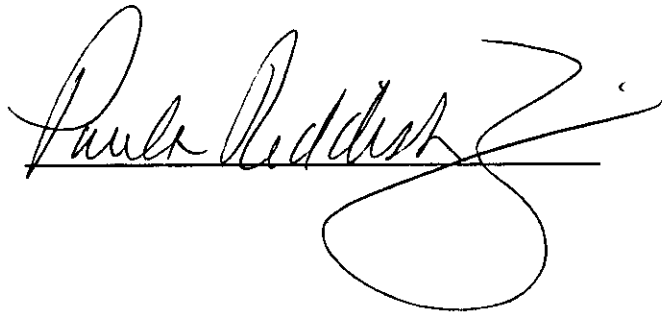


If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria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

This Decision shall become effective at 12 o'clock noon
on March 17, 2003.

IT IS SO ORDERED February 5, 2003.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

A large, stylized handwritten signature in black ink, appearing to read "Paula Reddish Zinnemann", is written over a horizontal line. The signature is highly cursive and extends significantly below the line.

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

HARMINDER SINGH,

Respondent.

Case No. H-3706 SAC

OAH No. N2002090237

PROPOSED DECISION

Administrative Law Judge Ann Elizabeth Sarli, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California on December 27, 2002.

Deidre L. Johnson, Counsel, represented the complainant.

Respondent was present and was represented by Michael A. Peritore, Attorney at Law, 1028 2nd Street, 3rd Floor, Sacramento, California 95814.

Evidence was received, the hearing was closed, and the matter was submitted on December 27, 2002.

PROCEDURAL FINDINGS

1. The complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, made and filed the Statement of Issues in his official capacity.
2. Harminder Singh ("respondent") initially filed an application with the Department of Real Estate of the State of California ("the Department") for a real estate salesperson license on or about February 8, 2000.
3. After an administrative hearing, the Real Estate Commissioner denied respondent's application by Decision effective December 27, 2000. The denial was based upon applicant's conviction in 1992 of theft from a merchant and his failure to disclose the conviction in his application.

4. On January 16, 2002, respondent filed an application with the Department for a real estate salesperson license. The Statement of Issues was filed, and respondent timely filed a Request for Hearing pursuant to Government Code sections 11504 and 11509. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

FACTUAL FINDINGS

1. On March 16, 1992, in the Municipal Court of California, County of Sutter, respondent was convicted of a violation of Penal Code section 484/490.5, Theft from a Merchant, a misdemeanor. The facts and circumstances underlying the conviction are that, on November 30, 1991, respondent and two friends each stole a music CD (compact disc) from K-Mart. The three were apprehended as they attempted to leave the store. The value of each CD was less than \$15. Respondent and his friends were all seniors in high school. Respondent was 18 years of age at the time of his arrest; his friends were still minors.

2. As a consequence of the conviction, imposition of sentence was suspended, and respondent was placed on summary probation for 24 months, subject to various terms and conditions of probation. Respondent was ordered to serve 48 hours of outside work release, pay a fine of \$211, and comply with other standard terms and conditions.

3. Respondent paid the fine and completed the community service as ordered by the court. Respondent was not required to meet with a probation officer as a condition of probation. Respondent's criminal probation ended on March 16, 1994. On November 16, 2000, respondent's conviction was set aside pursuant to Penal Code section 1203.4.

4. Respondent's criminal conviction for Theft from a Merchant is a crime of moral turpitude within the meaning of Business and Professions Code section 10177(b). Crimes which reveal an applicant's dishonesty involve moral turpitude. *Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1027. Lack of honesty or integrity, such as intentional dishonesty, demonstrates a lack of moral character and satisfies a finding of unfitness to practice a profession. *Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 305.

5. Respondent's conviction for Theft from a Merchant bears a substantial relationship to the qualifications, functions and duties of a real estate licensee. A real estate sales person is entrusted with and responsible for the real property and funds of clients. Stealing the property of another is an act directly contrary to the duties of the real estate sales person.

6. Respondent's conviction for Theft from a Merchant is per se inapposite to the qualifications, functions and duties of a real estate licensee. Respondent's conduct meets the

criteria of substantial relationship contained in Title 10, California Code of Regulations section 2910.

Section 2910 provides in pertinent part;

- (a) When considering whether a license should be denied, 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:

The listed offenses, which are pertinent therein, are as follows:¹

- (1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

- (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.

