

**FILED**  
MAR 21 2012

DEPARTMENT OF REAL ESTATE  
By R. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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|                                     |   |                    |
|-------------------------------------|---|--------------------|
| In the Matter of the Application of | ) |                    |
|                                     | ) | CASE NO. H-2615 FR |
| KEVIN L. TORRENCE,                  | ) |                    |
|                                     | ) | OAH NO. 2011050593 |
| Respondent.                         | ) |                    |
| _____                               | ) |                    |

DECISION

The Proposed Decision dated February 2, 2012, 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. 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 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 \_\_\_\_\_

APR 11 2012

IT IS SO ORDERED

3/12/12

BARBARA J. BIGBY  
Acting Real Estate Commissioner

Barbara J. Bigby

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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MAR - 9 2012

DEPARTMENT OF REAL ESTATE  
By R. Mar

In the Matter of the Statement of Issues  
Against:

KEVIN L. TORRENCE,

Respondent.

Case No. H-2615 FR

OAH No. 2011050593

**PROPOSED DECISION**

Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, heard this matter in Sacramento, California, on January 9, 2012.

John W. Barron, Real Estate Counsel, Department of Real Estate (department), represented complainant Luke Martin, a Deputy Real Estate Commissioner of the State of California (complainant).

Respondent Kevin L. Torrence appeared on his own behalf.

Oral and documentary evidence was received. At the conclusion of the hearing, the parties offered oral closing argument. The record remained open through January 20, 2012, to allow respondent to submit a letter from his treatment program and complainant to respond to this document. On January 12, 2012, OAH received a letter dated January 10, 2012, from Elton Nelson, Dean/Chaplain of the Teen Challenge Faith Home Ranch which was marked for identification as Exhibit C. No response was received from complainant. On January 20, 2012, the record closed and the matter was submitted for decision.

**FACTUAL FINDINGS**

1. On October 14, 2010, respondent filed an application with the department for a real estate salesperson license.
2. On April 18, 2011, complainant signed the Statement of Issues against respondent and requested that his application be denied pursuant to Business and Professions

Code sections 480, subdivision (a), and 10177, subdivision (b), based upon the convictions described in Factual Findings 4 through 6.<sup>1</sup>

3. On May 1, 2011, respondent signed his Notice of Defense and request for a hearing, which was received by the department on May 6, 2011. The matter was then 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.

#### *Respondent's Convictions*

4. On October 28, 1981, in Case No. 64334, respondent was convicted by the Alameda County Superior Court of a misdemeanor violation of Vehicle Code section 23102, subdivision (a) (now section 23152) (driving under the influence of alcohol [DUI]).<sup>2</sup> Respondent was fined \$255 and ordered to "DUI School." There was no probation imposed.

On February 25, 2011, the Alameda County Superior Court certified that the underlying criminal records had been destroyed, but that respondent had successfully completed all terms and conditions related to this conviction.

5. On April 7, 1982, in Case No. 67123, respondent was convicted by the Alameda County Superior Court of a misdemeanor violation of Vehicle Code section 23152, subdivision (a) (DUI). Respondent was placed on three years of formal probation, ordered to spend three days in county jail, to pay a \$375 fine, and attend "DDP."

On February 25, 2011, the Alameda County Superior Court certified that the underlying criminal records had been destroyed, but that respondent had successfully completed all terms and conditions related to this conviction.

6. On December 18, 2007, in Case No. F07909285, respondent was convicted by the Fresno County Superior Court of a misdemeanor violation of Health and Safety Code section 11173, subdivision (a) (obtaining controlled substances by fraud), based upon his no contest plea.<sup>3</sup>

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<sup>1</sup> Unless otherwise indicated, all undesignated statutory references are to the Business and Professions Code.

<sup>2</sup> Vehicle Code section 23102, added by Stats.1978, c. 790, p. 2533, § 4.5, as amended was renumbered section 23152 and amended by Stats.1981, c. 940, p. 3567, § 12.

<sup>3</sup> Health and Safety Code section 11173, subdivision (a), provides: "No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

Respondent was placed on formal probation for two years, subject to the following conditions: Serve two days in county jail; pay total fines and restitution fees of \$670; obey all laws; abstain from use of drugs; no drugs without lawful prescription; and complete 60 hours of community service.

### *Evidence of Rehabilitation*

7. *Respondent's Testimony:* Respondent's testimony is paraphrased as relevant below:

Respondent attributed his 1981 and 1982 DUI convictions to his poor judgment in his late teens and early 20s. He completed the requirements imposed on him by these convictions.

