

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
AUG 20 2003

DEPARTMENT OF REAL ESTATE  
*Shelly [Signature]*

\* \* \*

In the Matter of the Application of)  
JAMES THOMAS SAFONOV, )  
Respondent. )

NO. H-3776 SAC  
OAH No. N2003060079

**DECISION**

The Proposed Decision dated July 24, 2003, 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 application for a real estate salesperson license is denied. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon  
on September 9, 2003.

IT IS SO ORDERED August 7, 2003.

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

*Paula Reddish [Signature]*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

JAMES THOMAS SAFONOV

Petitioner.

Case No. H-3776 SAC

OAH No. N2003060079

**PROPOSED DECISION**

On June 26, 2003, in Sacramento, California, Leonard L. Scott, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Michael B. Rich, Counsel, represented the complainant.

Michael D. Dismukes, Attorney at Law, represented respondent James Thomas Safonov.

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

**FACTUAL FINDINGS**

1. Charles W. Koenig (Koenig), Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California, filed the Statement of Issues against respondent. Koenig acted in his official capacity.

2. On or about April 22, 2002, respondent filed a Real Estate "Salesperson License Application" with the Department. The date next to his signature on the application is March 27, 2002.

Respondent has not presented evidence to the Department regarding successful completion of the courses required by Business and Professions Code section 10153.4.

3. On March 20, 1995, in the Municipal Court, County of Sacramento, State of California, in the matter entitled People v. Sergei James Safonov, case number 95T01231,

section 23152(a) (Driving Under the Influence of Alcohol), a crime involving moral turpitude. Respondent's crime is substantially related to the qualifications, functions and duties of the licensed activity pursuant to the criteria enumerated in Title 10, California Code of Regulations, section 2910.

4. On December 6, 2001, in the Superior Court, County of Sacramento, State of California, in the matter entitled People v. James Thomas Safonov, case number 00T05181, respondent was convicted, on his plea of nolo contendere, of a violation of Vehicle Code section 23152(b) (Driving While Having a Blood Alcohol Level of .08% or More), a crime involving moral turpitude. Respondent's crime is substantially related to the qualifications, functions and duties of the licensed activity pursuant to the criteria enumerated in Title 10, California Code of Regulations, section 2910. Respondent is still on probation for this conviction.

5. The real estate license application instructs applicants:

**"Carefully read and provide detailed answers to questions # 24-26. You must provide a yes or no response to all questions".**

"'Convicted' as used in Question 25 includes a verdict of guilty by a judge or jury, a plea of guilty or of nolo contendere, or a forfeiture of bail in municipal, superior or federal court. All convictions must be disclosed whether or not the plea or verdict was set aside, the conviction against you was dismissed or expunged or if you have been pardoned. Convictions occurring while you were a minor must be disclosed unless the record of conviction has been sealed under Section 1203.45 of the California Penal Code or Section 781 of the California Welfare and Institutions Code." (Bold in original)

6. Question number 25 on the Application asks:

**"HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE."**

The application then instructs applicants that if they marked yes, they must complete number 27 below.

Respondent failed to mark either "Yes" or "No" in response to question number 25.

7. Question number 27 of the application instructs those who have been convicted of a crime or crimes to provide detailed information regarding the conviction. Respondent filled in the required information for his 2001 conviction but did not list or provide any of the required information regarding his 1995 conviction.

8. Since November of 2002, respondent has worked as a property manager for HomePointe Property Management and would like a real estate salesperson's license so he can advance in the real estate business. He helps rent out single family homes and coordinates the repair work to be done on them. His employer employs licensed real estate salespeople to show the properties and does not allow them to drive with clients or co-workers in their cars.

Respondent testified that he listed the information regarding his 2001 driving under the influence (DUI) conviction on the application because he realized he must disclose it but did not list the information regarding his 1995 DUI conviction because in a Department of Motor Vehicles class they were told that DUIs only stayed on their records for 7 years. He admitted on cross examination that the instructions to questions 24 and 25 do not have any age limitations regarding convictions that must be disclosed.

Respondent said he has not had a drink of any alcoholic beverages since October of 2000, the night he was arrested for DUI. He was then working as a bartender; since then he has changed his employment. After each conviction, he paid the fines and fees, attended the required DUI classes and impact classes, and attended a few Alcoholics Anonymous meetings. In spite of his two DUI convictions, respondent denies having an alcohol abuse problem and so has not completed any program such as the 12 step program to help him prevent a reoccurrence.

Respondent is 29 years of age and has a Bachelor of Arts from California State University, Sacramento. He has worked with the Stanford Home for Children, helping find low income housing for those with children.

Respondent presented character reference letters from friends, his supervisor at work, former employers and a co-worker.

