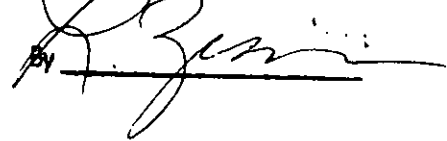


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FILED
JAN 10 2006

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of) DRE No. H-3184 SD
DONALD RAY MOLTON,) OAH No. L-20050452
Respondent.)

DECISION AFTER REJECTION

This matter came on for hearing before Vallera J. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, in San Diego, California, on September 12, 2005.

James L. Beaver, Counsel, represented the Complainant.

The Respondent, DONALD RAY MOLTON, was represented by Craig P. Fagan, Esq. and was present at the hearing.

Evidence was received, the record was closed, and the matter was submitted.

On September 22, 2005, the Administrative Law Judge rendered a Proposed Decision (hereinafter "the Proposed

1 Decision") which the Real Estate Commissioner declined to adopt
2 as his Decision herein. Pursuant to Section 11517 of the
3 Government Code of the State of California, Respondent was served
4 with notice of the Real Estate Commissioner's determination not
5 to adopt the Proposed Decision along with a copy of the Proposed
6 Decision. Respondent was notified that the case would be decided
7 by the Real Estate Commissioner upon the record, the transcript
8 of proceedings held on September 12, 2005, and upon written
9 argument offered by Respondent and Complainant.

10 Written argument was submitted by Respondent and filed
11 herein on December 6, 2005. Written argument has been submitted
12 on behalf of Complainant.

13 I have given careful consideration to the record in
14 this case, including the transcript of proceedings of
15 September 12, 2005 and written argument offered by Respondent and
16 Complainant.

17 The following shall constitute the Decision of the Real
18 Estate Commissioner in these proceedings.

19 The Proposed Decision dated September 22, 2005, of the
20 Administrative Law Judge of the Office of Administrative Hearings
21 is hereby adopted as the Decision of the Real Estate Commissioner
22 in the above-entitled matter.

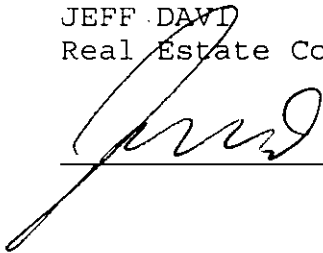
23 The application for a real estate salesperson license
24 is denied, but the right to a restricted real estate salesperson
25 license is granted to Respondent. There is no statutory
26 restriction on when a new application may be made for an
27 unrestricted license. Petition for the removal of restrictions

1 from a restricted license is controlled by Section 11522 of the
2 Government Code. A copy is attached hereto for the information
3 of Respondent.

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

10 This Decision shall become effective at 12 o'clock noon
11 on JAN 31 2006.

12 IT IS SO ORDERED

13 JEFF DAVIS
14 Real Estate Commissioner
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

DONALD RAY MOLTON,

Respondent.

File No. H – 3184 SD

OAH No. L2005050452

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on September 12, 2005.

James L. Beaver, Counsel, represented Complainant, J. Chris Graves, Deputy Real Estate Commissioner, State of California, Department of Real Estate.

Charles P. Fagan, Esq., Fagan & Fagan, represented Respondent, who was present during the hearing.

The matter was submitted on September 12, 2005.

FACTUAL FINDINGS

1. On September 17, 2003, Donald Ray Molton (Respondent) made application for a real estate salesperson license to the State of California, Department of Real Estate (Department).

2. J. Chris Graves (Complainant) made Statement of Issues, File No. H-3184 SD, dated March 28, 2005, in his official capacity as the Department's Deputy Real Estate Commissioner and not otherwise.

Respondent filed Notice of Defense on Application, dated April 26, 2005, requesting a hearing in this matter.

3. On January 4, 1995, in the Municipal Court of the State of California, County of San Diego, San Diego Judicial District, in the case entitled *The People of the State of California v. Donald Ray Molton*, case number CD 106843, on his plea of guilty, Respondent was convicted of a violation of Penal Code sections 240/241 (Assault), a misdemeanor.

