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JAN 06 2008

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of
MOHINDER SINGH GOOMAR,
Respondent.

No. H-2911 SD

ORDER GRANTING UNRESTRICTED LICENSE

On April 5, 2004, a Decision was rendered herein denying Respondent's application for a real estate broker license, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on July 17, 2004 and Respondent has operated as a restricted licensee since that time.

On June 12, 2006, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate broker license.

I have considered Respondent's petition and the evidence submitted in support thereof including Respondent's record as a restricted licensee. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate broker license and that it would not be against the public interest to issue said license to Respondent.

1 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal of
2 restrictions is granted and that a real estate broker license be issued to Respondent if, within nine
3 (9) months from the date of this order, Respondent shall:

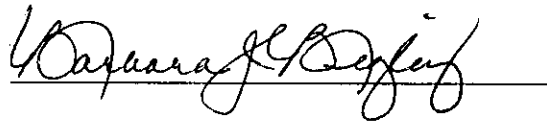
4 (a) Submit a completed application and pay the appropriate fee for a real estate
5 broker license, and

6 (b) Submit evidence of having taken and successfully completed the continuing
7 education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real
8 estate license.

9 This Order shall become effective immediately.

10 IT IS SO ORDERED 12-12-08

11 JEFF DAVI
12 Real Estate Commissioner

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16 BY: Barbara J. Bigby
17 Chief Deputy Commissioner
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FILED
MAY 18 2004

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

* * *

By *K. Alleen Contreras*

In the Matter of the Application of)
MOHINDER SINGH GOOMAR,)
Respondent.)

NO. H-2911 SD

L-2003110049

DECISION

The Proposed Decision dated April 15, 2004, 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 broker license is denied, but the right to a restricted real estate broker 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 broker 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 June 7, 2004.

IT IS SO ORDERED

April 5, 2004.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues of:

MOHINDER SINGH GOOMAR,

Respondent.

Case No. H-2911 SD

OAH No. L2003110049

PROPOSED DECISION

On December 18, 2003, in San Diego, California, Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Larry Alamo, Counsel, Department of Real Estate represented the complainant.

Respondent Mohinder Singh Goomar was present and represented by Charles Benninghoff from the offices of Professional Advocates.

The matter was submitted on December 18, 2003.

FACTUAL FINDINGS

1. The Statement of Issues was made and filed by J. Chris Graves in his official capacity as a Deputy Real Estate Commissioner of the State of California, and not otherwise.
2. At all times relevant to the determination of the issues in this case respondent was unlicensed by the Department in any capacity. He seeks licensure as a real estate broker.
3. The allegations in this case are very simple and straightforward. Respondent has applied for licensure with the Department as a real estate broker. The Department has denied this application on the basis of the language contained in Business and Professions Code section 10177(f). The Department also claims that respondent has failed to demonstrate that he is rehabilitated pursuant to the Department regulations dealing with rehabilitation. Respondent acknowledges the prior license discipline in the state of New York but argues that he has established a sufficient showing of rehabilitation to justify the granting of such a license.

4. Respondent signed an application for licensure with the Department on July 10, 2002. In it, he accurately answered questions about his prior license discipline in the State of New York.

5. The factual basis the Department relies on for denial is as follows:

Respondent was a physician in New York. In a decision effective March 27, 1987, respondent's medical license was revoked by the State of New York Office of Professional Medical Conduct. His conduct with respect to four female patients was found to have violated various provisions of the New York physician licensing laws including unprofessional conduct evidencing moral unfitness to practice, practicing medicine fraudulently, and conduct that was willfully harassing, abusing or intimidating to a patient either physically or verbally.

6. Respondent disclosed his prior license discipline during the application process with the DRE. Although the final actions of the New York medical board took place 17 years ago, the underlying conduct for which his license was revoked took place between 20 and 24 years ago.

7. On the basis of the record in this case including the testimony of respondent and others who have known him well, there is one major issue of concern for the Department and for the Administrative Law Judge hearing this case. Does respondent currently pose a risk to the people of the State of California should he be licensed as a real estate broker? The answer, based on the totality of the record is "probably not." This answer is very much equivocal and justifies the disciplinary order entered below. The disciplinary order is arrived at based upon the facts found to be established and the evaluation of these facts as described below.

