



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
against:

MATTHEW KEYWORTH,

Respondent.

Case No. H-3122 SD

OAH No. L2005020446

**PROPOSED DECISION**

On March 29, 2005, in San Diego, California, Greer D. Knopf, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Michael B. Rich, Real Estate Counsel, the Department of Real Estate, appeared on behalf of complainant J. Chris Graves, Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Bradford J. Hinshaw, Hinshaw, Draa, Marsh, Still & Hinshaw, attorneys at law, appeared and represented respondent Mathew Keyworth, who was also present at the hearing.

The matter was submitted on March 29, 2005.

**FACTUAL FINDINGS**

1. Statement of Issues number H-3122 SD, dated December 22, 2004, was filed by complainant, J. Chris Graves on January 4, 2005, in his official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of California against respondent Matthew Keyworth. The statement of issues alleges respondent applied for a license as a real estate salesperson, that he has been convicted of crimes involving moral turpitude that are substantially related to the qualifications, functions, and duties of a licensee and that he failed to fully disclose all the crimes of which he has been convicted. On February 3, 2005, respondent filed a notice of defense dated January 31, 2005 requesting a hearing in this matter. The proceeding herein followed.

2. On September 8, 2003, respondent submitted an application to the Department of Real Estate (hereinafter referred to as "the Department") for licensure as a real estate salesperson. Respondent signed his application certifying the truth and accuracy under penalty of perjury. In his application, respondent answered "No" to the question, "Have you ever been convicted of any violation of law?" However, respondent has a criminal conviction record he failed to disclose. Questions 25 and 27 of the application required respondent to disclose details about any convictions, such as the date of the conviction, the type of conviction, the arresting agency, the code name and specific section violated, the disposition of the case and the case number. The application directions clearly instruct the applicant to provide detailed information about each and every misdemeanor or felony conviction, regardless of how long ago the conviction occurred and whether or not the conviction has been expunged. Nevertheless, respondent failed to disclose he had any criminal convictions. In fact, respondent has two criminal convictions that he did not list on his application. Respondent failed to specifically disclose these two convictions in his application and thereby falsified his application under penalty of perjury.

When the Department asked respondent for more information regarding his criminal record, respondent filled out several Conviction Detail Reports and submitted them to the Department. In these reports, respondent provided some limited facts about his 1996 and 1997 convictions. He also presented documentation that his convictions in New Hampshire had been expunged.

3. On June 20, 1996, in the Municipal Court, County of San Bernardino, State of California, respondent was convicted of a violation of Penal Code section 594, subdivision (a), malicious vandalism. This crime was a misdemeanor that involved moral turpitude and is substantially related to the qualifications, functions and duties of a real estate licensee under California Code of Regulations, title 10, section 2910. This conviction arose out of respondent's arrest on April 6, 1996 with two friends for damaging the air conditioning unit and stealing the Freon from the unit at the apartment complex where respondent lived. Respondent admitted upon arrest that he was taking the Freon to inhale it, but in his testimony at this hearing he denied ever taking the Freon and denied ever inhaling it. The criminal court sentenced respondent to pay a \$280.00 fine and \$100.00 in restitution to the victim restitution fund.

4. On January 6, 1997, in the Nashua District Court, County of Hillsborough, State of New Hampshire, respondent was convicted on three counts. The first count was a violation of New Hampshire Revised Statutes section 318-B-2, unlawful manufacture, possession, sale, transportation, dispensing of a controlled drug, cocaine. The second count was a violation of New Hampshire Revised Statutes section 318-B-2, unlawful manufacture, possession, sale, transportation, dispensing a controlled drug, marijuana. The third count was a violation of New Hampshire Revised Statutes section 638:1, forgery. These crimes involved moral turpitude and they are substantially related to the qualifications, functions and duties of a real estate licensee under California Code of Regulations, title 10, section 2910. Respondent received a two year suspended sentence and \$750.00 in fines.

Subsequently, respondent filed a petition to annul his criminal record in New Hampshire. The court granted that petition in April 2003.

5. Respondent testified at the hearing that his criminal convictions were episodes in his youth and that he now leads a productive and law abiding lifestyle. He has not been in trouble with the law for the last eight years. He earned a degree in economics from Keene State College in New Hampshire and participated in a study program at the Hong Kong Baptist University in China. He now works as an account executive for Countryside Home Loans where he is respected as an excellent worker. He is also an active member of the Mormon Church.

However, respondent presented no real explanation of what actually happened when he was convicted of unlawful manufacture, possession, sale, transportation, or dispensing of marijuana and cocaine. It is not at all clear from the record what the circumstances of this conviction were. In his written account of this conviction, respondent only states he was driving a car with controlled substances in it. Respondent makes no acknowledgement of his responsibility for his own criminal actions. Respondent seems to suggest he was a victim rather than a perpetrator of a crime. This is also true about his statements regarding the 1997 conviction. In general, respondent repeatedly tries to minimize his criminal conduct. He does not appear to acknowledge any responsibility for his criminal actions and he shows no sincere remorse for his crimes. He therefore has failed to adequately establish true rehabilitation since the commission of his crimes.

