

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

FILED
MAY 19 2004

DEPARTMENT OF REAL ESTATE

By Laurie T. Zier

In the Matter of the Application of)
DAVID HOWIE,) NO. H-3954 SAC
Respondent.) OAH NO. N-2004030103

DECISION

The Proposed Decision dated April 27, 2004, 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 JUNE 9, 2004.

IT IS SO ORDERED May 14, 2004.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues of:

DAVID HOWIE,

Respondent.

Case No. H-3954 SAC

OAH No. N2004030103

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California heard this matter in Sacramento, California on April 12, 2004.

James L. Beaver, Counsel, represented the Department of Real Estate.

David Howie appeared and was represented by Brian DeAmicis, Attorney at Law.

The matter was submitted on April 12, 2004.

FACTUAL FINDINGS

1. Charles Koenig made the allegations contained in the Statement of Issues in his official capacity only as a Deputy Real Estate Commissioner, Department of Real Estate (hereafter "the Department"), State of California. The Statement of Issues was filed on January 29, 2004. David Howie timely filed a Notice of Defense on Application in response to the Statement of Issues. The matter was set for an evidentiary hearing before an Administrative Law Judge.

2. David Howie filed an application for a real estate salesperson's license with the Department on January 9, 2003. Question 25 on the application asks the applicant whether he or she has ever been convicted of a violation of law, excepting minor traffic offenses, even if expunged. Mr. Howie truthfully answered Question 25 "Yes" and fully disclosed all details of his several criminal convictions in the space provided at Question 27, including disclosing that there were still criminal proceedings pending against him in the Sacramento Superior Court for driving under the influence.

3. The Department's official records reveal that Mr. Howie has not completed the courses required by the provisions of Business and Professions Code section 10153.4.

4. Mr. Howie was convicted on February 20, 1996 in the Municipal Court, County of Placer, of the crime of violation of Penal Code section 148.9, falsely representing himself as another person to a peace officer to evade arrest, a misdemeanor. Mr. Howie was sentenced to serve one year of informal probation, the terms and conditions of which included the payment of \$370.00 in fines. The conviction involved moral turpitude.

5. The facts and circumstances leading to the conviction occurred on December 14, 1995. Mr. Howie attended an 18th birthday party in his honor arranged by his brother. Months before, Mr. Howie had arranged with his brother to be able to use a false identification card with his brother's name and photo, in case Mr. Howie encountered any law enforcement persons. Mr. Howie had outstanding juvenile warrants and planned to use the false identification card to pass himself off as his brother and avoid arrest if stopped by law enforcement. The party was loud and officers responded. Mr. Howie presented the false identification to the officers. He was arrested when officers contacted Mr. Howie's brother, and discovered Mr. Howie was not who was represented on the identification.

6. The conviction is substantially related to the qualifications, functions and duties of a real estate salesperson. The conviction resulted from Mr. Howie's making fraudulent representations to law enforcement regarding his identity by presenting a knowingly false identification. A real estate salesperson is a fiduciary, and is expected to uphold the highest standards of honest and ethical conduct.

7. Mr. Howie was convicted on August 19, 1996 in the Municipal Court, County of Placer, of the crime of violation of Vehicle Code section 23152(b), driving with a blood alcohol level of .08% by volume or greater, a misdemeanor. Mr. Howie was sentenced to serve three years of informal probation, the terms and conditions of which included serving 2 days in jail with credit for time served, and the payment of fines of \$1375.00 and a driver's license suspension of one year.

8. The facts and circumstances leading to the conviction occurred on July 11, 1996. Mr. Howie was pulled over for speeding and was found to have been drinking. He had two underaged companions in the vehicle with him. A partially full bottle of vodka was located in a bag in the back seat of the car.

9. Mr. Howie was convicted on January 13, 2000 in the Superior Court, County of Sacramento, of the crime of violation of Vehicle Code section 23152(a), driving under the influence of alcohol, with one prior conviction, a misdemeanor. Mr. Howie was sentenced to serve four years of informal probation, the terms and conditions of which included serving 10 days in jail, the payment of fines of \$1296.00, to complete the SB 38 drinking driver program, and a driver's license suspension for eighteen months.

