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DEC - 1 2009

DEPARTMENT OF REAL ESTATE

[Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

LAWRENCE WILLIAM TAGGART,

Respondent.

DRE No. H-3916 SD

OAH No. 2009040092

DECISION AFTER REJECTION

This matter came on for hearing before Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, in San Diego, California, on June 2, 2009.

Truly Sughrue, Counsel, represented the Complainant. The Respondent appeared in person without counsel.

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

On June 25, 2009, the Administrative Law Judge rendered a Proposed Decision (hereinafter "the Proposed Decision") which the Real Estate Commissioner declined to adopt as his Decision herein. Pursuant to Section 11517 of the Government Code of the State of California, Respondent was served with notice of the Real Estate Commissioner's determination not to adopt the Proposed Decision along with a copy of the Proposed Decision. Respondent was notified that the case would be decided by the Real Estate Commissioner upon

1 the record, the transcript of the proceedings held on June 2, 2009, and upon written argument
2 offered by Respondent and Complainant.

3 Written argument was submitted by Respondent. Written argument has been
4 submitted on behalf of Complainant.

5 I have given careful consideration to the record in this case, including the
6 transcript of proceedings of June 2, 2009, and written argument offered by Respondent and
7 Complainant.

8 The following shall constitute the Decision of the Real Estate Commissioner in
9 these proceedings.

10 FINDINGS OF FACT

11 1. Respondent is licensed by the Department of Real Estate as a real
12 estate broker, License No.00957098, and has been so licensed since May 26, 1987.

13 2. Complainant, CHARLES W. KOENIG, filed the Accusation in his
14 official capacity on February 27, 2009.

15 3. Respondent timely filed a Notice of Defense on Accusation, pursuant
16 to Government Code Section 11506. The matter was set for an evidentiary hearing before
17 an Administrative Law Judge of the Office of Administrative Hearings, an independent
18 adjudicative agency of the State of California, pursuant to Government Code Section
19 11500, et seq.

20 Respondent's Conviction

21 4. On or about March 17, 2006, in the United States District Court,
22 Southern District of California, Case No. 01CF2218-JM, Respondent was convicted on his
23 plea of guilty of two (2) counts of violating Title 18 United States Code Section 371
24 (Conspiracy to Commit Wire and Mail Fraud and Income Tax Evasion), felonies.
25 Respondent was sentenced to three (3) years probation for each count, to run concurrently,
26 ordered not to engage in the sale or promotion of unregistered securities, not to accept or
27 commence employment without prior approval of his probation officer, to provide

1 complete disclosure of his personal and business financial records, prohibited from opening
2 checking accounts or incurring new credit charges or opening lines of credit without prior
3 approval of his probation officer, to reside in a Community Corrections Center for four (4)
4 months, to cooperate with the Internal Revenue Service, to file all delinquent tax returns,
5 not to engage in the unlicensed practice of law, to comply with the conditions of the Home
6 Confinement Program for four (4) months, to participate in drug or alcohol abuse
7 treatment, and to make restitution of \$6,900,000, jointly and severally with the other seven
8 (7) defendants charged in the indictment.

9 Respondent's probation expired March 7, 2009. Respondent continues to
10 make monthly restitution payments as ordered. Initially, the Court ordered Respondent to
11 make payments of \$1,000 per month, an order with which Respondent complied. The
12 Court recently granted Respondent's request to make restitution payments at the reduced
13 rate of \$250 per month because of his financial difficulties.

14 The facts and circumstances surrounding the conviction are that in 1992,
15 Respondent was introduced to individuals who were interested in forming a company to
16 develop certain technologies. Respondent became the Legal Counsel and Vice-President of
17 that company, which was known as Basic Research. Investors were brought into Basic
18 Research and law firms were involved in the preparation of various corporate and securities
19 documents. Two principal investors had prior criminal records, one was permanently
20 enjoined from selling unregistered securities and one had been convicted of conspiracy to
21 commit mail fraud and securities fraud, and tax evasion. At some point during the
22 company's operation, funds from an offshore account were wired directly to Respondent's
23 attorney trust account, presumably to save posting time and to make funds more readily
24 available.