According to the evidence, the facts and circumstances underlying the conviction are that, on April 16, 1994, when he was 31 years old Respondent had consensual sexual intercourse with a 15-year-old girl, a juvenile.

As a consequence of the offense, the Court suspended imposition of sentence for one year, ordered him not to have direct or indirect contact with the victim or Door of Hope residents and not to socialize, date or have a relationship with any women under 18 years of age without an adult present.

4. The crime of which Respondent has been convicted (Finding 3) involved moral turpitude.

Complainant asserts that the crime of which Respondent has been convicted bears a substantial relationship to the qualifications, functions or duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2911, subdivision (5). The evidence does not support this contention. There is no evidence that the victim was an observer, that the criminal acts involved a non-consenting participant or that the conviction required that he register as a sex offender pursuant to Penal Code section 290. Given the foregoing, insufficient evidence was offered to establish that the crime of which Respondent was convicted bears a substantial relationship to the qualifications, functions or duties of a real estate licensee.

5. On March 20, 1997, in the Municipal Court of California, County of San Diego, San Diego Judicial District, in the case entitled *The People of the State of California v. Donald Ray Molton*, case number M724145, Respondent was convicted of a violation of Penal Code sections 242 and 243 (Spousal Battery), a misdemeanor.

Respondent admits that, on August 5, 1996, he unlawfully struck the victim, the mother of his children.

As a consequence of the conviction, the Court suspended imposition of the sentence for three years, placed Respondent on probation and ordered him to pay a fine of \$100.00, to complete a 52-week domestic violence program and to pay \$100.00 to the Domestic Violence Fund.

6. The crime of which Respondent has been convicted (Finding 5) constitutes moral turpitude and bears a substantial relationship to the qualifications, functions or duties of a real estate licensee, pursuant to California Code of Regulations, title 10, section 2910, subdivision (8).

7. Respondent provided evidence of explanation and rehabilitation.

- The conduct that resulted in his most recent conviction occurred over nine years ago. In that criminal case, the Court ordered him to complete an anger management program. Among other things, he learned to deal with

his anger and conflict and to make better use of his verbal skills. He has complied with the terms and conditions of probation in the criminal cases and both convictions have been expunged.

- For the past 13 years he has been employed by the Sweetwater Union High School District (District) as a bus driver. He has a broad range of duties that involve transporting junior high school and high school students to various activities within San Diego County and the State of California. He is responsible for maintenance of the bus, safety of the students and discipline of students, when necessary. Respondent was suspended by the District after he was arrested for his most recent conviction until after the trial. Currently Respondent transports special education students and their aides or nurses. No complaints have been filed against him. He has received awards from the District in various capacities, such as employee of the year, four years accident-free driving and, as a volunteer, evacuating students from a high school during a fire. He is dependable, reliable and well-liked by the students.
- He has been involved in community activities. For the past year or so, on Saturdays, with the permission of parents, he has taken troubled students fishing. Periodically he attends Bethel Baptist Church.
- Since his most recent conviction, in addition to the coursework that he was required to complete to qualify for his real estate license, between 1997 and 1999, he completed additional college courses at San Diego City College.
- He has two children, six and eight years of age. He provides for their living expenses on a monthly basis, including their home, food and clothes. He owns the home in which they live, across the street from his home; their mother does not pay rent.

8. Respondent established that he has a reputation in the community for being honest and trustworthy. He did so through the testimony of Dennis Williams, the District's Director of Transportation, who has known Respondent since 1996, and Robert Piantedosi, a close personal friend, who has known him since 1992.

9. Piantedosi has been licensed by the Department as a broker over 20 years, owns East Lake Realty and employs three agents. If granted a real estate license, he intends to hire and to supervise Respondent.

10. Administrative proceedings to discipline a professional license are intended to protect the public, not punish the licensee. *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763.

Business and Professions Code section 10050 states, in pertinent part: "It shall be the principal responsibility of the commission to enforce all laws of this part . . . in a manner which achieves the maximum protection of the purchasers of real property and those persons dealing with real estate licensees."