10. The facts and circumstances leading to the conviction occurred on December 18, 1999. Mr. Howie had been drinking at home and argued with his live-in girlfriend. He drove to his brother's house and was stopped by the California Highway Patrol for speeding. He was found to be under the influence.

11. Mr. Howie was convicted on February 26, 2003 in the Superior Court, County of Sacramento, of the crimes of violations of Vehicle Code section 23152(a), driving under the influence of alcohol, with two prior convictions, and Vehicle Code section 14601.2(a), driving with a suspended license, both as misdemeanors. Mr. Howie was sentenced to serve five years of informal probation, the terms and conditions of which included serving 120 days in jail, and the payment of fines and assessments of approximately \$1800.00. Mr. Howie's driver's license was revoked for a period of three years. Mr. Howie was permitted to serve a portion of his jail time on home detention. Mr. Howie was sentenced to serve 15 days in jail for the driving on a suspended license charge, to be served concurrently with the driving under the influence term. Mr. Howie's arrest and conviction violated his earlier probation, which prohibited any alcohol consumption as well as drinking and driving.

12. The facts and circumstances leading to the conviction occurred on September 20, 2002. Mr. Howie was at a sports bar drinking and celebrating the birthday of a friend. He chose to drive himself and two of his friends home. Mr. Howie was stopped for speeding and making an unsafe turn by the California Highway Patrol, failed field sobriety tests, took a blood alcohol breath test, was found to be under the influence and was arrested.

13. The three driving under the influence convictions each involve moral turpitude, in that each reflects a disregard of the duties a driver owes to other motorists and pedestrians to drive safely and responsibly without the impairment of alcohol. In two instances, Mr. Howie jeopardized the safety of passengers as well as other motorists sharing the road with him. The three convictions occurred within a period of seven months and are together substantially related to the qualifications, functions and duties of a real estate salesperson licensee. The convictions reveal a pattern of conduct demonstrating willful and repeated disregard of the law, and involve more than two convictions where alcohol consumption was involved and at least one involved driving.¹

14. Mr. Howie presented some evidence of beginning rehabilitation. Mr. Howie has taken responsibility for obtaining a college education. He did not finish high school, but he took and passed the High School Proficiency Examination when he was 16 years old. He has completed an A.S. Degree at Sierra College in Natural Science and an A.A. degree in Liberal Arts at Sierra College. Both degrees were awarded in the spring of 2003. Mr. Howie transferred to California State University, Sacramento and is currently a full-time business administration student. He made the Dean's list in the fall of 2003 and expects to graduate with an undergraduate degree in business with an emphasis on real estate. He has joined the professional real estate fraternity chapter at CSUS, Rho Epsilon, and is an active member. Mr. Howie is quite bright and is mathematically gifted, in the words of his aunt, a licensed

¹ Title 10, California Code of Regulations ("CCR") sections 2910(a) (10), (11).

real estate salesperson who offered supportive testimony about the positive changes Mr. Howie has made in his previously misdirected life. If he is licensed, he would like to pursue commercial real estate transactions or leasing, or perhaps planning. He hopes to obtain an internship while still a student to learn more about land use planning. He is on track to graduate in September 2005.

15. Mr. Howie lives with the mother of his seven year old daughter, whom he intends to marry. He provides financial and emotional support to both. He no longer associates with some of the persons he did in the past, when he received his convictions. He did not mention whether he continues to associate with his brother, who was involved directly or indirectly in two of the three convictions. Most all of Mr. Howie's time is spent attending classes (he is currently taking 18 units), and meeting the needs of his family. He has held a small seasonal part time job for several years, assisting Custom Inventory Services when that firm conducts inventories of car dealer's parts departments. He is not otherwise employed and has no meaningful employment history. Mr. Howie has supported himself and his daughter on the proceeds of an annuity received as a result of his mother's untimely death. The annuity recently finished payments, and he is now living on student loan proceeds.

