

1 DEPARTMENT OF REAL ESTATE  
2 P. O. Box 187000  
3 Sacramento, CA 95818-7000  
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5 Telephone: (916) 227-0789  
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FILED

JUL 15 2003

DEPARTMENT OF REAL ESTATE

By *James L. Beaver*

8 BEFORE THE  
9 DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Application of )  
13 JOSEPH J. CLEMENT, II, ) NO. H-2830 SD  
14 Respondent. ) STIPULATION  
15 ) AND WAIVER

16 It is hereby stipulated by and between JOSEPH J.  
17 CLEMENT, II (hereinafter "Respondent") and his attorney,  
18 Frank M. Buda, Esq., and the Complainant, acting by and through  
19 James L. Beaver, Counsel for the Department of Real Estate, as  
20 follows for the purpose of settling and disposing of the  
21 Statement of Issues filed on January 17, 2003 in this matter:

22 A. Respondent acknowledges that she has received and  
23 read the Statement of Issues and the Statement to Respondent  
24 filed by the Department of Real Estate in connection with his  
25 application for a real estate salesperson license. Respondent  
26 understands that the Real Estate Commissioner may hold a hearing  
27 on this Statement of Issues for the purpose of requiring further

1 proof of Respondent's honesty and truthfulness and to prove  
2 other allegations therein, or that she may in her discretion  
3 waive the hearing and grant Respondent a restricted real estate  
4 salesperson license based upon this Stipulation and Waiver.  
5 Respondent also understands that by filing the Statement of  
6 Issues in this matter the Real Estate Commissioner is shifting  
7 the burden to Respondent to make a satisfactory showing that  
8 Respondent meets all the requirements for issuance of a real  
9 estate salesperson license. Respondent further understands that  
10 by entering into this stipulation and waiver, Respondent will be  
11 stipulating that the Real Estate Commissioner has found that  
12 Respondent has failed to make such a showing, thereby justifying  
13 the denial of the issuance to Respondent of an unrestricted real  
14 estate salesperson license.

15           B. Respondent hereby admits that the allegations of  
16 the Statement of Issues filed against Respondent are true and  
17 correct and requests that the Real Estate Commissioner in her  
18 discretion issue a restricted real estate salesperson license to  
19 Respondent under the authority of Section 10156.5 of the  
20 Business and Professions Code.

21           C. Respondent is aware that by signing this  
22 Stipulation and Waiver, Respondent is waiving Respondent's right  
23 to a hearing and the opportunity to present evidence at the  
24 hearing to establish Respondent's rehabilitation in order to  
25 obtain an unrestricted real estate salesperson license if this  
26 Stipulation and Waiver is accepted by the Real Estate  
27 Commissioner. However, Respondent is not waiving Respondent's

1 right to a hearing and to further proceedings to obtain a  
2 restricted or unrestricted license if this Stipulation and  
3 Waiver is not accepted by the Commissioner.

4 D. Respondent further understands that the following  
5 conditions, limitations, and restrictions will attach to a  
6 restricted license issued by the Department of Real Estate  
7 pursuant hereto:

8 1. The license shall not confer any property  
9 right in the privileges to be exercised  
10 including the right of renewal, and the Real  
11 Estate Commissioner may by appropriate order  
12 suspend the right to exercise any privileges  
13 granted under this restricted license in the  
14 event of:

15 a. The conviction of Respondent (including a  
16 plea of nolo contendere) to a crime which  
17 bears a substantial relationship to  
18 Respondent's fitness or capacity as a real  
19 estate licensee; or

20 b. The receipt of evidence that Respondent has  
21 violated provisions of the California Real  
22 Estate Law, the Subdivided Lands Law,  
23 Regulations of the Real Estate  
24 Commissioner, or conditions attaching to  
25 this restricted license.

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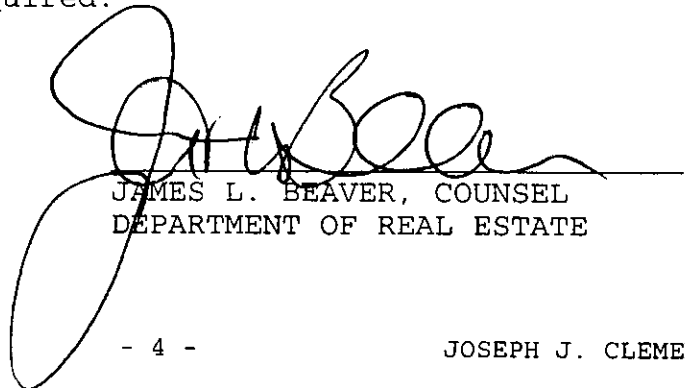
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to Respondent.

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 broker on a form approved by the Department of Real Estate wherein the employing broker shall certify as follows:

a. That broker has read the Statement of Issues which is the basis for the issuance of the restricted license; and

b. That 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.