Complainant asserts that there is some question about whether Respondent's rehabilitation is sufficiently complete, whether there has been a change in attitude from that which existed at the time of the conduct that resulted in his convictions. Respondent does not accept responsibility for his criminal acts and did not express remorse for his misconduct. The foregoing is supported by the evidence and is reason for concern. Nevertheless, the record cannot be disregarded. Respondent is 43 years old. His most recent conviction occurred over eight years ago. He has learned from the experience. There is no evidence that he has engaged in such misconduct since. For 13 years, he has worked with middle school students and high school students, including special education students, without complaint. Given the foregoing, Respondent established that he is substantially rehabilitated at this time.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), the crimes of which Respondent was convicted constitutes cause to deny his application for a real estate salesperson license, by reason of Findings 1, 5 and 6.

2. The facts (Findings 1, 5, 6, 7, 8, 9 and 10), the violation (Legal Conclusion 1), and the Department's criteria for rehabilitation (Cal. Code Regs., tit. 10, § 2911) have been considered. Respondent established that he is sufficiently rehabilitated such that it would not be contrary to the public interest for the Department to issue him a restricted real estate salesperson license at this time.

ORDER

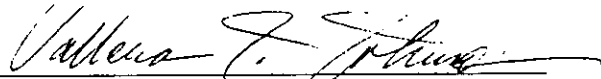
Respondent Donald Ray Moulton's application for a real estate salesperson license is denied; however, a restricted real estate salesperson license shall be issued to Respondent Donald Ray Moulton pursuant to Business and Professions Code section 10156.5. The restricted license shall be subject to the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under the authority of Business and Professions Code section 10156.6.

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) Respondent's conviction (including a plea of nolo contendere) of a crime which is substantially related to his fitness or capacity as a real estate licensee; or
 - (b) 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 or for 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.
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 RE 552 (Rev. 4/88) 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.

DATED: September 22, 2005


VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

FILED
OCT 17 2005

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	
DONALD RAY MOLTON,)	No. H-3184 SD
)	
Respondent.)	L-2005050452
)	

NOTICE

TO: DONALD RAY MOLTON, Respondent, and CHARLES P. FAGAN, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated September 22, 2005, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated September 22, 2005, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on September 12,

///

1 2005, and any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of September 12, 2005, at the Sacramento
6 office of the Department of Real Estate unless an extension of
7 the time is granted for good cause shown.

8 Written argument of Complainant to be considered by me
9 must be submitted within 15 days after receipt of the argument of
10 Respondent at the Sacramento office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: _____

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15 JEFF DAVIS
16 Real Estate Commissioner
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

DONALD RAY MOLTON,

Respondent.

File No. H – 3184 SD

OAH No. L2005050452

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on September 12, 2005.

James L. Beaver, Counsel, represented Complainant, J. Chris Graves, Deputy Real Estate Commissioner, State of California, Department of Real Estate.

Charles P. Fagan, Esq., Fagan & Fagan, represented Respondent, who was present during the hearing.

The matter was submitted on September 12, 2005.

FACTUAL FINDINGS

1. On September 17, 2003, Donald Ray Molton (Respondent) made application for a real estate salesperson license to the State of California, Department of Real Estate (Department).

2. J. Chris Graves (Complainant) made Statement of Issues, File No. H-3184 SD, dated March 28, 2005, in his official capacity as the Department's Deputy Real Estate Commissioner and not otherwise.

Respondent filed Notice of Defense on Application, dated April 26, 2005, requesting a hearing in this matter.

3. On January 4, 1995, in the Municipal Court of the State of California, County of San Diego, San Diego Judicial District, in the case entitled *The People of the State of California v. Donald Ray Molton*, case number CD 106843, on his plea of guilty, Respondent was convicted of a violation of Penal Code sections 240/241 (Assault), a misdemeanor.

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As a consequence of the offense, the Court suspended imposition of sentence for one year, ordered him not to have direct or indirect contact with the victim or Door of Hope residents and not to socialize, date or have a relationship with any women under 18 years of age without an adult present.