8. The Office of Administrative Hearings conducts hearings such as these involving sensitive licensing issues where public welfare is at stake for over 100 state and local government agencies. In almost every case, there are disputes over the honesty and veracity and reliability of witnesses. There are claims that one witness or another is lying. Those who lie should not be rewarded for their serious misdeed since they do so under penalty of perjury. By the same token, honest mistakes of memory, inadvertent lapses of recollection and well-intentioned misstatements should not wear the brand of the liar. Not every person who misstates something, either in a document or while testifying, is guilty of deceit. There are also cases in which a respondent does not appear to accept responsibility for prior misdeeds. This can be a very large red flag and place a cloud over a respondent's suitability for licensure. Each such charge (of dishonesty or failing to accept responsibility) must be evaluated individually and against a background of a body of expertise developed hearing similar types of cases. Government Code section 11425.50(c) contemplates this when it states:

"The statement of the factual basis for the decision shall be based exclusively on the evidence of record in the proceeding and on matters officially noticed in the

proceeding. The presiding officer's experience, technical competence, and specialized knowledge may be used in evaluating evidence."

It is regrettable, but lying and failing to accept responsibility are all too common in our courts. After 14 years of hearing these cases, that is the unfortunate conclusion that the Administrative Law Judge, as trier of fact, makes. People lie, they fib, they distort, they mislead, and they twist facts and exaggerate. Not all witnesses but some do. The respondent in this case has been honest and straightforward at all times during the application process and during the hearing about his license discipline. He may well see things differently than others regarding the underlying facts of his misconduct. He has maintained this position all along. What is crucial is that respondent has accepted the ruling of the New York medical board. He accepted its finality and its effect.

9. The findings of fact in this case are simple and clear. Respondent lost his medical license in New York for actions that were found to have occurred two decades ago. They were behaviors that involved inappropriate touching of the breasts of female patients. They were also findings of fact made by a New York administrative agency that found facts established by a preponderance of evidence. A preponderance of the evidence is not the standard by which a physician's conduct is evaluated for the purpose of administrative discipline in California. In California, a finding must be made that conduct occurred by "clear and convincing evidence" which is a much higher burden than a preponderance of the evidence.

10. California Business and Professions Code section 10177 and subpart (f) reads in relevant part:

"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 had done any of the following . . .

(f) Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or has either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act, . . . and only upon an express finding of a violation of law by the agency or entity."

Clearly, respondent lost a license by the actions of another state's agency and he had notice and opportunity to defend (" . . . fair notice of the charges, an opportunity for a hearing. . .") which are required for the application of Business and Professions Code section 10177 (f). The essential question that must be resolved is whether he received "other due process protections comparable to the Administrative Procedure Act" in his New York

license hearing. The administrative law judge has taken official notice of the acts and statutes of the State of New York including the following:

1. The provisions of the New York Public Health Law section 230.
2. The New York State Administrative Procedure Act, specifically sections 301-307.
3. The New York Education Law section 6509.
4. The New York Administrative Code, Title 8, sections 29.1(a)(2) and 29.1(b)(5)
5. Volume 10, New York Codes, Rules and Regulations, Part 51.

A review of these rules, regulations and statutes demonstrates that there were sufficient comparable due process protections afforded respondent in his New York disciplinary matter so that California Business and Professions Code section 10177(f) does apply. However, the issue most important for evaluation is not whether respondent has had a license issued by another state disciplined. It is the underlying conduct. Here, because of the preponderance of the evidence standard used, there is very little of substance that can be safely inferred from this record about the underlying conduct that occurred over 20 years ago in the State of New York.

11. The concern that California license authorities must have is that they not ignore the possibility that someone who has a prior finding of a sexual boundary violation not be given carte blanche in a new state to take advantage of women. The California Department of Real Estate was well within its prerogative in denying this application. However, decisions about licensure, under the California Administrative Procedure Act, must ultimately be made on the basis of a quantum of reliable evidence, not conjecture, surmise or suspicion.