25 Fighting between the investors eventually occurred, with one of the investors
26 filing litigation. Basic Research closed in 1998. Discovery obtained in the civil and
27 bankruptcy proceedings was eventually provided to the U.S. Attorney's Office, which filed

1 the criminal indictment against the eight (8) defendants, including Respondent, all of whom
2 were former investors or officers of Basic Research. According to Respondent, he took the
3 plea agreement and became the government's witness in lieu of the possible ten (10) years
4 incarceration he faced with a conviction. Respondent was charged with conspiracy to
5 commit tax fraud because by allowing offshore monies to be deposited into his trust
6 account, he permitted others to avoid paying taxes. Respondent was charged with
7 conspiracy to commit mail fraud because funds were wired into his account and because he
8 filed various corporate documents, which the government alleged furthered Basic
9 Research's scheme to defraud investors.

10 Respondent was a practicing attorney, having first been licensed by the
11 California State Bar in 1973. Respondent practiced real estate and business law. After his
12 conviction, Respondent surrendered his law license.

13 Respondent continued to assist individuals in real estate transactions,
14 primarily through his son's investment company.

15 Respondent is married with two (2) sons.

16 Respondent has volunteered in several community organizations, including
17 earning his Eagle Scout award and being a scoutmaster.

18 Respondent has taught courses in both real estate law and real estate finances
19 at local colleges.

20 LAW APPLIED TO THE FACTS

21 The Department's Accusation alleges Respondent was convicted of felonies
22 which bear a substantial relationship to the qualifications, functions or duties of a real
23 estate broker in violation of Sections 490 and 10177(b) of the Business and Professions
24 Code (hereafter "the Code").

25 Section 490 of the Code provides, in relevant part:

26 "...a board may suspend or revoke a license on the ground that the
27 licensee has been convicted of a crime, if the crime is substantially
related to the qualifications, functions, or duties of the business or

1 profession for which the license was issued.... A conviction within
2 the meaning of this section means a plea or verdict of guilty....”

3 Prior to January 1, 2008, Section 10177 of the Code provides, in relevant
4 part:

5 “The Commissioner may suspend or revoke the license of any real
6 estate licensee...who has done any of the following:...(b) Entered a
7 plea of guilty or nolo contendere to, or been found guilty of, or been
8 convicted of, a felony or a crime involving moral turpitude.”

9 Respondent’s Convictions are Substantially Related
10 to the Qualifications of a Real Estate Broker

11 The crimes for which Respondent was convicted are substantially related to
12 the qualifications, functions or duties of a real estate licensee. A board may impose license
13 discipline on the grounds that the licensee has been convicted of a crime if the crime is
14 substantially related to the qualifications, functions or duties of the business or profession
15 for which the license was issued. Consequently, a determination that a licensee’s
16 conviction justifies discipline cannot rest on the moral reprehensibility of the underlying
17 conduct, but requires a reasoned determination that the conduct was in fact substantially
18 related to the licensee’s fitness to engage in the profession. (*Gromis v. Medical Board*
19 (1992) 8 Cal.App.4th 589, 598) Licensing authorities do not enjoy unfettered discretion to
20 determine on a case-by-case basis whether a given conviction is substantially related to the
21 relevant professional qualifications. Section 481 of the Code requires each licensing
22 agency to “develop criteria to aid it...to determine whether a crime or act is substantially
23 related to the qualifications, functions, or duties or the business or profession it regulates.”
24 In response to this directive, the Department adopted Section 2910 of Title 10 of the
25 California Code of Regulations (hereafter “the Regulations”). (*Donaldson v. Department of*
26 *Real Estate* (2005) 134 Cal.App.4th 948, 955-956) Title 10, Section 2910(a) of the
27 Regulations provides, in relevant 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

1 within the meaning of Sections 480 and 490 of the Code if it
2 involves:

3 ...
4 (3) Willfully attempting to derive a personal financial benefit
5 through a nonpayment or underpayment of taxes, assessments or
6 levies duly imposed upon the licensee or applicant by federal, state or
7 local government.

8 (4) The employment of bribery, fraud, deceit, falsehood or
9 misrepresentation to achieve an end.

10 ...
11 (8) Doing any unlawful act with the intent of conferring a financial or
12 economic benefit upon the perpetrator or with the intent or threat of
13 doing substantial injury to the person or property of another.

14 ...
15 (b) The conviction of a crime constituting an attempt, solicitation or
16 conspiracy to commit any of the above enumerated acts or omissions
17 is also deemed to be substantially related to the qualifications,
18 functions or duties of a licensee of the department.”