9. Respondent is still on probation for his last driving under the influence conviction. He presented evidence that he has complied with the terms of his probation and has taken some steps to rehabilitate himself but he has two driving under the influence convictions within a 6 year period and has addressed his problem with alcohol only to the extent required by probation. In addition, he failed to list the 1995 conviction for driving under the influence on his application for licensure; the omission of a material fact which the application clearly required to be disclosed.

### LEGAL CONCLUSIONS

1. Respondent's crimes are substantially related to the licensed activity pursuant to Title 10, California Code of Regulations, section 2910(a)(10) repeated and willful disregard of law.

2. Although respondent provided some evidence of his efforts to rehabilitate himself pursuant to the criteria enumerated in Title 10, California Code of Regulations, section 2911, it has been

only a relatively short time since his last conviction, he is still on probation, he has taken only minimal steps to prevent a reoccurrence and he failed to disclose one conviction on his application. Respondent has some way to go before he is rehabilitated.

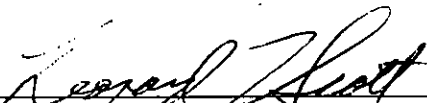
3. Cause for denial of respondent's application for a Real Estate Salesperson's license was established for violation of Business and Professions Code sections 480(c) and 10177(a), as found in Findings 3 through 7.

4. Cause for denial of respondent's application for a Real Estate Salesperson's license was established for violation of Business and Professions Code sections 480(a) and 10177(b), as found in Findings 3 and 4.

ORDER

The application of respondent James Thomas Safonov for a real estate salesperson's license is denied pursuant to Legal Conclusions 3 and 4, separately and for both of them, and in conjunction with Legal Conclusions 1 and 2.

Dated: July 24, 2003

  
LEONARD L. SCOTT  
Administrative Law Judge  
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
JUN 03 2003

DEPARTMENT OF REAL ESTATE

*Shelly Ely*

In the Matter of the Application of

JAMES THOMAS SAFONOV,

Case No. H-3776 SAC

OAH No.

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 THURSDAY--JUNE 26, 2003, at the hour of 10:30 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 Hearing 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 for 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: JUNE 3, 2003

By

*Michael B. Rich*

MICHAEL B. RICH,

Counsel

1 MICHAEL B. RICH, Counsel  
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3 Department of Real Estate  
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5 Sacramento, CA 95818-7000  
6  
7 Telephone: (916) 227-0789

FILED  
FEB 25 2003  
DEPARTMENT OF REAL ESTATE  
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8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Application of )  
12 JAMES THOMAS SAFONOV, ) No. H- 3776 SAC  
13 Respondent. ) STATEMENT OF ISSUES  
14 )

15 The Complainant, CHARLES W. KOENIG, a Deputy Real  
16 Estate Commissioner of the State of California, for Statement of  
17 Issues against JAMES THOMAS SAFONOV (hereinafter "Respondent"),  
18 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 April 22, 2002, 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, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity and not otherwise.

III

On or about March 20, 1995, in the Municipal Court, County of Sacramento, Respondent was convicted of a violation of Section 23152(a) of the California Vehicle Code (Driving under the influence of alcohol), 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 December 6, 2001, in the Superior Court, County of Sacramento, Respondent was convicted of a violation of Section 23152(b) of the California Vehicle Code (Driving while having a blood alcohol level of .08% or more), 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

In responses to Questions 25 and 27 of the license application, requiring Respondent to reveal the court conviction, arresting agency, date of conviction, type of conviction, code name and section number violated, disposition and case number, for each conviction of any violation of law (other than for convictions of drunk driving, reckless driving, and minor traffic



1 citations not constituting a misdemeanor or felony offense),  
2 Respondent concealed and failed to reveal the convictions  
3 described in Paragraph III as set forth herein above.

4 VI

5 Respondent's failure to reveal in the Application the  
6 conviction described in Paragraph III constitutes an attempt to  
7 procure a real estate license by fraud, misrepresentation, or  
8 deceit, or by making a material misstatement of fact in the  
9 application, which failure is cause for denial of Respondent's  
10 license application under Sections 480(c) and 10177(a) of the  
11 California Business and Professions Code.

12 VII

13 The crimes of which Respondent was convicted, as  
14 alleged in Paragraphs III and IV, individually and/or  
15 collectively, constitute cause for denial of Respondent's  
16 application for a real estate license under Sections 480(a) and  
17 10177(b) of the California Business and Professions Code.

18 WHEREFORE, the Complainant prays that the above-  
19 entitled matter be set for hearing and, upon proof of the charges  
20 contained herein, that the Commissioner refuse to authorize the  
21 issuance of, and deny the issuance of, a real estate salesperson  
22 license to Respondent, and for such other and further relief as  
23 may be proper under other provisions of law.

24   
25 CHARLES W. KOENIG  
26 Deputy Real Estate Commissioner

27 Dated at Sacramento, California,  
this 16<sup>th</sup> day of January, 2003.