

FILED
AUG 06 2007

DEPARTMENT OF REAL ESTATE

By Arne Shamir

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) No. H-3069 SD
)
SEAN PATRICK O'HARA,)
)
Respondent.)

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

(Continuing Education)

TO: SEAN PATRICK O'HARA ("Respondent"):

On April 25, 2005, a restricted real estate salesperson license was issued by the Department of Real Estate to Respondent on the terms, conditions and restrictions set forth in the Real Estate Commissioner's Decision effective April 25, 2005, in Case No. H-3069 SD. This Decision granted the right to the issuance of a restricted real estate salesperson license subject to the provisions of Section 10156.7 of the Business and Professions Code of the State of California, and to enumerated additional terms, conditions and restrictions imposed under authority of

1 Section 10156.6 of said Code. Among those terms, conditions and
2 restrictions, the Decision required Respondent, within nine (9)
3 months after April 25, 2005, the effective date of the Decision,
4 to present evidence satisfactory to the Real Estate Commissioner
5 that Respondent has, since the most recent issuance of an
6 original or renewal real estate license, taken and successfully
7 completed the continuing education requirements of Article 2.5 of
8 Chapter 3 of the Real Estate Law for renewal of a real estate
9 license, and provided that if Respondent failed to satisfy this
10 condition, the Commissioner may order suspension of the
11 restricted license until Respondent satisfy this condition.

12 As of April 18, 2007, Respondent has failed to submit
13 proof satisfactory to the Commissioner of satisfying this
14 condition. The Commissioner has determined that Respondent has
15 failed to satisfy this condition, and as such, that Respondent is
16 in violation of Section 10177(k) of the Business and Professions
17 Code.

18 NOW, THEREFORE, IT IS ORDERED under authority of
19 Section 10156.7 of the Business and Professions Code of the State
20 of California that the restricted real estate license heretofore
21 issued to Respondent and the exercise of any privileges
22 thereunder is hereby suspended until such time as Respondent
23 provides proof satisfactory to the Commissioner that Respondent
24 has satisfied the condition, described above, or pending final
25 determination made after hearing (see "Hearing Rights" set forth
26 below).

1 IT IS FURTHER ORDERED that all license certificates
2 and identification cards issued by the Department of Real Estate
3 which are in the possession of Respondent be immediately
4 surrendered by personal delivery or by mailing in the enclosed
5 self-addressed, stamped envelope:

6 DEPARTMENT OF REAL ESTATE
7 **ATTN: Flag Section**
8 P. O. Box 187000
Sacramento, CA 95818-7000

9 HEARING RIGHTS: You have the right to a hearing to
10 contest the Commissioner's determination that you are in
11 violation of Section 10177(k). If you desire a hearing, you must
12 submit a written request. The request may be in any form, as
13 long as it is in writing and indicates that you want a hearing.
14 Unless a written request for a hearing, signed by or on behalf of
15 you, is delivered or mailed to the Department, Legal Section, at
16 2201 Broadway, P. O. Box 187007, Sacramento, California 95818-
17 7007, within twenty (20) days after the date that this Order was
18 mailed to or served on you, the Department will not be obligated
19 or required to provide you with a hearing.

20 This Order shall be effective immediately.

21 DATED: 7-26, 2007.

22 JEFF DAVI
23 Real Estate Commissioner
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FILED
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Anne Shaupe

* * *

In the Matter of the Accusation of)
SEAN PATRICK O'HARA) NO. H-3069 SD
Respondent.) OAH NO. L-2004100599

DECISION

The Proposed Decision dated March 7, 2005, 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 APRIL 25, 2005.

IT IS SO ORDERED 3-30, 05.

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SEAN PATRICK O'HARA,

Respondent.

Case No. H-3069 SD

OAH No. L2004100599

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 16, 2005, in San Diego, California.

Truly Sughrue, Counsel, represented Complainant J. Chris Graves, a Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Brian J. Kushner, Lay Representative, represented Respondent Sean Patrick O'Hara, who was present throughout the administrative hearing.

The matter was submitted on February 16, 2005.