16. Mr. Howie's life took a wrong turn from some extreme personal tragedies. Mr. Howie's mother died as a result of injuries sustained in an auto accident when he was 10. Mr. Howie was very close to his uncle, who provided some male guidance and support, but he died an untimely death shortly after Mr. Howie's mother. Mr. Howie's father took the death of his wife very hard. He provided Mr. Howie almost no emotional support, and ultimately filed a petition in the juvenile court, relinquishing his parental rights in Mr. Howie. Mr. Howie was made a ward of the juvenile court. Mr. Howie dropped out of school and got involved in drinking and petty juvenile delinquency.

17. In many other respects, Mr. Howie's rehabilitation is markedly deficient. Mr. Howie remains on two concurrent grants of probation that will not expire until 2008, unless terminated early. His driver's license is revoked for the next two years. He has paid his fines from his annuity, and he has completed all his jail time and house arrest. He has several additional months of attendance to complete his SB 38 class. Since Mr. Howie has yet to successfully complete a DUI probation in this decade, he is not eligible to obtain an expungement of any of the convictions.

18. Mr. Howie's repeated contention that the DUIs were not serious in part because no one was hurt is fortuitous. He was speeding during each incident leading to arrest, and made an unsafe turn in the most recent incident. Being lucky, and the fact that other motorists sharing the road with him were lucky when he was drinking and driving is not a factor in mitigation.

19. Of most significant concern is Mr. Howie's pronouncement that he might have had a drinking problem once, but does not have one now. The evidence indicates otherwise. Even his acknowledgement that he had an drinking problem in the past was equivocal and

unconvincing, and is contrasted with references in his Confidential Statement made to the Department such as "the CHP officer formed the opinion that I was under the influence of alcohol and not able to safely operate a vehicle". Mr. Howie's breath test was a .16/.16, twice the legal limit, but his description of his state of sobriety was to infer the CHP officer's opinion may have been wrong. Mr. Howie testified that he quit drinking alcohol after his last arrest. He has obtained one or two sessions of counseling on his own, and attends group and individual counseling as part of the SB 38 program. Other than his court-ordered attendance at the SB 38 program, Mr. Howie has not participated in any alcohol recovery or rehabilitation program. He is not a member of Alcoholics Anonymous or any other sobriety or recovery program. Mr. Howie made it clear in his testimony that he does not see the need to attend a recovery or rehabilitation program. Mr. Howie's irresponsible drinking and driving behavior, resulting in three convictions and an acknowledged "several other times" he drank and drove where he was not detained just in the most recent seven years, reveals a significant alcohol abuse problem that appears to need more than just quitting "cold turkey" to be fairly characterized as rehabilitation. Such "cold turkey" sobriety has and will in the future result in sustained sobriety for some people, but an extensive period of time of such sobriety is required before rehabilitation of any significant dimension can be found. Mr. Howie has only a few months of claimed sobriety to weigh against several years of alcohol abuse, and no accountability based recovery or rehabilitation program to provide any assurances that he will comply with his no alcohol consumption probation term this time around.

LEGAL CONCLUSIONS

1. "A board may deny a license regulated by this code on the grounds that the applicant has done one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or a 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.

"..."

"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

2. As set forth in the Factual Findings, Mr. Howie has been convicted of four criminal offenses between 1996 and 2002, all of which involve moral turpitude. Proof of a

² Business and Professions Code section 480, in pertinent parts.

violation of Section 480 does not require proof that the convictions involve moral turpitude, but do require proof the convictions are substantially related to Mr. Howie's fitness for licensure. Mr. Howie's conviction for making false representations to a peace officer and furnishing the officer a knowingly false identification is a form of fraud and reflects dishonesty. Fraud is by definition substantially related to the qualifications, functions and duties of a real estate salesperson.³ In aggravation, Mr. Howie's use of the false identification was premeditated for several months before the offence, and he was attempting to use his brother's identification to avoid arrest on outstanding juvenile warrants. "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee."⁴ "If (the) offenses reflect unfavorably on his honesty, it may be said that he lacks the necessary qualifications to become a real estate salesperson."⁵ "The Legislature intended to insure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear."⁶ Under these circumstances, Mr. Howie's false identification conviction is significant evidence of unfitness for licensure in a profession where honesty and integrity are mandatory character traits.