June 19, 2003  
DATED

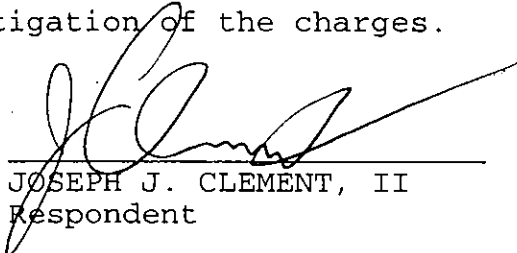
  
JAMES L. BEAVER, COUNSEL  
DEPARTMENT OF REAL ESTATE

1 \* \* \*

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

12 6/9/03

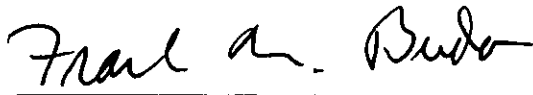
13 \_\_\_\_\_  
14 DATED

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16 \_\_\_\_\_  
17 JOSEPH J. CLEMENT, II  
18 Respondent

19 I have reviewed the Stipulation and Agreement as to  
20 form and content and have advised my client accordingly.

21 6-6-03

22 \_\_\_\_\_  
23 DATED

24   
25 \_\_\_\_\_  
26 FRANK M. BUDA, ESQ.  
27 Attorney for Respondent

28 \* \* \*

29 I have read the Statement of Issues filed herein and  
30 the foregoing Stipulation and Waiver signed by Respondent. I am  
31 satisfied that the hearing for the purpose of requiring further  
32 proof as to the honesty and truthfulness of Respondent need  
33 not be called and that it will not be inimical to the public

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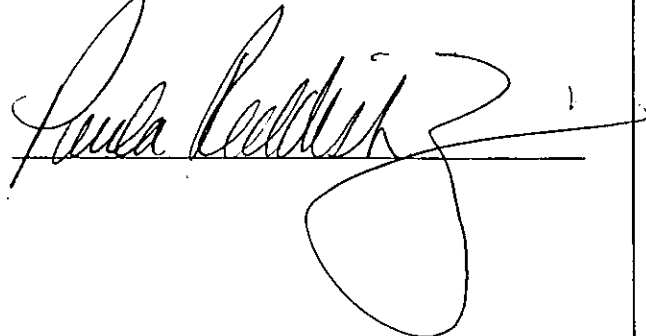
1 interest to issue a restricted real estate salesperson license  
2 to Respondent.

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

9 This Order is effective immediately.

10 IT IS SO ORDERED July 7, 2003.

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12 PAULA REDDISH ZINNEMANN  
13 Real Estate Commissioner

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FILED  
APR 18 2003

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

JOSEPH J. CLEMENT, II,

By Lauriel J. [Signature]

Case No. H-2830 SD

OAH No.

Respondent

NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at THE OFFICE OF ADMINISTRATIVE HEARINGS, 1350 FRONT STREET, SUITE 6022, SAN DIEGO, CA 92101 on TUESDAY, JUNE 24, 2003, at the hour of 1:30 P.M., or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: APRIL 18, 2003

DEPARTMENT OF REAL ESTATE

By Larry A. Alamao  
LARRY A. ALAMA, Counsel

1 JAMES L. BEAVER, Counsel (SBN 60543)  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0788 (Direct)

FILED  
MAR 28 2003

DEPARTMENT OF REAL ESTATE

By *Laurie G. Graves*

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Application of )  
12 JOSEPH J. CLEMENT, II, ) No. H-2830 SD  
13 Respondent. ) STATEMENT OF ISSUES  
14 )

15 The Complainant, J. Chris Graves, a Deputy Real Estate  
16 Commissioner of the State of California, for Statement of Issues  
17 against JOSEPH J. CLEMENT, II (hereinafter "Respondent"),  
18 alleges as follows:

19 I

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

23 II

24 Respondent made application to the Department of Real  
25 Estate of the State of California for a real estate salesperson  
26 license on or about March 6, 2002.

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III

In response to Question 25 of said application, to wit: "Have you ever 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 answered "No".

IV

On or about August 30, 1996, in the District Court of Ellis County, State of Kansas, Respondent was convicted of the crime of Obstruction Of Official Duty in violation of K.S.A. 21-3808(a), a misdemeanor and a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations (herein "the Regulations"), to the qualifications, functions or duties of a real estate licensee.

V

On or about October 31, 1994, in the District Court of Ellis County, State of Kansas, Respondent was convicted of the crime of Obstruction Of Official Duty in violation of K.S.A. 21-3808(a), a misdemeanor and a crime involving moral turpitude which bears a substantial relationship under Section 2910 of the Regulations to the qualifications, functions or duties of a real estate licensee.

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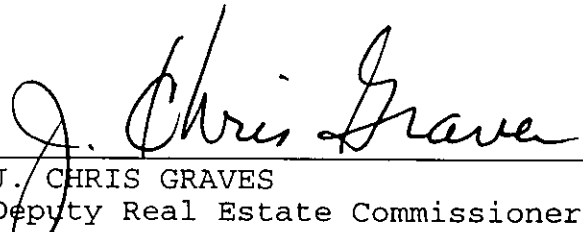
VI

In failing to reveal the convictions described in Paragraphs IV and V, above, in said application, Respondent 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 denial of Respondent's application for a real estate license under Sections 480(c) and 10177(a) of the California Business and Professions Code.

VII

Respondent's criminal convictions, described in Paragraphs IV and V, above, constitutes cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

WHEREFORE, Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of a real estate salesperson license to Respondent, and for such other and further relief as may be proper in the premises.

  
J. CHRIS GRAVES  
Deputy Real Estate Commissioner

Dated at San Diego, California,  
this 11<sup>th</sup> day of March, 2003.