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 16, 2004, Complainant J. Chris Graves, a Deputy Real Estate Commissioner, Department of Real Estate (the Department), State of California, signed the Accusation in his official capacity.

The Accusation and other required jurisdictional documents were served on Respondent Sean Patrick O'Hara (O'Hara or Respondent).

O'Hara timely filed a Notice of Defense on Accusation.

On February 16, 2005, the administrative record was opened. Jurisdictional documents were presented. Official notice was taken. Sworn testimony and documentary

evidence was received. Closing arguments were given, the record was closed, and the matter was submitted.

License History

2. On February 24, 2001, the Department issued Salesperson License No. 01304948 to O'Hara, which was originally issued as a conditional salesperson's license. It expired on August 24, 2002. On August 25, 2002, it was suspended indefinitely under Business and Professions Code section 10153.4, subdivision (c). On March 8, 2003, Salesperson License No. 01304948 was reinstated from its conditionally suspended status when educational requirements were completed.

O'Hara's salesperson's license has been in effect since its reinstatement. O'Hara's current employing broker is D. G. Elegado, the principal of Real Financial.

There is no history of any administrative discipline having been imposed against Salesperson License No. 01304948.

O'Hara's Conviction

3. On September 9, 2003, O'Hara was convicted on his plea of guilty of violating Health and Safety Code section 11351 (Possession for Sale of a Controlled Substance), which was deemed a misdemeanor, in the Superior Court of California, County of San Diego, Central Division, in Case No. DC 175773 captioned *People of the State of California v. Sean Patrick O'Hara*.

The written change of plea form provided that after 24 months of successful probation, O'Hara would be permitted to plead guilty to violating Health and Safety Code section 11350, subdivision (a) (Possession of a Controlled Substance).

On November 7, 2003, imposition of sentence was suspended and O'Hara was placed on three years supervised probation. O'Hara was ordered to serve 180 days in custody (with credit given for two days served, and with the balance of the custody order stayed pending successful completion of probation), to provide 20 days of service in the Public Service Program, to pay fines and fees of approximately \$1,500, to obey the lawful orders of the probation officer, to not possess a firearm or other deadly weapon, to register under Health and Safety Code section 11590, to have a photo ID card on his person at all times, to seek and maintain full time employment, schooling or some combination thereof, to obtain consent before leaving San Diego County, to attend and complete a substance abuse program as directed, to attend AA or NA meetings as directed, to not use or possess any controlled substance without a prescription, and to have to no contact with Robert Rivers.

The Offense

4. O'Hara began experimenting with cocaine sometime in late 2002 or early 2003. He began associating with persons he met at nightclubs, many of whom were using cocaine. O'Hara and his associates used cocaine on weekends, perhaps two or three times a month. In the course of his partying, O'Hara met an individual (presumably Robert Rivers) who dealt cocaine. From time to time, O'Hara would purchase cocaine from this dealer for the personal use of himself and his friends.

In the course of his partying, O'Hara met another individual, known as Guillermo, who provided O'Hara with backstage passes to concerts and other favors. Unbeknownst to O'Hara, Guillermo had been arrested and had become a police informant.

On July 1, 2003, Guillermo telephoned O'Hara and asked if O'Hara could provide Guillermo with cocaine. O'Hara said he would do so. O'Hara went to the drug dealer's condominium and purchased 4.5 grams of cocaine for \$140. When O'Hara exited the apartment complex where the drug dealer lived, federal drug enforcement officers (who had the drug dealer's apartment under surveillance) arrested O'Hara.

O'Hara was searched and the plastic baggie containing the 4.5 grams of cocaine was seized from his shirt pocket. In addition, a plastic baggie with cocaine residue was found in his wallet and was seized. O'Hara was transported back to his residence, where his residence and car were searched. Several plastic baggies containing cocaine residue were found at his residence and were seized, as well as a black cocaine grinder.