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9. Piantedosi has been licensed by the Department as a broker over 20 years, owns East Lake Realty and employs three agents. If granted a real estate license, he intends to hire and to supervise Respondent.

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Business and Professions Code section 10050 states, in pertinent part: "It shall be the principal responsibility of the commission to enforce all laws of this part . . . in a manner which achieves the maximum protection of the purchasers of real property and those persons dealing with real estate licensees."

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LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), the crimes of which Respondent was convicted constitutes cause to deny his application for a real estate salesperson license, by reason of Findings 1, 5 and 6.

2. The facts (Findings 1, 5, 6, 7, 8, 9 and 10), the violation (Legal Conclusion 1), and the Department's criteria for rehabilitation (Cal. Code Regs., tit. 10, § 2911) have been considered. Respondent established that he is sufficiently rehabilitated such that it would not be contrary to the public interest for the Department to issue him a restricted real estate salesperson license at this time.

ORDER

Respondent Donald Ray Moulton's application for a real estate salesperson license is denied; however, a restricted real estate salesperson license shall be issued to Respondent Donald Ray Moulton pursuant to Business and Professions Code section 10156.5. The restricted license shall be subject to the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under the authority of Business and Professions Code section 10156.6.

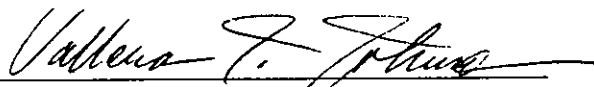
- Not adopted*
1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may, by appropriate order, suspend the right to exercise any privileges granted under this restricted license in the event of:
 - (a) Respondent's conviction (including a plea of nolo contendere) of a crime which is substantially related to his fitness or capacity as a real estate licensee; or
 - (b) 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.

- Not adopted*
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for 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.
 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 RE 552 (Rev. 4/88) 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.

DATED:

September 22, 2005

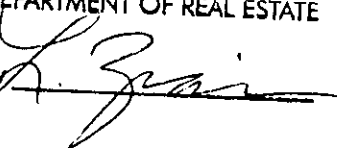

VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0788 (Direct)

FILED
APR 15 2005

DEPARTMENT OF REAL ESTATE

By 

7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Application of)
11 DONALD RAY MOLTON,)
12 Respondent.)

No. H-3184 SD

STATEMENT OF ISSUES

13
14 The Complainant, J. Chris Graves, a Deputy Real Estate
15 Commissioner of the State of California, for Statement of Issues
16 against DONALD RAY MOLTON (hereinafter "Respondent"), alleges as
17 follows:

18 I

19 Complainant, J. Chris Graves, a Deputy Real Estate
20 Commissioner of the State of California, makes this Statement of
21 Issues in his official capacity.

22 II

23 On or about April 13, 2004, Respondent made
24 application to the Department of Real Estate of the State of
25 California (hereinafter "the Department") for a real estate
26 salesperson license.

27 ///

1 III

2 On or about January 4, 1995, in the Municipal Court of
3 the State of California, County of San Diego, Respondent was
4 convicted of the crime of Assault in violation of Penal Code
5 Sections 241 and 242, a misdemeanor and a crime involving moral
6 turpitude which bears a substantial relationship under Section
7 2910, Title 10, California Code of Regulations (herein "the
8 Regulations"), to the qualifications, functions or duties of a
9 real estate licensee.

10 IV

11 On or about March 20, 1997, in the Municipal Court of
12 the State of California, County of San Diego, Respondent was
13 convicted of the crime of Spousal Battery in violation of Penal
14 Code Sections 242 and 243, a misdemeanor and a crime involving
15 moral turpitude which bears a substantial relationship under
16 Section 2910 of the Regulations to the qualifications, functions
17 or duties of a real estate licensee..

18 V

19 Respondent's criminal convictions, as described in
20 Paragraphs III and IV, above, individually and collectively
21 constitute cause for denial of Respondent's application for a
22 real estate license under Sections 480(a) and 10177(b) of the
23 California Business and Professions Code.

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WHEREFORE, 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.

J. Chris Graves
J. CHRIS GRAVES
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 28th day of March, 2005.