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MAR 22 1994

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

\* \* \*

By *Kathleen Contreras*

In the Matter of the Application of )  
MICHAEL EUGENE AYERS, )  
Respondent. )

NO. H-2951 SAC  
N-9311050

DECISION

The Proposed Decision dated February 23, 1994, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon  
on April 11, 1994.

IT IS SO ORDERED

3/12, 1994.

CLARK WALLACE  
Real Estate Commissioner

*Clark Wallace*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application )  
of: )  
MICHAEL EUGENE AYERS, ) Case No. H-2951 SAC  
Respondent. ) OAH No. N 9311050

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PROPOSED DECISION

This matter was heard before Jonathan Lew, Administrative Law Judge, State of California, Office of Administrative Hearings on January 25, 1994, in San Francisco, California.

The Department of Real Estate was represented by Larry A. Alamao, Counsel.

Respondent Michael Eugene Ayers was present and represented himself.

The record remained open until February 10, 1994, for receipt of additional reference letters. Two letters were received on February 10, 1994, and marked as Exhibits C and D. The matter was thereafter submitted.

FINDINGS OF FACT

I

Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California Department of Real Estate (Department), made and issued the Statement of Issues in his official capacity, and not otherwise.

II

Michael Eugene Ayers (Respondent), pursuant to the provisions of section 10153.3 of the Business and Professions Code (Code), made application to the Department for a real estate salesperson license on April 27, 1993, with the knowledge and understanding that any license issued as a result of this application would be subject to the conditions of section

10153.4 of the Code. Raymond Howard Robinson is listed as his sponsoring broker.

### III

On July 31, 1990, in the Superior Court of California, County of Contra Costa (Case No. 901008-3) Respondent was convicted upon his plea of Guilty of violation of California Penal Code section 459-460.2 (Burglary - Second Degree), commercial. This is a crime involving moral turpitude and one that bears a substantial relationship under Title 10, California Code of Regulations, section 2910, to the qualifications, functions or duties of a real estate licensee.

Respondent was placed on three years probation, the terms of which included 120 days in the County Jail, 60 days of which were served through the work furlough program, and payment of a restitution fine of \$100.00. On November 18, 1991, an order was issued deeming Respondent's offense to be a misdemeanor under Penal Code section 17. His probation ended on September 17, 1993. Respondent complied with all the terms and conditions of his probation without incident.

### IV

The circumstances of Respondent's arrest and conviction are that on February 24, 1990, he attempted to enter a Ford Mustang parts store through a roof air duct to take a Mustang grill, valued between \$300 and \$400. Respondent wanted this part for his own vehicle and intended to break into the store to take it when he was spotted by Richmond police.

### V

Respondent has been employed at Glass Pack Bottling Company in Oakland since 1990. He has worked there as a forklift and truck driver, and has also done hauling over the past seven months with Cal Glass. He is engaged to be married in March 1994, and has a son, age ten months. He no longer associates with former high school associates who were negative influences in his life. Respondent has completed a course of real estate studies with Anthony School of Real Estate. He has postponed, however, compliance with other Department education requirements pending the instant appeal. It is his desire to work part time under Raymond Robinson, a licensed real estate broker in Richmond.

Raymond Robinson is willing to provide Respondent with daily monitoring and supervision. He notes that Respondent is a very bright, dedicated and ambitious individual who has pursued and completed his formal real estate instruction in only two and a half months, well under the usual six months.

Robinson is aware of Respondent's conviction, and notes that Respondent has since expressed regret for his mistake. He believes that Respondent will make an excellent real estate sales agent.

## VI

One of Respondent's letter references is from Claude Earle, owner of West County Mustang Classics. He notes that the crime caused him no injury or loss, and that since the crime Respondent has "demonstrated that he is now a responsible person." In addition, his parole agent, Muriel Martin writes:

"The fact that his juvenile life and pre-adult life began negatively should not be the deciding factor in excluding him from contributing to our world in a positive manner. He is an active participant at New Life Christian Assembly and is quick to be of assistance to all his friends and family. The ability to give back to the community in which he took advantage of in his pre-adult life would be one of the greatest achievements he could do."

Respondent has demonstrated substantial rehabilitation over the four years since his arrest. He has maintained steady employment and has gained the confidence of the individual who will be his supervising real estate broker, Raymond Robinson. It would not be contrary to the public interest to issue Respondent a restricted license at this time.

## DETERMINATION OF ISSUES

### I

Cause for denial of Respondent's application for a real estate license under Business and Professions Code sections 480(a) and 10177(b) and Title 10 California Code of Regulations section 2910 exists, by reason of the matters set forth in Findings III and IV. Respondent was convicted of a crime involving moral turpitude and which bears a substantial relationship to the qualifications, functions or duties of a Department licensee.

### II

The matters set forth in Findings V and VI were considered in making the following Order.

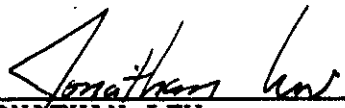
ORDER

Respondent Michael Eugene Ayers' application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to section 10156 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 and 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 one year has 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 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's restricted real estate salesperson license is issued subject to the requirements of section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.
5. Pursuant to section 10154, if Respondent has not satisfied the requirements for an unqualified license under section 10153.4, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to section 10153.4 until four years after the date of the issuance of the preceding restricted license.

DATED: 2/23/94

  
\_\_\_\_\_  
JONATHAN LEW  
Administrative Law Judge  
Office of Administrative Hearings

FILED  
NOV - 8 1993  
DEPARTMENT OF REAL ESTATE

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

By Kathleen Centresas

*In the Matter of the Application of*

MICHAEL EUGENE AYERS,

Case No. H-2951 SAC

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, 455 Golden Gate Avenue,  
Room 2248, San Francisco, California 94102

on Tuesday -- January 25, 1994, 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.

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 are 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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: November 4, 1993

By Susan Y. Bennett  
SUSAN Y. BENNETT Counsel

1 SUSAN Y. BENNETT, Counsel  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

FILED  
OCT 19 1993  
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 MICHAEL EUGENE AYERS, )  
14 Respondent. )  
\_\_\_\_\_ )

NO. H-2951 SAC  
STATEMENT OF ISSUES

16 The Complainant, Charles W. Koenig, a Deputy Real Estate  
17 Commissioner of the State of California, for Statement of Issues  
18 against MICHAEL EUGENE AYERS (hereinafter "Respondent") alleges as  
19 follows:

20 I

21 Respondent, pursuant to the provisions of Section  
22 10153.3 of the Business and Professions Code, made application to  
23 the Department of Real Estate of the State of California for a  
24 real estate salesperson license on or about April 27, 1993, with  
25 the knowledge and understanding that any license issued as a  
26 result of said application would be subject to the conditions of  
27 Section 10153.4 of the Business and Professions Code.



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II

Complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity.

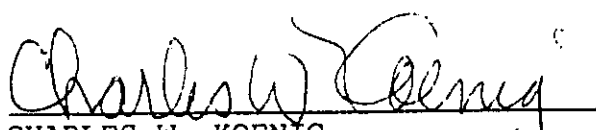
III

On or about July 31, 1990, in the Superior Court of California, County of Contra Costa, Respondent was convicted of a violation of Section 459-460.2 (Burglary - Second Degree), a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

IV

The crime of which Respondent was convicted, as alleged in Paragraph III, 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, 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 salesperson license to Respondent, and for such other and further relief as may be proper in the premises.

  
CHARLES W. KOENIG  
Deputy Real Estate Commissioner

Dated at Sacramento, California,  
this 7th day of October, 1993.