O'Hara told the arresting officers he had used cocaine for approximately a year, mostly on weekends, and that he had purchased the 4.56 grams of cocaine from the drug dealer on behalf of a friend. O'Hara told the arresting officers he had purchased cocaine for the friend two or three times before, but he did not receive any compensation for doing so. He said he was doing it as a favor to a friend. O'Hara stated because he knew the drug dealer, he usually purchased the drugs he and his friends used on weekends, but he never charged his friends for the drugs. O'Hara identified the drug dealer and was cooperative with the arresting officers. The arrest report did not mention the seizure of scales or other equipment typically associated with the sale or distribution of cocaine.

O'Hara's Explanation

5. O'Hara testified he entered a guilty plea to possession for sale of a controlled substance on the advice of counsel to avoid the risks of proceeding to trial. He denied purchasing the cocaine for the purpose of selling it to another to make a profit.

O'Hara said he began using cocaine to impress a girl friend about a year before his arrest. He said he used cocaine on weekends with new associates. O'Hara said he was "experimenting in that culture." He said he met the drug dealer at a nightclub and purchased cocaine for personal use from the drug dealer. O'Hara described this time of his life as

"dark, sick, and twisted." O'Hara testified his involvement in drugs "was the biggest mistake of my life" and said his decision to obtain cocaine as a favor for his friend "was a terrible judgment call."

6. O'Hara's 30-hour jail experience had a chilling effect on his drug use. He described being locked up in jail, sleeping on the jail floor and using his shoe for a pillow, and being frightened that he might have to spend any more of his life in those circumstances.

Other Relevant Evidence

7. O'Hara was born in San Diego, California, on January 19, 1972. He graduated from Mission Bay High School in 1989. O'Hara attended San Diego State University, where he received a Bachelor of Arts in Business Administration in 1993.

8. While O'Hara was attending San Diego State University, he began working in the mortgage loan business as a telemarketer. After working in that capacity for a couple of years, O'Hara became a telemarketing supervisor. From there, O'Hara became a loan officer for a direct lender.

9. O'Hara became licensed as a real estate salesperson in 2001. Since then he has been employed in the mortgage loan business.

O'Hara has built a substantial referral based mortgage loan clientele for whom he works on a full-time basis. O'Hara has worked with Eric Elegado, a licensed real estate salesperson associated with Real Financial, at an office in Rancho Bernardo, California, for the past five years. O'Hara completes about 70 loan transactions a year.

10. O'Hara testified he was unable to complete his 20 days of public service because of a torn anterior cruciate ligament, but he has since recovered and will complete his 20 days of public service in the near future. O'Hara is in the process of paying his fines and fees. O'Hara testified he will seek to have his conviction reduced to simple possession when he successfully completes 24 months of probation in early November 2005.

11. O'Hara has not used cocaine or any other controlled substance since he was released from jail. O'Hara has not been in contact with any person he associated with when he was using cocaine. O'Hara no longer frequents nightclubs and has changed his lifestyle. O'Hara resumed working out and maintains his physical fitness, something he abandoned when he was using cocaine. O'Hara claimed he was in a "healthy, long term romantic relationship." He testified that since being released from jail, "My life has made a complete change."

12. O'Hara spent four months in an outpatient substance abuse program known as Choices of Recovery. He was submitted to random testing to determine if he had been using cocaine or other dangerous drugs; no test was positive for the presence of any controlled substance or dangerous drug. O'Hara successfully completed the rehabilitation program.

When asked what he learned from the program, O'Hara said he came to understand that he had embarked on a dangerous path when he began using drugs, and his life is much better with a commitment to sobriety.

13. O'Hara is an actor in his spare time and holds membership in the Screen Actors Guild. He has no meaningful vocational experience outside the real estate field.

14. O'Hara is single. He has no dependents. O'Hara has no other arrests or convictions.

15. Eric Elegado (Elegado) testified he is a licensed real estate salesperson who is associated with Real Financial, an enterprise that employs about 100 persons in San Diego County. Elegado has been in the home lending business for 22 years. He has known O'Hara for approximately five years.

Elegado testified O'Hara is a "top producer." O'Hara's clients have expressed gratitude for the care O'Hara provided. Elegado was not aware of a single customer complaint. O'Hara is hardworking, honest, and a person of integrity, according to Elegado.

Elegado heard about O'Hara's conviction a couple of weeks before the administrative hearing and was "surprised - I could not believe it."

