

1 DEPARTMENT OF REAL ESTATE  
2 P.O. Box 187007  
3 Sacramento, CA 95818-7007  
4 Telephone: (916) 227-0789

FILED  
APR - 8 2005

DEPARTMENT OF REAL ESTATE

By H. Contreras

7 DEPARTMENT OF REAL ESTATE  
8 STATE OF CALIFORNIA

9  
10 *In the Matter of the Application of* ) NO. H- 3079 SD  
11 JOHN TIMOTHY McCANN, )  
12 Respondent ) **STIPULATION AND WAIVER**  
13 \_\_\_\_\_ )

14 It is hereby stipulated by and between JOHN TIMOTHY McCANN (hereinafter  
15 "Respondent") and Respondent's attorney, Bradford J. Hinshaw, Hinshaw Draa Marsh Still & Hinshaw,  
16 Attorneys at Law, and the Complainant, acting by and through Deidre L. Johnson, Counsel for the  
17 Department of Real Estate, as follows for the purpose of settling and disposing of the Statement of Issues  
18 filed on October 1, 2004, in this matter:

19 Respondent acknowledges that Respondent has received and read the Statement of Issues  
20 and the Statement to Respondent filed by the Department of Real Estate in connection with Respondent's  
21 application for a real estate broker license. Respondent understands that the Real Estate Commissioner may  
22 hold a hearing on this Statement of Issues for the purpose of requiring further proof of Respondent's  
23 honesty and truthfulness and to prove other allegations therein, or that he may in his discretion waive the  
24 hearing and grant Respondent a restricted real estate broker license based upon this Stipulation and Waiver.  
25 Respondent also understands that by filing the Statement of Issues in this matter the Real Estate  
26 Commissioner is shifting the burden to Respondent to make a satisfactory showing that Respondent meets  
27 all the requirements for issuance of a real estate broker license. Respondent further understands that by

1 entering into this Stipulation and Waiver, Respondent will be stipulating that the Real Estate Commissioner  
2 has found that Respondent has failed to make such a showing, thereby justifying the denial of the issuance  
3 to Respondent of an unrestricted real estate broker license.

4 Respondent hereby admits that the allegations of the Statement of Issues filed against  
5 Respondent are true and correct and requests that the Real Estate Commissioner in his discretion issue a  
6 restricted real estate broker license to Respondent under the authority of Section 10156.5 of the Business  
7 and Professions Code.

8 Respondent is aware that by signing this Stipulation and Waiver, Respondent is waiving  
9 Respondent's right to a hearing and the opportunity to present evidence at the hearing to establish  
10 Respondent's rehabilitation in order to obtain an unrestricted real estate broker license if this Stipulation  
11 and Waiver is accepted by the Real Estate Commissioner. However, Respondent is not waiving  
12 Respondent's right to a hearing and to further proceedings to obtain a restricted or unrestricted license if  
13 this Stipulation and Waiver is not accepted by the Commissioner.

14 Respondent further understands that the following conditions, limitations, and restrictions  
15 will attach to a restricted license issued by the Department of Real Estate pursuant hereto:

- 16 1. The license shall not confer any property right in the privileges to be exercised  
17 including the right of renewal, and the Real Estate Commissioner may by  
18 appropriate order suspend the right to exercise any privileges granted under this  
19 restricted license in the event of:
- 20 a. The conviction of Respondent (including a plea of nolo contendere) to a  
21 crime which bears a substantial relationship to Respondent's fitness or  
22 capacity as a real estate licensee; or
- 23 b. The receipt of evidence that Respondent has violated provisions of the  
24 California Real Estate Law, the Subdivided Lands Law, Regulations of  
25 the Real Estate Commissioner, or conditions attaching to this restricted  
26 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.