19 Respondent's conviction is substantially related under Section 2910(a)(3),
20 2910(a)(4) and 2910(a)(8) of the Regulations. Respondent's misconduct is substantially
21 related to the qualifications, functions or duties of a real estate licensee because the
22 convictions involved a conspiracy to willfully attempt to derive a personal financial benefit
23 through the nonpayment or underpayment of taxes, employ deceit to achieve an end, and
24 the doing of an unlawful act with the intent of conferring a financial or economic benefit
25 on Respondent. By reason of Respondent's guilty plea, he was convicted of each element
26 required to be proven in order to establish a violation of Title 18 USC 371. Ultimately, the
27 elements of Respondent's crimes establish the substantial relationship.

Respondent asserts that his conviction is not substantially related to the
qualifications of a licensee because he was only an “enabler” and not the primary actor in
the conspiracy. What Respondent is essentially attempting to do by that argument is
impeach his conviction by claiming he did not commit the elements to which he pled
guilty. However, Respondent's actions allowed others to engage in illegal activities and
his participation in the participation in the activities of Basic Research caused harm to the
company's investors.

1 Additionally, Respondent asserts that his conviction has no relationship to
2 the real estate business and the qualifications of honesty and integrity necessary for a real
3 estate licensee to possess. The Criteria of Substantial Relationship was never intended to
4 be so narrowly construed so as to be limited only to crimes that "obviously and intimately"
5 have something to do with the business of real estate sales or loans. There is no
6 requirement that the crime be "actually" related to the duties or responsibilities of a real
7 estate licensee to be actionable. The crime need only be "substantially" related. The
8 substantial relationship of crimes involving dishonesty is established by the fact that real
9 estate licensees are placed, by the nature of their profession, in a position of utmost trust,
10 and by the fact that their profession gives them access to the homes and personal financial
11 information of their clients, as well as that of other prospective sellers. Additionally,
12 licensees deal with large amounts of money and handle transactions involving the most
13 significant asset of many people – their home.

14 Respondent's Conviction is a Felony

15 The court documents admitted into evidence show Respondent was
16 convicted of two (2) felonies.

17 BURDEN OF PROOF

18 The burden of proof is clear and convincing evidence to a reasonable
19 certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d
20 853,857) The Department has met this burden. As discussed above, Respondent has been
21 convicted of substantially related felonies. There are clear grounds for the revocation of
22 Respondent's license under Section 490 and Section 10177(b) of the Code.

23 PUBLIC PURPOSE OF DISCIPLINARY ACTION

24 Section 10050 of the Code provides, in pertinent part, that: "It shall be the
25 principal responsibility of the commissioner to enforce all laws in this part...in a manner
26 which achieves the maximum protection for the purchasers of real property and those
27 persons dealing with real estate licensees." The proposed discipline of Respondent's

1 license must be considered in that context. Thus, when the Commissioner denies, suspends
2 or revokes a license based on a criminal conviction that involves moral turpitude, it is a
3 conclusion that the applicant or licensee has engaged in acts that characterize him or her as
4 being unfit or unsuitable for the particular real estate license in question. (*Golde v. Fox*
5 (1979) 98 Cal.App.3d 167, 181)

6 REHABILITATION

7 Section 2912 of the Regulations of the Real Estate Commissioner provides
8 the Criteria of Rehabilitation, which is used by the Commissioner to help determine to
9 what extent a Respondent convicted of a crime has been rehabilitated. Rehabilitation is not
10 an event but rather a process at earning a second chance. In relation to Section 2912 of the
11 Commissioner's Regulations, Respondent has presently satisfied only some of the Criteria
12 of Rehabilitation. It has been over two (2) years since the conviction and he has completed
13 his probation. However, while Respondent offered testimony regarding his past
14 accomplishments, little evidence was offered as to the changes and accomplishments of
15 Respondent since his criminal convictions. After the convictions, Respondent surrendered
16 his license to practice law and no evidence was presented that Respondent's law license has
17 been reinstated. Additionally, Respondent is still making payments toward the \$6,900,000
18 in restitution.

19 When all the facts and circumstances are weighed and balanced, it would be
20 contrary to the public interest and welfare to allow Respondent to remain licensed as an
21 unrestricted real estate broker or to conduct real estate licensed activities without
22 independent supervision by an employing broker.