Between these DUI convictions and his 2007 conviction, respondent married and had three children. He learned the flooring business, obtained a California Contractor's license (No. 689368) in 1994, and eventually opened and ran his own flooring business, Torrence Flooring. According to respondent, he never had any complaints filed against his license or with the Better Business Bureau and his company enjoyed a good reputation for integrity. Respondent then became a top salesman for several companies. At same time, respondent was active in the community and with his local church. He sponsored and coached Little League, and volunteered at preschool and in various other capacities. His life was successful.

In approximately 2003, following several accidents, respondent began to experience migraine headaches of an intensity that would send him to bed for several days. Respondent sought treatment and was prescribed Vicodin. He used this medication to successfully control his migraine pain. At a certain point, however, respondent realized that he really enjoyed the way Vicodin made him feel and that he was addicted to it. Respondent continued to use Vicodin. Respondent noted that, while he had essentially stopped drinking alcohol after his DUI convictions, he began drinking alcohol again once he was taking Vicodin. Respondent admits that he attempted to forge a Vicodin prescription in November of 2007, which led to his arrest and ultimate conviction. Respondent engaged in this conduct because he was "addicted beyond [his] control" and made a wrong decision he has regretted ever since.

Since this time, respondent has sought help from various medical practitioners for his ongoing migraine headaches. At some point not established by his testimony, respondent was treated by a holistic doctor and learned that he was allergic to both yeast and wheat. Since he began to strictly eliminate these substances from his diet, respondent has been free from migraines.

Respondent complied with the conditions of his probation. He completed two years of formal probation, spent two days in jail, paid fines and restitution, and served 60 hours of community service with Goodwill. His probation ended in December 2009.

In 2009 through 2010, respondent engaged in voluntary drug treatment to address his Vicodin addiction. He entered the Teen Challenge Faith Home Ranch program (Teen Challenge) and spent one year in this residential program. He completed this program in September 2010. During this one year program, respondent was unemployed.

At roughly the same time period, respondent's marriage ended and his divorce finalized in 2011. Two of his children are currently in college; one remains at home with her mother. Respondent provides child support and other help as he is able and he has weekend visits with his children.

Sometime in 2010, respondent began studying for his real estate salesperson license. He successfully completed courses and final examinations in Real Estate Finance, Real Estate Practice and Real Estate Principles.

In May 2011, respondent had a relapse when he consumed alcohol. This was his last drink. Respondent voluntarily readmitted himself to the Teen Challenge Restoration program for six months, through December 2011.

Respondent is committed to maintaining his sobriety and to helping others to do so. He considers alcohol and drug addiction to be an epidemic in this country. He is committed to volunteering and giving back to help others lead full and successful drug-free lives. He is interested in working in ministry and has applied to ministry school. Currently, respondent works with Teen Challenge as a volunteer, doing odd jobs as needed at a facility for men in Turlock. He is also active in Celebrate Recovery, a faith-based 12-Step program he attends weekly, and in Cross-Recovery at Calvary Temple, where he currently attends church. Respondent considers these activities to be vital to his recovery.

8. Real estate brokers Greg Vasquez and William Adanalian, are owners of Adanalian & Vasquez, a Century 21 firm in Fresno, California. Mr. Adanalian is respondent's sponsoring broker. Mr. Vasquez submitted a letter dated February 8, 2011, to the department recommending that respondent be licensed as a real estate salesperson. This document was offered and admitted as administrative hearsay pursuant to Government Code section 11513, subdivision (d).<sup>4</sup> Mr. Vasquez indicated that he has known respondent for five years and has "known him to be a reputable, conscientious, and trustworthy person." Mr. Vasquez further stated that he was aware of unspecified "incidents" that the department was investigating, but felt confident that respondent would be successful in this field and was "holding a position open for him at our office." Respondent reports that both Mr. Vasquez and Mr. Adanalian are aware of the specifics of his convictions, and that Mr. Adanalian is willing to supervise him if he were to be given a restricted license.

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<sup>4</sup> Government Code section 11513, subdivision (d), provides in pertinent part that "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..."

9. On December 13, 2010, the department notified respondent that he had successfully passed his real estate salesperson examination. After passing this examination, respondent began training with Adanalian & Vasquez.

10. Bernard and Linda Morris are the pastors of the Lighthouse Christian Fellowship. This was respondent's church for many years, until mid 2011. The Morrises provided a letter to the department in February 2011 which described respondent's attendance, church involvement, and volunteer activities. This document was admitted as administrative hearsay pursuant to Government Code section 11513, subdivision (d). The letter describes the positive values and ethics of respondent's children which, in the authors' opinions, reflect positively on their parents. In addition, it provides that respondent has shown his concern for the needy by heading up a food distribution program to help those hit hard by the economic crisis.