- (c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

Respondent's conviction for Theft from a Merchant involved the elements and characteristics of the offenses set forth above.

7. When applicant submitted his initial application for licensure, he committed an act of dishonesty by falsely stating that he had not been convicted of a crime and by failing to disclose the crime.

8. Title 10, California Code of Regulations section 2911 sets forth the criteria developed by the Department of Real Estate pursuant to Business and Professions Code section 482(a) for evaluating rehabilitation of an applicant for licensure following a criminal conviction or act of dishonesty. The following criteria are applicable to respondent;

- (a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the

¹ The paragraph numbering corresponds to the sub-sections of section 2910.

department.)

Respondent's criminal conviction occurred in March of 1992. Ten years have elapsed since this conviction. However, respondent committed an act of dishonesty in February of 2000, when he initially applied for licensure. Three years have passed since that act.

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

This item is inapplicable to respondent.

(c) Expungement of criminal convictions resulting from immoral or antisocial acts.

Respondent's conviction has been expunged.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

This item is not applicable to respondent.

(e) Successful completion or early discharge from probation or parole.

Respondent has successfully completed probation.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.

There is no evidence that respondent's conviction or act of dishonesty were alcohol or drug related.

(g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

Respondent has paid the fines imposed for his criminal conviction.

(h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.

Respondent is twenty nine years old. He is unmarried and has no children. He has no obligation to provide support to others.

- (i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

Respondent has one class left to take in order to complete work on a BA degree in psychology at UC Davis. He has worked for the State of California Employment Development Department as a disability claims person since March of 1999.

- (j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

Respondent has no debts or monetary obligations to others. His father paid his attorney fees in connection with his 1992 conviction. He has worked off the debt by handling the books for his father's business and by transporting parts for his father's business.

- (k) Correction of business practices resulting in injury to others or with the potential to cause such injury.

This item is not applicable to respondent.

- (l) Significant or conscientious involvement in community, church or privately sponsored programs designed to provide social benefits or to ameliorate social problems.

Respondent is involved in his church and works with the church in putting together an annual parade. Once a month he provides service to the church; serving food, landscaping and doing various tasks around the facility. He coached basketball for a local church for two years and now is coaching a girls' basketball team for one or two games a week during the four month basketball season.

- (m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

In the ten years that have passed since his conviction respondent has attended school and taken a job. He does not appear to associate with the friends he had as an eighteen year old high school student.

- (n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

- (1) Testimony of applicant.

- (2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

Respondent testified that he has learned from his conviction and from his failure to disclose his conviction on his first application. He submitted several letters of reference from friends and business people who have known him for years and attest to his good character. John Ochipinti, a real estate broker, testified that he offered respondent employment as an agent in his office. He has known respondent and his family for over twenty years and he believes respondent is of good character and honest. Respondent's manager at EDD wrote to commend respondent on his hard work, volunteerism, integrity and ability to get along with clients and co workers. The manager wrote that respondent has handled funds and cash in his capacity as a disability claims person and in his capacity as a volunteer in the "CASH CLUB". The physical education teacher at Lawrence School wrote to confirm that respondent coached basketball and was an active member of his church. The director of the Sikh Temple of Yuba City wrote to confirm respondent's involvement with the temple and its community activities.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480 states as follows:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

2. Business and Professions Code section 10177(b) states in pertinent part as follows:

The commissioner may ... deny the issuance of a license to an applicant, who has done any of the following ...:

(b) entered a plea of guilty or nolo contendere...to a crime involving moral turpitude...

3. Business and Professions Code section 10177(f) states in pertinent part as follows:

The commissioner may ... deny the issuance of a license to an applicant, who has done any of the following ...:

(f) acted or conducted himself ... in a manner that would have warranted the denial of his...application for a real estate license...

4. Cause for denial of respondent's application for a real estate salesperson license was established pursuant to Business and Professions Code sections 480(a) and 10177(b) by reason of Factual Findings 1 through 6, inclusive.

5. Cause for denial of respondent's application for a real estate salesperson license was established pursuant to Business and Professions Code sections 480(a) and 10177(f) by reason of Factual Findings 1 through 7, inclusive.

6. In order to determine whether it is appropriate to deny respondent a real estate salesperson's license or to issue him a restricted license, it is necessary to weigh and balance factors in aggravation, mitigation, justification and rehabilitation. In order to determine if an individual is presently fit for licensure, the trier of fact must consider the licensee's conviction and any factors introduced in justification, mitigation, aggravation and rehabilitation. "The licensee . . . should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation." *Arneson v. Fox* (1980) 28 Cal.3d 440, 449; *Brandt v. Fox* 90 Cal.App.3d 737 at p. 747.