March 16, 2005  
Dated

Deidre L. Johnson  
DEIDRE L. JOHNSON, Counsel, Department of Real Estate

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

Respondent can signify acceptance and approval of the terms and conditions of this Stipulation and Waiver by faxing a copy of the signature page, as actually signed by Respondent, to the Department at fax number (916) 227-9458. Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of his actual signature as it appears on the Stipulation and Waiver, that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation and Waiver.

3-11-05  
Dated

John Timothy McCann  
JOHN TIMOTHY McCANN, Respondent

*I have reviewed the Stipulation and Waiver as to form and content and have advised my client accordingly.*

3-10-05  
Dated

Bradford J. Hinshaw  
BRADFORD J. HINSHAW, Attorney for Respondent

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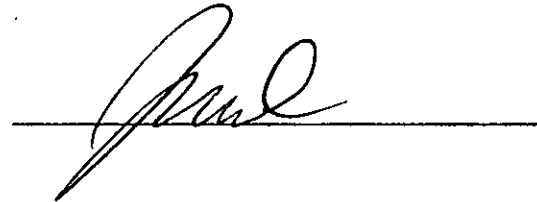
I have read the Statement of Issues filed herein and the foregoing Stipulation and Waiver signed by Respondent. I am satisfied that the hearing for the purpose of requiring further proof as to the honesty and truthfulness of Respondent need not be called and that it will not be inimical to the public interest to issue a restricted real estate salesperson license to Respondent.

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

This Order is effective immediately.

IT IS SO ORDERED 4-7, 2005.

JEFF DAVI  
Real Estate Commissioner



FILED

BEFORE THE DEPARTMENT OF REAL ESTATE JAN 31 2005

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By *H. Contreras*

In the Matter of the Application of

JOHN TIMOTHY McCANN,

}  
}

Case No. H-3079 SD

OAH No. L-2004110303

Respondent

**FIRST CONTINUED  
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, CA 92101**

on **MARCH 18, 2005**, at the hour of **9:00 AM**, 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 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 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: January 26, 2005

By *Deidre L. Johnson*  
DEIDRE L. JOHNSON, Counsel

FILED

DEC - 9 2004

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Application of

JOHN TIMOTHY McCANN,

}

Case No. H-3079 SD

OAH No. 2004110303

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, CA 92101

on **DECEMBER 30, 2004**, at the hour of **9:00 AM**, 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.

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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 6, 2004

By Deidre L. Johnson  
DEIDRE L. JOHNSON, Counsel

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

FILED

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DEPARTMENT OF REAL ESTATE

By

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Application of ) No. H- 3079 SD  
12 JOHN TIMOTHY McCANN, ) STATEMENT OF ISSUES  
13 Respondent. )

14  
15 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate  
16 Commissioner of the State of California, for Statement of Issues  
17 against JOHN TIMOTHY McCANN (hereinafter "Respondent"), is  
18 informed and alleges as follows:

19 I

20 Respondent made application to the Department of Real  
21 Estate of the State of California for a real estate broker  
22 license on or about January 6, 2004.

23 II

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

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III

On or about June 8, 1999, in the Superior Court, County of Sacramento, Respondent was convicted of a violation of Section 11378 of the California Health and Safety Code (Possession of a Controlled Substance for the Purpose of 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

On or about May 21, 2001, the State of California Department of Motor Vehicles in Case No. RS-00-1262 denied Respondent's vehicle salesperson license application for violations of Vehicle Code Sections 11703(d) and 11806(d).

V

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.

VI

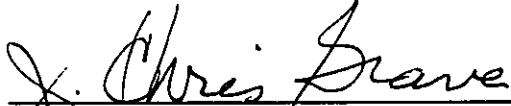
The denial of Respondent's license application as described in Paragraph IV above, constitutes cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(f) of the California Business and Professions Code.

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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 under other provisions of law.

  
\_\_\_\_\_  
J. CHRIS GRAVES  
Deputy Real Estate Commissioner

Dated at San Diego, California,  
this 10<sup>th</sup> day of September, 2004.