23 WHEREFORE, the following Order is hereby made:

24 ORDER

25 All licenses and license rights previously issued to Respondent LAWRENCE
26 WILLIAM TAGGART under the Real Estate Law are revoked; provided, however, a
27 restricted real estate salesperson license shall be issued to Respondent pursuant to section

1 10156.5 of the Business and Professions Code if Respondent makes application therefore
2 and pays to the Department of Real Estate the appropriate fee for the restricted license
3 within ninety (90) days from the effective date of this Decision. The restricted license
4 issued to Respondent shall be subject to all of the provisions of section 10156.7 of the
5 Business and Professions Code and to the following limitations, conditions, and restrictions
6 imposed under authority of section 10156.6 of said Code:

7 1. The restricted license issued to Respondent may be suspended prior to
8 hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or
9 plea of nolo contendere to a crime which is substantially related to Respondent's fitness or
10 capacity as a real estate licensee.

11 2. The restricted license issued to Respondent may be suspended prior to
12 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the
13 Commissioner that Respondent has violated provisions of the California Real Estate Law, the
14 Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching
15 to this restricted license.

16 3. Respondent shall not be eligible to apply for the issuance of an
17 unrestricted real estate license nor for the removal of any of the conditions, limitations or
18 restrictions attaching to the restricted license until two (2) years have elapsed from the
19 effective date of this Decision.

20 4. Respondent shall, within nine months from the effective date of this
21 Decision, present evidence satisfactory to the Real Estate Commission that Respondent has,
22 since the most recent issuance of an original or renewal real estate license, taken and
23 successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of
24 the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this
25 condition, the Commissioner may order the suspension of the restricted license until
26 respondent presents such evidence. The Commissioner shall afford Respondent the

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1 opportunity for a hearing pursuant to the Administrative Procedure Act to present such
2 evidence.

3 5. Respondent shall submit with any application for license under an
4 employing broker, or any application for transfer to a new employing broker, a statement signed
5 by the prospective employing real estate broker on a form approved by the Department of Real
6 Estate which shall certify:

7 A. That the employing broker has read the Decision of the Commissioner
8 which granted the right to a restricted license; and

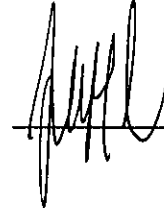
9 B. That the employing broker will exercise close supervision over the
10 performance by the restricted licensee relating to activities for which a real estate license is
11 required.

12 6. Within six (6) months from the effective date of this Decision,
13 Respondent shall take and pass the Professional Responsibility Examination administered
14 by the Department, including the payment of the appropriate examination fees. If
15 Respondent fails to satisfy this condition, the Commissioner may order the suspension of
16 Respondent's licenses until he passes the examination.

17 This Decision shall become effective at 12 o'clock noon on DEC 22 2009
18 2009.

19 IT IS SO ORDERED 11-24-09

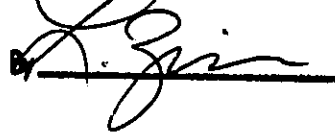
20 JEFF DAVI
21 Real Estate Commissioner

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23 _____
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FILED

AUG -4 2009

DEPARTMENT OF REAL ESTATE



BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

LAWRENCE WILLIAM TAGGART,

Respondent.

No. H-3916 SD

OAH No. 2009040092

NOTICE

TO: LAWRENCE WILLIAM TAGGART, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated June 25, 2009, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated June 25, 2009, 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 June 2, 2009, and any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of June 2, 2009, at the Sacramento

///

1 office of the Department of Real Estate unless an extension of the time is granted for good cause
2 shown.

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

6 DATED: **AUG 31 2009**

7
8 JEFF DAVI
Real Estate Commissioner

9
10 
11

12 By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LAWRENCE WILLIAM TAGGART,

Respondent.

Case No. H-3916 SD

OAH No. 2009040092

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 2, 2009, in San Diego, California.

Truly Sughrue, Counsel, represented complainant Charles W. Koenig, a Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Respondent Lawrence William Taggart represented himself and was present throughout the administrative hearing.

The matter was submitted on June 2, 2009.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 26, 2009, Charles W. Koenig, a Deputy Real Estate Commissioner, Department of Real Estate (the Department), State of California, signed the accusation in his official capacity. The accusation sought the suspension or revocation of the real estate salesperson's license issued to Lawrence William Taggart (respondent) based upon his March 2006 conviction for conspiracy to commit mail fraud and income tax evasion.

The accusation and other required jurisdictional documents were served on respondent, who timely filed a notice of defense.