6. More troubling is respondent's attempt to minimize his criminal record by failing to disclose his convictions. Respondent testified at the hearing that he did not disclose his 1997 conviction on his application because a petition to annul the conviction had been granted and he claims his New Hampshire lawyer advised him he did not have to disclose an annulled conviction. However, respondent did seek advice from a California lawyer and not inquire of the Department about the need to disclose this conviction. The application directions supplied by the Department are very clear that convictions that have been expunged must be disclosed. Respondent further claimed he did not disclose his 1996 conviction because he did not really recall the incident and later he stated his lawyer had told him it would not stay on his record. This testimony by respondent was simply not credible. Respondent's various excuses for his non-disclosure of his past criminal activity are not an adequate explanation for misrepresenting his criminal record to the Department. It was respondent's responsibility to know the state of his record and report it before he submitted his application under penalty of perjury.

Respondent was obligated to disclose his convictions. He impresses the court as a smart and articulate individual. It is simply not believable that he did not understand he needed to list each and every conviction on his record. Respondent's convictions should have been disclosed in the application process. The evidence all indicates that respondent knew or should have known he had been convicted two times. It was his responsibility to disclose that information in his application under penalty of perjury. The Department must be able to rely on its licensees to be honest and forthcoming. Respondent failed to

demonstrate that he can be trusted to disclose all the facts and tell the truth. He should not be entrusted with a real estate license. It is not in the public interest to grant respondent's application for a license as a real estate salesperson at this time.

### LEGAL CONCLUSIONS

1. Cause exists to deny respondent's application for a license as a real estate salesperson pursuant to Business and Professions Code sections 480, subdivision (a) and 10177, subdivision (b) in that respondent was convicted crimes that involved moral turpitude and were substantially related to the qualifications, functions and duties of a real estate licensee as set forth in Findings 2, 3, 4, 5, and 6.

2. Cause exists to deny respondent's application for a license as a real estate salesperson pursuant to Business and Professions Code sections 480, subdivision (c) and 10177, subdivision (a) in that respondent misrepresented his criminal record in the application process for licensure and he attempted to procure a real estate license through said misrepresentation, as set forth in Findings 2, 3, 4, 5, and 6.

### ORDER

The application of Mathew Keyworth for a license as a real estate salesperson is hereby denied.

DATED: 4/20/05



GREER D. KNOPF  
Administrative Law Judge  
Office of Administrative Hearings

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FILED  
JAN 04 2005

DEPARTMENT OF REAL ESTATE

By J. Fej

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Application of )  
12 MATTHEW KEYWORTH, ) No. H-3122 SD  
13 Respondent. ) STATEMENT OF ISSUES

14  
15 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate  
16 Commissioner of the State of California, for Statement of Issues  
17 against MATTHEW KEYWORTH also known as MATTHEW KIMBALL KEYWORTH  
18 (hereinafter "Respondent"), is 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 salesperson  
22 license on or about September 8, 2003, with the knowledge and  
23 understanding that any license issued as a result of said  
24 application would be subject to the conditions of Section 10153.4  
25 of the Business and Professions Code.

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II

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

III

In response to Question 25 of said application, to wit: "Have you ever been convicted of any violation of law?", Respondent answered "No".

IV

On or about June 20, 1996, in the Municipal Court, County of San Bernardino, State of California, in case number 029144, Respondent was convicted of violating Section 594(a) of the California Penal Code (Malicious vandalism), 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.

V

On or about January 6, 1997, in the Nashua District Court, County of Hillsborough, State of New Hampshire, Respondent was convicted of one count of violating Section 318-B-2 of the New Hampshire Revised Statutes (Unlawful manufacture, possession, sale, transporting, dispensing a controlled drug, to wit: cocaine), one count of violating Section 318-B-2 of the New Hampshire Revised Statutes (Unlawful manufacture, possession, sale, transporting, dispensing a controlled drug, to wit: marijuana), and one count of violating Section 638:1 of the New

1 Hampshire Revised Statutes (Forgery), crimes involving moral  
2 turpitude which bear a substantial relationship under Section  
3 2910, Title 10, California Code of Regulations, to the  
4 qualifications, functions, or duties of a real estate licensee.

5 VI

6 The crimes of which Respondent was convicted, as  
7 alleged in Paragraphs IV and V, individually and/or collectively,  
8 constitute cause for denial of Respondent's application for a  
9 real estate license under Sections 480(a) and/or 10177(b) of the  
10 California Business and Professions Code.

11 IX

12 Respondent's failure to reveal the convictions set  
13 forth in Paragraphs IV and V, above, in said application  
14 constitutes the procurement of or attempt to procure a real  
15 estate license by fraud, misrepresentation, or deceit, or by  
16 making a material misstatement of fact in said application, which  
17 failure is cause for denial of Respondent's application for a  
18 real estate license under Sections 480(c) and 10177(a) of the  
19 California Business and Professions Code.

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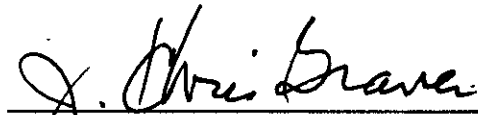
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1           WHEREFORE, the Complainant prays that the above-  
2 entitled matter be set for hearing and, upon proof of the charges  
3 contained herein, that the Commissioner refuse to authorize the  
4 issuance of, and deny the issuance of, a real estate salesperson  
5 license to Respondent, and for such other and further relief as  
6 may be proper under other provisions of law.

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10           J. CHRIS GRAVES  
            Deputy Real Estate Commissioner

11   Dated at San Diego, California,  
12   this 22<sup>nd</sup> day of December, 2004.