Court stated in *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 899:

It is crystal clear to us that courts in the formulation of rules on damage assessment and in weighing the deterrent function must recognize the severe threat to the public safety which is posed by the intoxicated driver. The lesson is self-evident and widely understood. Drunken drivers are extremely dangerous people.

<sup>4</sup> Complainant did not allege that respondent's 2005 criminal conviction for disturbing the peace constituted an independent cause for discipline of respondent's license and licensing rights.



8. Business and Professions Code section 10177, subdivision (a), states:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or a salesperson, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

9. Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent's license and licensing rights was pursuant to Business and Professions Code section 10177, subdivision (a), by reason of Findings 4, 7, 10, and 16 through 28, in that respondent procured a real estate license by fraud, deceit or misrepresentation and by making a material misstatement of fact in his renewal application for said license by failing to disclose the convictions set forth in Findings 4, 7, and 10 on his license renewal application.

10. Cause for denial of respondent's renewal application for a real estate salesperson license was established pursuant to Business and Professions Code section 480, subdivision (c), by reason of Findings 4, 7, 10, and 16 through 28, in that respondent knowingly made a false statement of fact required to be revealed in the renewal application by failing to disclose the convictions set forth in Findings 4, 7, and 10 on his license renewal application.

### *Rehabilitation*

11. California Code of Regulations, title 10, section 2912, states:

The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

(a) The passage of not less than two years since the most recent criminal conviction that is 'substantially related' to the qualifications, functions or duties of a licensee of

the department. (A longer period will be required if there is a history of criminal convictions or acts 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 licensee.
- (c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.
- (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 criminal conviction was attributable in part to the use of a controlled substance or alcohol.
- (g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.
- (h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.
- (i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.
- (j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.
- (k) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

- (l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- (m) Change in attitude from that which existed at the time of the commission of the criminal acts 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 the licensee's previous conduct and with 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.

12. Pursuant to Business and Professions Code section 482, subdivision (b), the Department has developed criteria to evaluate the rehabilitation of a licensee after a criminal conviction, which are set forth in California Code of Regulations, title 10, section 2912. In this case, less than 16 months have passed since respondent's most recent conviction. (Finding 4). Respondent has not completed the court-ordered 18-month DUI course (Finding 6). He is currently in compliance with his criminal probation, and has paid all associated fines and fees (findings 6, 9, and 41). Respondent will remain on criminal probation until August 2012 (Finding 6). He has not obtained expungement of any of his criminal convictions (Finding 41).

13. Respondent has completely abstained from the use of alcohol for approximately one year as of the date of hearing (Finding 30). Apart from court-ordered DUI classes, respondent has not undergone alcohol rehabilitation, and he does not attend any 12-step program, such as AA, to support his sobriety (Findings 31 and 32). The fact that respondent testified that he "was" an alcoholic but does not believe he is one anymore demonstrated a fundamental lack of understanding of the recovery process.

14. Respondent has engaged in additional education for professional self-improvement since the events that gave rise to his criminal convictions, by attending training at work and completing continuing education courses required for license renewal (Finding 38). Respondent's family life is stable, he has the support of family and friends, and he has changed his social relationships by disassociating himself from friends who drink heavily (Findings 34-35). Respondent has been active in community programs to provide social benefit (Findings 36-37). Respondent has worked successfully in the real estate field (Finding 39). Respondent's employing broker testified on his behalf and expressed a willingness to continue to employ respondent, while having respondent's immediate supervisor closely monitor respondent's activities as a real estate salesperson, should he be permitted to remain licensed (Finding 40).

15. Respondent has made progress in his rehabilitation, for which he is to be commended and encouraged. However, respondent has only been sober for about a year, and he needs to provide a longer track record of sobriety, in light of his history of alcohol-related convictions, and particularly considering the minimal support system which he currently has in place to support his sobriety. Respondent is apparently in compliance with the terms of his criminal probation; however, compliance with the law when one is on court ordered release "does not necessarily prove anything but good sense." (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473.) When a person is on criminal probation or parole, rehabilitation efforts are accorded less weight, "[s]ince persons under the direct supervision of correctional authorities are required to behave in exemplary fashion..." (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Therefore, an insufficient period of time has passed for respondent to demonstrate rehabilitation.

16. Furthermore, respondent's failure to fully disclose his criminal convictions on his license renewal application demonstrates a lack of complete rehabilitation as well as dishonesty. Honesty and trustworthiness are qualities of utmost importance in a real estate licensee, who must frequently act in a fiduciary capacity. "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*, 214 Cal.App.3d at 402; *Golde v. Fox, supra*, 98 Cal.App.3d at 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*, 214 Cal.App.3d at 402; *Ring v. Smith* (1970) 5 Cal.App.3d 197, 205.)