On June 2, 2009, the administrative record was opened. Jurisdictional documents were presented, official notice was taken, documentary evidence was produced, and sworn

testimony was received. Closing arguments were given thereafter, the record was closed, and the matter was submitted.

License History

2. The Department issued real estate license no. B/00957098 to respondent. Complainant did not introduce any evidence to establish when the license was first issued, but respondent testified he had been licensed since approximately 1970. Complainant did not dispute that testimony at hearing.

Respondent's license expires on August 26, 2012, unless suspended or revoked.

There is no history of any discipline having been imposed against the real estate broker's license issued to respondent.

Respondent's Conviction

3. On March 17, 2006, respondent was convicted on his plea of guilty of two counts of violating Title 18 U.S.C. § 371 (conspiracy to commit wire and mail fraud and income tax evasion), in the United States District Court, Southern District of California, in the case entitled *United States of America v. Lawrence Taggart*, Case No. 01CR2218-JM. In exchange for his plea, the remaining counts against respondent were dismissed.

The court sentenced respondent to three years of probation for each count, to run concurrently, ordered him not to engage in the sales or promotion of unregistered securities, not accept or commence employment without prior approval of his probation officer, to provide a complete disclosure of his personal and business financial records, prohibited respondent from opening checking accounts or incurring new credit charges or opening lines of credit without prior approval of his probation officer, to reside in a Community Corrections Center for four months, to cooperate with the IRS, to file all delinquent tax returns, to not engage in the unlicensed practice of law, to comply with the conditions of the Home Confinement Program for four months, to participate in a drug or alcohol abuse treatment,¹ and to make restitution of \$6,900,000, jointly and severally with the other seven defendants charged in the indictment.

No violation of probation was established. According to respondent, he has made monthly restitution payments. Respondent's probation expired on March 17, 2009. No evidence was introduced at hearing that respondent's probation was terminated earlier, or that it had been extended or revoked. No evidence was introduced that respondent violated any of the terms of his probation before it expired. Respondent continues to make monthly restitution payments as ordered. Initially, the court ordered that respondent make payments of \$1,000 per month, an order with which respondent complied, but the court recently

¹ No evidence was introduced that any of the charges were alcohol or drug related and no evidence was introduced that respondent ever at any time suffered from a drug or alcohol problem.

granted respondent's request to make restitution payments at the reduced rate of \$250 per month because of his financial difficulties.

Respondent's federal conviction cannot be expunged under any California statute, and there is no federal equivalent to California Penal Code section 1203.4.

Circumstances of the Offense

4. By reason of his guilty plea, respondent stands convicted of each element required to be proven in order to establish he that violated Title 18 U.S.C. § 371 (conspiracy to commit mail and wire fraud and income tax evasion).

Respondent testified that in 1992 he was introduced to individuals who were interested in forming a company to develop certain technologies. Respondent became the Legal Counsel and Vice President of that company, which was known as Basic Research. Investors were brought into Basic Research and law firms were involved in the preparation of various corporate and securities documents. Two principal investors had prior criminal records, one was permanently enjoined from selling unregistered securities and one had been convicted of conspiracy to commit mail fraud, commit securities fraud and tax evasion. At some point during the operation, funds from an offshore account were wired directly into respondent's trust account, presumably to save posting time and to make the funds more readily available.

Fighting between the investors eventually ensued with one of the investors filing litigation. Basic Research closed in 1998. Discovery obtained in the civil and bankruptcy litigation was eventually provided to the U.S. Attorney's Office, which filed the criminal indictment against the eight defendants, including respondent, all of whom were former investors or officers of Basic Research. According to respondent, he took the plea agreement and became the government's witness in lieu of the possible ten years' incarceration he faced should he be convicted.² Respondent was charged with conspiracy to commit tax fraud because by allowing offshore monies to be deposited into his trust account, he permitted others to avoid paying taxes. Respondent was charged with conspiracy to commit wire and mail fraud because funds were wired into his account and because he filed various corporate documents, which the government alleged furthered Basic Research's scheme to defraud investors.

Respondent's Background and Evidence of Rehabilitation

5. Respondent was a practicing attorney, having first been licensed by the California State Bar in 1973. Respondent practiced real estate and business law. As a result

² In administrative disciplinary proceedings, a licensee may not seek to impeach a prior criminal conviction by means of an "an inquiry into the circumstances surrounding the offense." On the other hand, 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.)

of his love of real estate, respondent obtained his real estate license. Respondent served as legal counsel for numerous companies and banking institutions. During his career, respondent was appointed by (then) Governor Deukmejian to serve as California's Savings and Loan Commissioner. After his conviction, respondent surrendered his law license. He disclosed his conviction on his real estate renewal application. Respondent continues to assist individuals involved in real estate transactions, primarily through his son's investment company.