7. There was no evidence introduced which demonstrates any justification for respondent's criminal conviction. In mitigation respondent committed his offense when he was eighteen years old. There were no factors in aggravation. Respondent has

demonstrated substantial rehabilitation, however, that rehabilitation is somewhat undermined by respondent's dishonesty in his initial application for licensure. Under these circumstances, it is not in the public interest to grant respondent an unrestricted license. It is, however, in the public interest to grant respondent a restricted license.

ORDER

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

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until 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

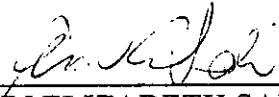
(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

not adapted

4. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.

5. Pursuant to Section 10154, if Respondent has not satisfied the requirements for an unqualified license under Section 10153.4, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

Dated: January 29, 2003



ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings

FILED
NOV 18 2002

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

DEPARTMENT OF REAL ESTATE

By Kathleen Cortez

In the Matter of the Application of

HARMINDER SINGH,

} Case No. H-3706 SAC

} OAH No. N-2002090237

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
560 J STREET, SUITES 340/360
SACRAMENTO, CALIFORNIA 95814**

on **DECEMBER 27, 2002**, 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 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: NOVEMBER 18, 2002

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

RE 500 (Rev. 8/97)

FILED
OCT - 8 2002

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

DEPARTMENT OF REAL ESTATE

By *Katherine Contreras*

In the Matter of the Application of

HARMINDER SINGH,

} Case No. H-3706 SAC

} OAH No. N-2002090237

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
560 J STREET, SUITES 340/360
SACRAMENTO, CALIFORNIA 95814**

on **NOVEMBER 4, 2002**, 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 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: OCTOBER 4, 2002

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

RE 500 (Rev. 8/97)

1 DEIDRE L. JOHNSON, Counsel
2 SBN 66322
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
6
7 Telephone: (916) 227-0789

FILED
AUG - 9 2002

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Application of)
13 HARMINDER SINGH,) NO. H-3706 SAC
14 Respondent.) STATEMENT OF ISSUES
15)

16 The Complainant, CHARLES W. KOENIG, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 Statement of Issues against HARMINDER SINGH, alleges as follows:

19 I

20 HARMINDER SINGH (hereafter Respondent) made
21 application to the Department of Real Estate of the State of
22 California for a real estate salesperson license on or about
23 January 16, 2002.

24 II

25 Complainant, CHARLES W. KOENIG, a Deputy Real Estate
26 Commissioner of the State of California, makes this Statement of
27 Issues in his official capacity and not otherwise.

1 III

2 In response to Question 25 of said application, to
3 wit: "Have you ever been convicted of any violation of law?",
4 Respondent answered "Yes," and disclosed the conviction alleged
5 in Paragraph IV below.

6 IV

7 On or about March 16, 1992, in the Municipal Court
8 of California, County of Sutter, Respondent was convicted of a
9 violation of California Penal Code Section 484/490.5 (THEFT
10 FROM A MERCHANT), a crime involving moral turpitude, and a
11 crime which bears a substantial relationship under Section 2910,
12 Title 10, California Code of Regulations, to the qualifications,
13 functions, or duties of a real estate licensee.

14 V

15 Effective December 27, 2000, in Case No. H-3524 SAC,
16 OAH No. N-2000090347 before the State of California Department of
17 Real Estate, the real estate salesperson license application of
18 Respondent submitted on February 8, 2000, was denied following a
19 hearing under the Administrative Procedure Act. The denial was
20 based upon the criminal conviction alleged in Paragraph IV above,
21 and Respondent's failure to disclose the conviction in his prior
22 application. The grounds for denial were based in whole or in
23 part on acts that, if done by a real estate licensee, would be
24 grounds for the suspension or revocation of a California real
25 estate license.

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VI

The crime of which Respondent was convicted as alleged in Paragraph IV 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 (hereafter the Code).

VII

The facts alleged in Paragraph V above constitute cause for denial of Respondent's application for a real estate license under Section 10177(f) of the Code.

WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of a real estate salesperson license to Respondent, and for such other and further relief as may be proper in the premises.



CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California
this 26th day of July, 2002.