3. The three DUI convictions together reflect a pattern of repeated and willful disregard of the law. Multiple convictions for driving under the influence, or reckless driving with alcohol involved, have been held substantially related to the qualifications, functions and duties of a licensed professional in California.⁷ Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment. Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. Driving while under the influence of alcohol also shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society.⁸ Similar to the facts here, the *Griffiths* court found relevant in aggravation that Griffith's 1989 arrest violated his 36-month probation ordered on August 20, 1987, and Griffith's November 1991, arrest violated his 36-month probation ordered on April 3, 1990. Both probations violated were for alcohol related driving offenses. Repeated convictions involving alcohol use, two of which violated Griffith's probation, reflect poorly on Griffith's common sense and professional judgment, which are essential to the practice of his profession, and tend to undermine public confidence in and respect for the licensed profession.⁹ In addition, the Department's Regulation is in accord, and Mr. Howie's three convictions for DUI within 7 years, two of which violated existing DUI probations, are defined by the Regulation as substantially related to the qualifications, functions and duties of a real estate licensee.¹⁰

³ 10 CCR section 2910(a) (4).

⁴ *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.

⁵ *Id.*

⁶ *Id.*, citing *Ring v. Smith* (1970) 5 Cal.App.3d 197, 205.

⁷ *Griffiths v. Medical Board of California* (2002) 96 Cal.App.4th 757, 770, (hrg. den. June 12, 2002)

⁸ *Id.*

⁹ *Id.*

¹⁰ 10 CCR sections 2910(a)(10), (11)

4. Since the false representations conviction and the group of three driving under the influence convictions are each substantially related to the functions, duties and qualifications of a real estate salesperson licensee, legal cause exists within the meaning of Section 480 for the Department to refuse to issue Mr. Howie a real estate license.

5. "The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock 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 involving moral turpitude, 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..."¹¹

6. As set forth above and in the Factual Findings, Mr. Howie has been convicted of four criminal offenses that involve moral turpitude and are substantially related to the qualifications, functions and duties of a real estate licensee. Therefore, separate legal cause exists within the meaning of Section 10177(b) for the Department to deny the issuance of a real estate license to Mr. Howie.

7. The applicant for a real estate license has the burden of proving by a preponderance of the evidence that the applicant is rehabilitated and is a person of good character such that the license should issue, despite the existence of legal cause to deny issuance of the license. Proof of satisfactory rehabilitation is the means by which good character, honesty and fitness for licensure are proved.

8. The Department has enacted in Title 10, California Code of Regulations section 2911 a nonexhaustive list of criteria against which to weigh and evaluate an applicant's evidence of rehabilitation.

"The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

¹¹ Business and Professions Code section 10177(b), in pertinent part.

- (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 department.)
- (b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.
- (c) Expungement of criminal convictions resulting from immoral or antisocial acts.
- (d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.
- (e) Successful completion or early discharge from probation or parole.
- (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.
- (g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.
- (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.
- (i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.
- (j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.
- (k) Correction of business practices resulting in injury to others or with the potential to cause such injury.
- (l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- (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.
- (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.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

9. Mr. Howie presented some praiseworthy evidence of a beginning rehabilitation, but failed to meet his burden of proof to demonstrate rehabilitation sufficient that the license should issue. Particularly impressive was Mr. Howie's attainment of two community college degrees with Dean's List grades, and progress toward a four year college degree, as evaluated by the Department's criteria set forth above. He has found a career goal and is making significant efforts to attain the education and experience to enter real estate as a career. Mr. Howie has successfully completed two probations and many of his present obligations, but the two most recent probations run to 2008 and his revoked driver's license cannot be restored for two more years. Mr. Howie has no significant employment. However, he has been a full-time student from 2000 to the present. He enjoys a stable family and home life and provides support for his daughter. But there was little evidence of any other factors of rehabilitation listed in the Department's criteria, and considerable evidence of aggravating factors.