Respondent's failure to fully disclose his criminal convictions on his license application is particularly troubling, because disclosure by a real estate licensee of information known to the licensee that may or may not be known to other parties is an essential element of the fiduciary

duty owed by a licensee to clients and to the public.<sup>5</sup> Respondent has not sustained his burden to prove that he can remain licensed at this time without harm to the public,

17. Under all the facts and circumstances herein, it would be contrary to the public interest to permit respondent to retain a real estate license, with or without restrictions.

ORDER

All licenses and licensing rights of respondent Carlos Angel Padilla under the Real Estate Law are revoked pursuant to Legal Conclusions 6, 9, 10, 15, 16, and 17, separately and collectively.

Dated: January 18, 2011.

*Catherine B. Frink*

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CATHERINE B. FRINK  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>5</sup> Respondent falsified his renewal Application less than a month after completing his continuing education ethics course.

FLAG

1 JASON D. LAZARK, Counsel (SBN 263714)  
2 Department of Real Estate  
3 P. O. Box 187007  
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**FILED**  
NOV 09 2010

DEPARTMENT OF REAL ESTATE  
By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation of	)	H-2473 FR
	)	
CARLOS ANGEL PADILLA,	)	<u>FIRST AMENDED</u>
	)	<u>ACCUSATION</u>
Respondent.	)	
	)	

The Complainant, LUKE MARTIN, in his official capacity as a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against CARLOS ANGEL PADILLA (hereinafter "Respondent"), is informed and alleges as follows:

1

Respondent is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter "the Code") as a real estate salesperson.

2

On or about September 2, 2009, Respondent filed his application to renew his real estate salesperson license. In response to Question 3 of said renewal application, to wit: "Within the past four year period, have you been convicted of any violation of law? Convictions expunged under Penal Code Section 1203.4 must be disclosed. However, you may omit minor traffic citations which do not constitute a misdemeanor or felony offense", Respondent replied

1 "NO" and concealed and failed to disclose the convictions described in Paragraphs 3 through 5,  
2 below.

3 3

4 On or about August 18, 2009, in the Kern County Superior Court, State of  
5 California, Case Number BM739883A, Respondent was convicted of violating section 23152  
6 (a) of the California Vehicle Code (DUI), a misdemeanor which bears a substantial relationship  
7 under Section 2910, Title 10, California Code of Regulations to the qualifications, functions, or  
8 duties of a real estate licensee.

9 4

10 On or about July 16, 2008, in the Kern County Superior Court, State of  
11 California, Case Number BM733785A, Respondent was convicted of violating section 647 of  
12 the California Penal Code (Drunk in Public), a misdemeanor which bears a substantial  
13 relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications,  
14 functions, or duties of a real estate licensee.

15 5

16 On or about September 9, 2005, in the Kern County Superior Court, State of  
17 California, Case Number MB677024A, Respondent was convicted of violating section 415 of  
18 the California Penal Code (Disturbing the Peace), a misdemeanor which bears a substantial  
19 relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications,  
20 functions, or duties of a real estate licensee.

21 MATTER IN AGGRAVATION

22 6

23 On or about September 11, 2002, in the Kern County Superior Court, State of  
24 California, Case Number BM625330A, Respondent was convicted of violating section 23152 (a)  
25 of the California Vehicle Code (DUI), a misdemeanor which bears a substantial relationship  
26 under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or  
27 duties of a real estate licensee.

In failing to reveal the convictions described in Paragraphs 3 through 5, above, Respondent procured or attempted to procure a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said application, which constitutes cause for suspension or revocation of all licenses and license rights of Respondent under Sections 480(c) and 10177(a) of the Code.

In addition, the convictions as alleged in Paragraphs 3 and 4, above, constitute independent cause for suspension or revocation of all licenses and license rights of Respondent under Sections 490 and 10177(b) of the California Business and Professions Code

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under the provisions of law.



LUKE MARTIN  
Deputy Real Estate Commissioner

Dated at Fresno, California,  
this 5<sup>TH</sup> day of NOVEMBER, 2010.



FLAG

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**FILED**  
APR 13 2010  
DEPARTMENT OF REAL ESTATE  
By Lazark

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) H-2473 FR  
12 )  
13 CARLOS ANGEL PADILLA, ) ACCUSATION  
14 Respondent. )

15 The Complainant, LUKE MARTIN, in his official capacity as a Deputy Real  
16 Estate Commissioner of the State of California, for cause of Accusation against CARLOS  
17 ANGEL PADILLA (hereinafter "Respondent"), is informed and alleges as follows:

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19 Respondent is presently licensed and/or has license rights under the Real Estate  
20 Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter "the Code") as a  
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27 traffic citations which do not constitute a misdemeanor or felony offense", Respondent replied

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5 California, Case Number BM73983A, Respondent was convicted of violating section 23152 (a)  
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*LS Martin*

LUKE MARTIN  
Deputy Real Estate Commissioner

Dated at Fresno, California,  
this 5<sup>th</sup> day of APRIL, 2010.