Elegado, who has supervisory responsibilities over O'Hara at Real Financial, would like O'Hara to remain in the organization.

16. Chris Parcel (Parcel), a licensed real estate broker and the owner of First National Home Loans, Inc. met O'Hara seven years ago. O'Hara became Parcel's mentor. According to Parcel, O'Hara is a highly ethical individual who was not involved in "turning and burning." Because of the excellent service he provided to customers, O'Hara received a lot of repeat business. Parcel would employ O'Hara, notwithstanding O'Hara's conviction.

O'Hara disclosed the fact of his arrest to Parcel shortly after he was arrested. Parcel knew O'Hara used cocaine on a recreational basis before that arrest, and described O'Hara as experiencing "dark times." Since O'Hara's arrest, "Sean has changed his life in a big way," according to Parcel. O'Hara no longer uses drugs and has become very fit. O'Hara no longer frequents nightclubs.

The Contentions

17. Complainant noted the conviction was very recent, involved moral turpitude and O'Hara remains on probation as a result of it. Complainant argued the conviction was substantially related to the qualifications, functions and duties of a real estate licensee under the Department's regulatory guidelines. Complainant argued it is too early to assess O'Hara's rehabilitation.

Complainant suggested a revocation of the license was the most appropriate sanction under all the circumstances.

18. Respondent argued the conviction was not substantially related to the qualifications, functions and duties of a real estate licensee because it did not involve an unlawful act through which O'Hara intended to gain a financial or economic benefit. Respondent also argued that by mid-November 2005, O'Hara will have successfully completed two years of probation and he will be permitted to change his plea to a conviction of simple possession, a crime that does not necessarily involve moral turpitude. Respondent argued his conviction was totally out of character with his otherwise current law-abiding lifestyle, he made significant changes in his life after his arrest, and he presently poses no risk to the public.

Respondent argued that if any license restriction was imposed, it should not be imposed beyond November 2005.

Evaluation

19. It was not established that O'Hara ever engaged in any misconduct related to the use of his real estate salesperson's license. It was not established that O'Hara has any other arrest, much less another criminal conviction.

While O'Hara's conviction did not involve fraud or misrepresentation, it involved moral turpitude as a matter of law. O'Hara cannot collaterally attack the fact and nature of his criminal conviction in this administrative proceeding.

Less than two years have passed since the misconduct resulting in the conviction. O'Hara remains on probation, and while there has been no violation of probation, O'Hara has not completed 20 days of public service, nor has he paid all his fines and fees. O'Hara remains eligible to have the possession for sale conviction (which involved moral turpitude and culminated in the administrative action) expunged in mid-November 2005 when he will be permitted to withdraw his plea and plead guilty to simple possession (which does not involve moral turpitude).

According to O'Hara and others, he has not used controlled substances or other illegal drugs since his arrest in July 2003. He does not appear to have an alcohol problem. O'Hara presently enjoys different social relationships and habits from those existing at the time of the misconduct giving rise to the criminal conviction. O'Hara appears to have undergone a significant change in attitude from that which existed at the time of the misconduct leading to his conviction, which was evidence by his testimony and that of two credible witnesses who know him well.

It is impressive that O'Hara has been in the real estate field for many years without a blemish on his record. His use of cocaine evidently had no impact on his real estate practice

and his professional treatment of his clients. It is also noteworthy that O'Hara has never been arrested for any other crime, much less convicted.

20. The purpose of this proceeding is to determine if O'Hara exercised his privilege in derogation of the public interest and to keep the real estate industry clean and wholesome. This proceeding is not designed to punish O'Hara, but to ensure the protection of the public.

O'Hara engaged in irresponsible, illegal conduct for about a year. At the time of the misconduct giving rise to his conviction, O'Hara was taking quite a few risks, including buying drugs from persons he knew were engaged in drug dealing and by providing friends with drugs, although not for personal profit. By O'Hara's own admission, his life had become "dark and twisted." He was not engaging in conduct which could be described as "professional" in supplying drugs to friends. It would be difficult to predict exactly where and under what circumstances O'Hara's drug use would have stopped had he not been arrested. O'Hara's conviction does not bring respect to the profession.