Respondent testified that he repeatedly advised Basic Research investors that they needed to file tax returns, but they claimed the monies received were "loans" and not "income;" the investors refused to take his advice. Respondent described a work environment where the principal investors became very suspicious of each other and one in which one of the officers was spending company money without the principal investor's knowledge or consent. Respondent testified that he repeatedly tried to "hold the company together" but was soon unable to do so.

Respondent has been married 45 years. He received his Bachelor of Arts degree from University of California, Berkeley, in 1964 and a law degree in 1973. He is a 1980 graduate of Savings and Loan Graduate School in Indiana. He has volunteered in several community organizations, including earning his Eagle Scout award and being a scoutmaster. He has taught courses in both real estate law and real estate finances at local colleges. Respondent passionately and credibly described his love of both the law and real estate professions and the high regard in which he held both licenses. He deeply regretted the surrender of his law license and he strongly desired to retain his real estate license to continue making restitution payments and to support his family.

Argument

6. Complainant argued that the conviction was substantially related to the duties, qualifications and functions of a licensee, but offered no disciplinary recommendation. In rebuttal closing argument, complainant argued that public protection would not be afforded by allowing respondent to retain his broker's license, but raised no objection to the issuance of a restricted salesperson's license.

Respondent requested that his license not be revoked.

LEGAL CONCLUSIONS

Purpose of Disciplinary Action

1. The purpose of an administrative proceeding aimed at revoking a real estate license is to protect the public. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

Burden and Standard of Proof

2. In an action seeking to impose discipline against the holder of a real estate license, the burden of proof is on complainant to establish the allegations by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

Applicable Statutes

3. Business and Professions Code section 490 provides in part:

“A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere”

4. Business and Professions Code section 10177 provides in pertinent part:

“The commissioner may suspend or revoke the license of a real estate licensee . . . who has done any of the following . . .

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee . . . ,” and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information”

Substantial Relationship

5. A board may impose license discipline on the ground that the licensee has been convicted of a crime if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. Thus, a determination that a licensee's conviction justifies discipline cannot rest on the moral reprehensibility of the underlying conduct, but requires a reasoned determination that the conduct was in fact substantially related to the licensee's fitness to engage in the profession. (*Gromis v. Medical Board* (1992) 8 Cal.App.4th 589, 598.) Conviction alone will not support a denial of a license unless the crime substantially relates to the qualifications, functions, or duties of the business or profession in question. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.)

Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. There is more to being a licensed

professional than mere knowledge and ability. Honesty and integrity are deeply and daily involved in various aspects of the practice. If a criminal offense reflects unfavorably on a licensee's honesty, it may be said to be substantially related to his qualifications. (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.)

Licensing authorities do not enjoy unfettered discretion to determine on a case-by-case basis whether a given conviction is substantially related to the relevant professional qualifications. Business and Professions Code section 481 requires each licensing agency to "develop criteria to aid it . . . to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates." In response to this directive the Department adopted section 2910 of Title 10 of the California Code of Regulations, California Code of Regulations. (*Donaldson v. Department of Real Estate* (2005) 134 Cal.App.4th 948, 955-956.)

Where the Legislature delegates to an administrative agency the responsibility to implement a statutory scheme through rules and regulations, the courts will interfere only when the agency has clearly overstepped its statutory authority or violated a constitutional mandate (*Ford Dealers Association v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 356), and deference should be given to an administrative agency's interpretation of a statute or regulation involving its area of expertise. (*Communities for a Better Environment v. State Water Resources Control Board* (2005) 132 Cal.App.4th 1313, 1330.)

6. Title 10, California Code of Regulations, section 2910 sets forth the Department's substantial relationship criteria. Under the Department's criteria, respondent's misconduct was substantially related to the qualifications, functions, and duties of a real estate licensee because the conviction involved a conspiracy to willfully attempt to derive a personal financial benefit through the nonpayment or underpayment of taxes, employ deceit to achieve an end, and do an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator. (Cal. Code Regs., tit. 10, § 2910, subds. (a)(3), (4) and (8) and (b).)