12. Respondent moved to California in 1989 with his wife of 37 years and has led an exemplary life by all accounts since his arrival here. Those who testified on his behalf and who wrote letters of support have created a long-term and detailed picture of a good neighbor and good friend. Most importantly, they have created a picture of a man who can be trusted and relied upon, not someone who would take advantage of others in any way. Respondent has held numerous other state and federal licenses and certificates in the last ten years without problem. He has been licensed as a vehicle dealer by the California Department of Motor Vehicles and currently is licensed by the California Secretary of State as a Notary Public. He has not suffered any license discipline as a result of those licensures.

13. Respondent has a long and consistent track record of appropriate behavior over the last 15 years. This is a very strong predictor of future conduct. What came out of this record that causes concern is not the issues surrounding his conduct with patients 20 years ago, whatever it may have been. The concern is about his mental status. This came out of the testimony from a therapist who has evaluated him. This is frustrating because there is insufficient detailed information in this record to make a specific enough disciplinary order that provides sufficient public protection but does not unduly burden the respondent. The record in this case discloses that respondent has had a serious psychiatric diagnosis and

that he is being currently treated for this. The diagnosis is Psychotic Disorder, Not Otherwise Specified. According to the report of Phyllis J. Crow, F.F.C.C. (as well as her testimony at hearing) respondent "has had no recurrent hallucinations or delusions since beginning medication. He is in, and maintains an out-patient treatment program of medication and psychotherapy. He has been involved in the business world assisting people in financial issues without incident." What we have here is a situation that is fairly common. We have a psychiatric diagnosis that is serious and we appear to have a patient/applicant who is doing fine taking medication and receiving psychotherapy. But we have scant details of this and the Department and the people of the State of California are entitled to this. Many psychiatric disorders, if treated appropriately with medication and therapy, do not impair or inhibit a person from performing tasks of complexity and responsibility . . . as long as they remain medication compliant.

14. Respondent has demonstrated by his actions a long track record of consistently appropriate behavior both socially, personally and professionally. He is highly thought of and trusted by those around him. The only concern that has been raised by this record is that he remains true to the demands of his physicians and therapists to treat his psychiatric condition.

LEGAL CONCLUSIONS

1. Cause was established to deny respondent's application for licensure as a real estate broker on the grounds that he sustained the revocation of his medical license in the State of New York in 1987. This license discipline constitutes grounds for license discipline in California under sections 480(a) and 10177(f) of the California Business and Professions Code by virtue of Factual Findings 1-14.

2. Cause was established to deny respondent's application for licensure as a real estate broker on the grounds that he has failed to establish complete rehabilitation under Title 10, California Code of Regulations, section 2910, by virtue of Factual Findings 1-14. Respondent has made significant and substantial progress on his rehabilitative journey and deserves to feel good about his accomplishments.

3. Respondent was found to be sincere and credible in his testimony at this hearing. His demeanor was appropriate to the seriousness of the situation.

California Government Code section 11425.50(b) reads as follows:

"The statement of the factual basis for the decision may be in the language of, or by reference to, the pleadings. If the statement is no more than mere repetition or paraphrase of the relevant statute or regulation, the statement shall be accompanied by a concise and explicit statement of the underlying facts of record that support the decision. If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness that supports

the determination, and on judicial review the court shall give great weight to the determination to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it.” (Emphasis added.)

ORDER

The application for licensure of Mohinder Singh Goomar for licensure as a real estate broker is denied; provided, however, a restricted real estate broker license shall be issued to respondent under Business and Professions Code section 10156.5. The restricted license shall be subject to all of the provisions of Business and Professions Code section 10156.7 and shall be subject to the following limitations, conditions and restrictions imposed under Business and Professions Code section 10156.6:

1. The license issued to respondent 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 for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision.
3. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondent’s activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which the Respondent engaged during the period covered by the report.
4. Respondent shall at intervals of six months, report to the Department his then current medical and/or mental health status. This shall be accomplished by supplying a written report from physician or psychologist or marriage, family therapist licensed

in the State of California who has personal knowledge of respondent's condition and treatment. This report shall certify that respondent continues to be treated on a regular or ongoing basis for his condition of Psychotic Disorder NOS and that he remains capable of performing the tasks of a real estate broker.