While O'Hara's conviction involved moral turpitude, it was not established that the conviction arose out of egregious wrongdoing. The misconduct did not involve any persons with whom O'Hara had a professional relationship, and the nature of the conviction did not involve deceit, fraud, or misrepresentation. Because the Department's regulatory criteria of rehabilitation require at least two years to pass from the most recent misconduct giving rise to a licensee's conviction, not enough time has passed to permit O'Hara to meet this specific rehabilitation requirement; however, it is obvious O'Hara is well along the way towards rehabilitation. The reoccurrence of similar misconduct is remote.

Under all the circumstances, the revocation of O'Hara's real estate salesperson's license is mandated; however, it would not be contrary to the public interest to permit O'Hara to hold a conditional salesperson's license for three years restriction (including an actual suspension through the date on which O'Hara will have his conviction reduced to simple possession, which would necessarily require the completion of the 20 days of public service and the payment of the fines and fees). This sanction will protect the public, serve as a warning to other licensees that they cannot engage in similar misconduct with impunity, and constitute a painful reminder to O'Hara that he must remain responsible and law-abiding away from the job.

LEGAL CONCLUSIONS

Purpose of Disciplinary Action

1. The object of an administrative proceeding aimed at revoking a license is to protect the public, that is, to determine whether a licensee has exercised his privilege in derogation of the public interest, and to keep the regulated business clean and wholesome.

Such proceedings are not conducted for the primary purpose of punishing an individual and such proceedings are not criminal in nature. *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.

Burden and Standard of Proof

2. In a disciplinary administrative proceeding, the burden of proof is upon the party asserting the affirmative. Guilt must be established to a reasonable certainty. Guilt cannot be based on surmise or conjecture, suspicion or theoretical conclusions, or upon uncorroborated hearsay. *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.

3. In an action seeking to impose discipline against the holder of a real estate license, the burden of proof is on Complainant to establish the charging allegations by clear and convincing evidence. See, *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857.

4. The key element of clear and convincing evidence is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. *People v. Mabini* (2001) 92 Cal.App.4th 654, 662.

Applicable Statutes

5. Business and Professions Code section 490 provides in pertinent part:

“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. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere”

6. Business and Professions Code Section 10177 provides in pertinent part:

“The commissioner may suspend or revoke the license of a real estate licensee . . . 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 involving moral turpitude”

Arneson v. Fox

7. A licensee may introduce evidence in mitigation or explanation, as well as evidence of rehabilitation. However, an inquiry into the circumstances surrounding the offense should not form the basis of impeaching a prior conviction. Regardless of the various motives which may have impelled a plea, a conviction based upon a plea stands as conclusive evidence of the licensee's guilt of the offense charged. To hold otherwise would impose upon administrative boards extensive, time-consuming hearings aimed at relitigating

criminal charges which culminated in final judgments of conviction. *Arneson v. Fox* (1980) 28 Cal. 3d 440, 449.

Moral Turpitude

8. While simple possession of a controlled substance does not necessarily involve moral turpitude, possession for sale does – although the trait involved is not dishonesty but rather the intent to corrupt others. *People v. Vera* (1999) 69 Cal.App.4th 1100, 1103.

9. While simple possession of narcotics does not necessarily involve moral turpitude, possession for sale does pass the test. The trait involved is not dishonesty but rather the intent to corrupt others. Anything that is related to trafficking is more serious than possessing. *Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1028.

Substantial Relationship

10. A conviction alone will not support a denial of a license unless the crime substantially relates to the qualifications, functions, or duties of the business or profession in question. Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. If a licensee's conviction reflects unfavorably on the licensee's honesty, it may be said the licensee lacks the necessary qualifications. The Legislature intended to ensure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear. *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.