11. The January 10, 2012, letter from Chaplain Nelson at Teen Challenge (Exhibit C) was admitted as administrative hearsay pursuant to Government Code section 11513, subdivision (d). Chaplain Nelson confirmed that respondent lived in the Teen Challenge program in Ceres and completed their one-year residential program on September 28, 2010. He described Teen Challenge as a residential Christian program addressing life-control problems, including substance abuse. Chaplain Nelson also reported that respondent returned after a period of relapse and entered the six-month Restoration Program, which is designed for those who completed the first program but who suffered a relapse. Chaplain Nelson reported that "Mr. Torrence completed this program on December 1, 2012 [sic]."

13. Respondent has had no history of drinking and driving since 1982. He completed his criminal probation over two years ago, for a serious offense. Since completing probation, respondent voluntarily engaged in vigorous efforts to maintain his freedom from substance abuse. He completed a one-year residential program that addressed substance abuse. His relapse in May 2011 occurred shortly before the finalization of his divorce. This motivated him to voluntarily re-enter Teen Challenge for another six months. He has conscientiously engaged in efforts to improve his community through his church and he has experienced a radical change in attitude from that which he had when arrested in November 2007. Although now divorced, respondent successfully raised two children who are in college and he has continued to support in his dependent child as he is able in light of his unemployed status. Respondent has completed training courses in real estate, has successfully passed his real estate examination, and has a broker who is willing to supervise him with a restricted license. Respondent is current on his debts. He is willing to accept a restricted license. He understands the seriousness of his convictions and the responsibilities imposed on a department licensee. Respondent believes his successful business history over the years demonstrates that he is not a career criminal and that the department can trust him with a restricted license while he proves himself.

14. Considering the record as a whole, it would not be contrary to the public interest to allow respondent to receive a restricted real estate salesperson license.

## LEGAL CONCLUSIONS

1. *Burden of Proof*: An applicant for a license bears the burden of proving that he should be granted the license. (*Martin v. Alcohol Beverage Control Appeals Bd.* (1959) 52 Cal.2d 238.) In addition, rehabilitation is akin to an affirmative defense; consequently, the burden of proof of establishing an affirmative defense is on the proponent of that defense. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164.)

2. Section 480 provides, in pertinent part, as follows:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere...

3. Section 10177, subdivision (b), provides that the commissioner may deny the issuance of a license to an applicant, who 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 (10 CCR), section 2910, subdivision (a), provides that a criminal conviction or an act "shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department" when it involves the following pertinent conduct:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

(2) Counterfeiting, forging or altering of an instrument or the uttering of a false statement.

[¶] ... [¶]

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

[¶] ... [¶]

(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.

[¶] ... [¶]

(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.

5. As set forth in the Factual Findings and Legal Conclusions as a whole, respondent's criminal convictions (Factual Findings 4 through 6) are substantially related to the qualifications, functions or duties of a real estate licensee within the meaning of 10 CCR section 2910. Legal cause is therefore established to deny respondent's application for licensure pursuant to sections 480, subdivision (a), and 10177, subdivision (b).

6. The department has developed criteria to be used when determining the rehabilitation of an applicant for issuance of a license based on a criminal conviction or act. As set forth in 10 CCR section 2911 and as relevant to this matter, the criteria are as follows:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought...

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

(c) Expungement of criminal convictions resulting from immoral or antisocial acts.

[¶] ... [¶]

(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 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) 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.

(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.

7. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly in Factual Findings 13 and 14, respondent has made significant strides toward rehabilitation. Under these circumstances, the issuance of a restricted license for a three-year period is appropriate.

### ORDER

The application for real estate salesperson license filed by respondent KEVIN L. TORRENCE is hereby 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 three (3) years have elapsed from the date of issuance of the restricted license to respondent.

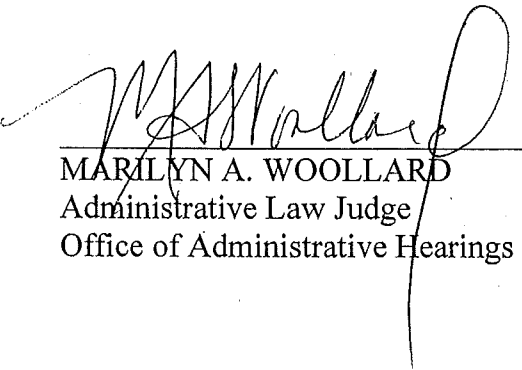
3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

(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.

4. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: February 2, 2012



MARILYN A. WOOLLARD  
Administrative Law Judge  
Office of Administrative Hearings