DATED: April 15, 2004



STEPHEN E. HJELT
Administrative Law Judge
Office of Administrative Hearings

Section 11522 of the Government Code of the State
of California:

11522. Reinstatement of License or Reduction of Penalty. A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty. (Added by Stats. 1945, Ch. 867; amended by Stats. 1985, Ch. 587.)

CRITERIA OF REHABILITATION (*Denial*)

RE 573 (Rev. 10/03)

Your application for a real estate license or your petition to reinstate your real estate license has been denied. The reason(s) for denial is on the grounds set forth in the attached Decision or Order Denying Reinstatement. Set forth below is the Criteria of Rehabilitation. These criteria have been developed by the Department of Real Estate as guidelines to assist an applicant or former licensee to establish a rehabilitation program and in the presentation of his or her case should application again be made for licensure or a petition filed for either reinstatement of a license or removal of restrictions from a restricted license.

Not all of the factors listed in the criteria will be applicable in the case of every person who has had a license application or petition for reinstatement or removal of restrictions denied. Nor will each factor necessarily be given equal weight in evaluating the person's rehabilitation. Each person must decide which of these factors are applicable to his or her case and should then take appropriate steps toward rehabilitation to the end of satisfying the Real Estate Commissioner that it would not be against the public interest to grant the license in question.

2911. Criteria of Rehabilitation (*Denial*). 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 a crime or act committed by the applicant:

- (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. (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.)
- (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.
- (d) Expungement or discontinuance of a requirement of registration pursuant to 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 conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.
- (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.
- (j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.
- (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.
 - (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.

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
OCT 30 2003
DEPARTMENT OF REAL ESTATE
By Kathleen Contreras

In the Matter of the Application of

MOHINDER SINGH GOOMAR,

} Case No. H-2911 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, ROOM 6022

SAN DIEGO, CALIFORNIA 92101

on **DECEMBER 18, 2003**, at the hour of **1:30 PM**, 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: OCTOBER 29, 2003

DEPARTMENT OF REAL ESTATE
By Larry A. Alamao
LARRY A. ALAMAO, Counsel

1 DEIDRE L. JOHNSON, Counsel
2 SBN 66322
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
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FILED
OCT 23 2003

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

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

11 * * *

12 In the Matter of the Application of)
13 MOHINDER SINGH GOOMAR,) NO. H-2911 SD
14 Respondent.) STATEMENT OF ISSUES
15)

16 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Statement
18 of Issues against MOHINDER SINGH GOOMAR, alleges as follows:

19 I

20 MOHINDER SINGH GOOMAR (hereafter Respondent) made
21 application to the Department of Real Estate of the State of
22 California for a real estate broker license on or about July 15,
23 2002.

24 II

25 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate
26 Commissioner of the State of California, makes this Statement of
27 Issues in his official capacity and not otherwise.

1 III

2 Effective on or about March 27, 1987, in Case No. 6760,
3 before the State of New York Office of Professional Medical
4 Conduct, New York State Education Department, the New York State
5 medical license of Respondent was revoked pursuant to N.Y.
6 Education Law Section 6509(9) (unprofessional conduct evidencing
7 moral unfitness to practice the profession within the meaning of
8 N.Y. Administrative Code Title 8, Section 29.1(b)(5)); N.Y.
9 Education Law Section 6509(2), (practicing the profession of
10 medicine fraudulently); N.Y. Education Law Section 6509(9)
11 (unprofessional conduct by willfully harassing, abusing or
12 intimidating a patient either physically or verbally within the
13 meaning of N.Y. Administrative Code Title 8, Section 29.1(a)(2);
14 and N.Y. Education Law Section 6509(2) (practicing the profession
15 of medicine with negligence and/or incompetence on more than one
16 occasion).

17 IV

18 The grounds for disciplinary action of Respondent's
19 medical license as alleged above were based, in whole or in part,
20 on acts which, if done by a real estate licensee, would be
21 grounds for the suspension or revocation of a California real
22 estate license.

23 V

24 The facts alleged above constitute cause for denial of
25 Respondent's application for a real estate broker license under
26 Section 10177(f) of the Code.

27 ///

WHEREFORE, the 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 broker 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 21st day of October, 2003.