11. In *Brandt v. Fox* (1979) 90 Cal.App.3d 737, the Real Estate Commissioner denied an application for a real estate salesman's license because the applicant had been convicted of distribution of cocaine. The applicant never had the cocaine in his possession, but arranged an introduction between several individuals with the knowledge it would result in a narcotics sale. After reviewing the record, the appellate court concluded the conduct was relatively remote in time (four years), involved one isolated incident, and the applicant was only peripherally involved in the illegal transaction. The appellate court concluded the applicant's conduct did not involve fraud or dishonesty in any fundamental sense or bear a substantial relationship to the qualifications, functions or duties to render him unfit to obtain a license. (*Id.* at p. 747.) The appellate court concluded the Commission's decision to deny the license was not supported by the evidence.

12. *Golde v. Fox* (1979) 98 Cal.App.3d 167 involved a disciplinary action brought against a real estate broker who had pled guilty to possession of 1,000 pounds of marijuana. The broker intended to sell the marijuana, which had a value of \$250,000. On the basis of the broker's conviction of possession for sale, the Real Estate Commissioner's decision to revoke the broker's license was upheld where both the administrative law judge and the Real Estate Commissioner considered evidence concerning the broker's rehabilitation. In reaching this conclusion, the appellate court noted that where the conviction of an offense reflects unfavorably on the licensee's honesty, "it may be said to be substantially related to

his qualifications . . . Illegal possession and transportation by airplane with the attendant sophisticated planning of a quarter of a million dollars worth of marijuana, admittedly for the purpose of personal gain, is clearly an illicit act of deceit and dishonesty in a fundamental sense.” *Id.*, at 176.

13. *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394 explained the importance of these two decisions (at p. 402) as follows:

“They [the convictions in *Harrington*] did not involve acts which reflect only on his personal morals or vices, such as those in *Brandt v. Fox*, *supra*, 98 Cal.App.3d 167, (a narcotic offense), but involve breach of professional promises, dishonesty in financial transactions, and disregard of the laws governing professional relationships. These are the types of misconduct which the Legislature intended to prevent when establishing the minimum licensing standards for professions possessing the public trust. (*Golde v. Fox*, *supra*.)”

14. For a review of other published appellate cases dealing with the revocation or suspension of a real estate broker’s license for narcotics offenses not connected with the business of a broker, see 22 A.L.R.4th 136, originally published in 1983 and last updated in October 2002, which indicates that convictions of such offenses constitute grounds for revocation or suspension in many jurisdictions.

15. California Code of Regulations, title 10, section 2910 provides in part:

“(a) When considering whether a license should be . . . 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”

16. California Code of Regulations, title 10, section 2910 does *not* address felony convictions or convictions of crimes involving moral turpitude, which are an independent statutory basis for disqualification from licensure under Business and Professions Code section 10177, subdivision (b).

Rehabilitation

17. The Department's criteria of rehabilitation are set forth in California Code of Regulations, title 10, section 2912. The relevant criteria were mentioned and discussed in Factual Finding 19.

Cause Exists to Revoke O'Hara's License

18. Cause exists to revoke O'Hara's real estate salesperson's license under Business and Professions Code sections 490 and 10177, subdivision (b). The clear and convincing evidence established that on September 9, 2003, O'Hara was convicted on his plea of guilty of violating Health and Safety Code section 11351 (Possession for Sale of a Controlled Substance), a crime involving moral turpitude as a matter of law. The conviction is substantially related to the qualifications, functions and duties of a real estate licensee under Business and Professions Code section 10177, subdivision (b) because it involved the conviction of a crime involving moral turpitude; the conviction is substantially related to the qualifications, functions and duties of a real estate licensee under Business and Professions Code section 490 under *Golde v. Fox* (1979) 98 Cal.App.3d 167 because the conviction reflects unfavorably on O'Hara's character for honesty.

However, cause exists to permit O'Hara to hold a conditional salesperson's license. While the underlying conviction involved moral turpitude, it was not established the conviction arose out of egregious wrongdoing or arose out of O'Hara's real estate activities or professional relationships. A measure of discipline should be imposed; the imposition of an actual suspension of a restricted license until O'Hara's conviction is reduced to simple possession of a controlled substance, together with other appropriate terms and conditions, will adequately protect the public.

This conclusion is based on Factual Findings 2-16, 19 and 20 and on Legal Conclusions 1-13 and 15-17.