Rehabilitation

7. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) A candid admission of misconduct and the full acknowledgment of wrongdoing are but a necessary first step in demonstrating rehabilitation. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315.)

8. The Department's criteria of rehabilitation are set forth in Title 10, California Code of Regulations, section 2912. The evidence in rehabilitation under these criteria was set forth in Factual Findings 4-5.

Evaluation

9. Respondent's conviction is substantially related to the qualifications, functions, and duties of a real estate licensee. It involved a serious breach of his ethics as an attorney and his actions as Legal Counsel for Basic Research, even if he did not intend it, allowed others to engage in illegal activities. Although respondent's conviction is out of place in an otherwise long history of law-abiding behavior, one cannot simply overlook the harm that his participation in the activities at Basic Research caused its investors.

In mitigation, respondent expressed credible remorse for his present circumstances and for allowing himself to become involved with individuals who had less than good intentions. Moreover, although the conviction is less than five years old, the acts which were the subject of respondent's participation in the crimes alleged occurred between 1992 and 1998. Nothing in the evidence that was presented suggested that respondent presents a current danger to the public or that allowing respondent to maintain a restricted salesperson's license would pose a risk of injury to the public.

Cause Exists to Authorize the Issuance of a Restricted License

10. Cause exists to revoke respondent's broker's license and instead issue him a restricted real estate salesperson's license under Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b). In March 2006, respondent was convicted of conspiracy to commit wire fraud and income tax evasion, a conviction that is substantially related to the functions, qualifications and duties of a real estate licensee. Respondent disclosed that conviction in his recent renewal application. The conviction is inconsistent with his history of being a law-abiding person. Respondent established that he has sufficiently rehabilitated himself to the extent it would not be contrary to the public interest to permit him to hold a restricted real estate license.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

ORDER

The Department's accusation filed against respondent is dismissed.

Respondent's broker's license is revoked; however, a restricted real estate salesperson license shall be issued to respondent under Business and Professions Code section 10156.5. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under 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 conviction following 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.

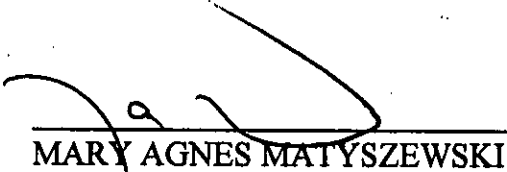
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to Respondent.

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: 6-25-09


MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
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4 P. O. Box 187007
5 Sacramento, CA 95818-7007
6
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FILED

FEB 27 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

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

11 * * *

12 In the Matter of the Accusation of
13 LAWRENCE WILLIAM TAGGART,
14 Respondent.

No. H-3916 SD
ACCUSATION

15
16 The Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner
17 of the State of California, for cause of Accusation against LAWRENCE WILLIAM TAGGART
18 (hereinafter "Respondent"), is informed and alleges as follows:

19 1

20 The Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner
21 of the State of California, makes this Accusation in his official capacity.

22 2

23 Respondent is presently licensed and/or has license rights under the Real Estate
24 Law (Part 1 of Division 4 of the Business and Professions Code) (Code) as a real estate broker.

25 3

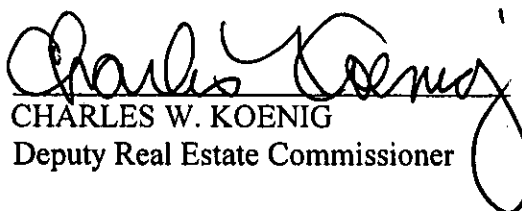
26 On or about March 16, 2006, in the United States District Court, Southern District
27 of California, Respondent was convicted of two counts of Title 18 United States Code Section

1 371 (Conspiracy to Commit Wire and Mail Fraud and Income Tax Conspiracy), felonies which
2 bear a substantial relationship under Section 2910, Title 10, California Code of Regulations, to
3 the qualifications, functions or duties of a real estate licensee.

4 4

5 The facts alleged above constitute cause under Sections 490 and 10177(b) of the
6 Code for suspension or revocation of all licenses and license rights of Respondent under the
7 Real Estate Law.

8 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
9 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
10 action against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of
11 Division 4 of the Business and Professions Code), and for such other and further relief as may
12 be proper under the provisions of law.

13 
14 CHARLES W. KOENIG
15 Deputy Real Estate Commissioner

16 Dated at Sacramento, California,
17 this 26th day of February 2009
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