ORDER

All licenses and licensing rights of Respondent Sean Patrick O'Hara under the Real Estate Law are revoked; provided, however, the order of revocation is stayed and a restricted real estate salesperson license shall be issued to Respondent Sean Patrick O'Hara under Business and Professions Code section 10156.5 if Respondent makes application therefor and if he pays to the Department of Real Estate the appropriate fee for the issuance of a restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent 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 restricted license issued to Respondent shall be suspended until November 30, 2005, or until Respondent's criminal conviction in Case No. DC 175773, Superior Court of California, State of California (captioned *People of the State of California v. Sean Patrick O'Hara*) is reduced to a simple possession of a controlled substance as outlined in the written plea agreement.

2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent is convicted of any felony or any crime involving moral turpitude, or any other crime which is substantially related to Respondent's fitness or capacity as a real estate licensee. A conviction within the meaning of this condition includes a conviction following a plea of guilty or a conviction following a plea of nolo contendere.

3. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event Respondent's probation in Case No. DC 175773, Superior Court of California, State of California (captioned *People of the State of California v. Sean Patrick O'Hara*) is revoked.

4. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.

5. Respondent shall notify the Commissioner of Real Estate, in writing, of any arrest for any crime, whether misdemeanor or felony, within seventy-two (72) hours of such an arrest. Notification shall be made by sending a letter setting forth the date of the arrest, the charges on which Respondent was arrested, and the name and address of the law enforcement agency effecting Respondent's arrest. The letter shall be sent to the Commissioner by registered or certified mail, return receipt requested, in care of the Department of Real Estate, Post Office Box 187007, Sacramento, CA 95818-7007.

6. 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 three years have elapsed from the effective date of this Decision.


7. Respondent shall submit with any application for license under an employing broker, or with any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

8. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: 3/7/05.



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

FLAG

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

FILED
DEC 20 2004

DEPARTMENT OF REAL ESTATE

By Anne Sharon

In the Matter of the Accusation of

SEAN P. O'HARA

} Case No. H-3069 SD

} OAH No. 2004100599

Respondent

**CONTINUED
NOTICE OF HEARING ON ACCUSATION**

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 **WEDNESDAY, FEBRUARY 16, 2005**, at the hour of **9:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Accusation 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.

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.

DEPARTMENT OF REAL ESTATE

Dated: DECEMBER 20, 2004

By Truly Sughrue / as
TRULY SUGHRUE, Counsel

TS/as

2/1/04

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

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DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

SEAN PATRICK O'HARA

} Case No. H-3069 SD

} OAH No.

Respondent

NOTICE OF HEARING ON ACCUSATION

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, DECEMBER 28, 2004**, at the hour of **9:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Accusation 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.

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DEPARTMENT OF REAL ESTATE

Dated: NOVEMBER 1, 2004

By *Truly Sughrue / as*
TRULY SUGHRUE, Counsel

TS/as

FILED

SEP 20 2004

DEPARTMENT OF REAL ESTATE

By Anne Shawver

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2 State Bar No. 223266
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007
6
7
8 Telephone: (916) 227-0781
9

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of)
12 SEAN PATRICK O'HARA,)
13 Respondent.)

No. H-3069 SD

ACCUSATION

14
15 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against SEAN PATRICK O'HARA (hereinafter "Respondent"), is
18 informed and alleges as follows:

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20 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation in
22 his official capacity.

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II

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) (Code) as a real estate salesperson.

III

On or about November 7, 2003, in the Superior Court, County of San Diego, Respondent was convicted of a violation of Section 11351 of the California Health and Safety Code (Possession of Cocaine for Sale), 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 facts alleged above constitute cause under Sections 490 and 10177(b) of the Code for suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

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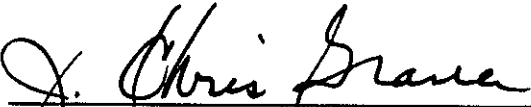
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and license rights of Respondent
5 under the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

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9 
10 J. CHRIS GRAVES
Deputy Real Estate Commissioner

11 Dated at San Diego, California,
12 this 16th day of August, 2004
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