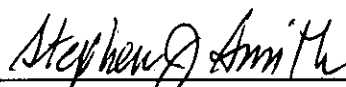
10. Looming large against a finding of rehabilitation and fitness for licensure is the problem with alcohol abuse, Mr. Howie's most recent three convictions and the surrounding circumstances. Two of Mr. Howie's DUI convictions are very recent and Mr. Howie is on two concurrent grants of probation that will extend four more years. Mr. Howie failed to successfully abide by and complete his 4 year DUI probation, resulting in substantially aggravated additional penalties when he reoffended. The most recent offense had not been adjudicated by the criminal courts at the time of Mr. Howie's application. Mr. Howie does not accept that he has an alcohol abuse problem, and therefore he has not done anything to seek treatment, or a recovery or rehabilitation program, save what has been ordered by court. It cannot be concluded on this record that the circumstances that led to the DUI convictions appear unlikely to recur.

11. The primary purpose of professional licensing schemes is the protection of the public, and the prevention of future harm to consumers.¹² A significant period of credible sustained sobriety, with the time weighed in part against the length of time Mr. Howie abused alcohol, crime free living, successful completion and/or early termination of probation, a more direct approach to accepting that there is a problem with alcohol abuse and a reasonable approach to treatment of the problem would constitute more persuasive evidence of rehabilitation than what was presented here. Successful completion of, early termination of probation and/or expungement of the convictions are also important evidence of rehabilitation, but are not yet present. Mr. Howie may well make a fine candidate for licensure in the future, but he failed to prove that he is such at this time.

ORDER

The application of David Howie to the Department of Real Estate for the issuance of a real estate salesperson license is DENIED, for the violations proved in the Legal Conclusions, and the action of the Department in refusing to issue the license is SUSTAINED.

DATED: April 27, 2004



STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings

¹² *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App. 3d 1471, 1476, *In re Kelly* (1990) 52 Cal.3d 487, 496.

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

FILED
MAR - 9 2004

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

DAVID HOWIE,

Case No. H-3954 SAC

OAH No. N-2004030103

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, SUITE 340/360, SACRAMENTO, CA 95814** on **MONDAY, APRIL 12, 2004**, at the hour of **1:00 P.M.**, 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 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 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: MARCH 9, 2004

By James L. Beaver
JAMES L. BEAVER, Counsel (12)

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

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

FILED
JAN 29 2004

DEPARTMENT OF REAL ESTATE

By Laurie A. Z...

7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Application of)

11 DAVID HOWIE,)

12 Respondent.)

No. H-3954 SAC

STATEMENT OF ISSUES

13
14 The Complainant, Charles W. Koenig, a Deputy Real
15 Estate Commissioner of the State of California, for Statement of
16 Issues against DAVID HOWIE (hereinafter "Respondent"), alleges
17 as follows:

18 I

19 Complainant, Charles W. Koenig, a Deputy Real Estate
20 Commissioner of the State of California, makes this Statement of
21 Issues in his official capacity.

22 II

23 Respondent made application to the Department of Real
24 Estate of the State of California for a real estate salesperson
25 license on or about January 9, 2003 with the knowledge and
26 understanding that any license issued as a result of said
27 application would be subject to the conditions of Section

1 10153.4 of the California Business and Professions Code
2 (hereinafter "the Code").

3 III

4 On or about February 20, 1996, in the Municipal Court
5 of the State of California, County of Placer, Respondent was
6 convicted of the crime of Giving False Information To A Peace
7 Officer in violation of Penal Code Section 148.9(a), a
8 misdemeanor and a crime involving moral turpitude which bears a
9 substantial relationship under Section 2910, Title 10,
10 California Code of Regulations (herein "the Regulations"), to
11 the qualifications, functions or duties of a real estate
12 licensee.

13 IV

14 On or about August 19, 1996, in the Municipal Court of
15 the State of California, County of Placer, Respondent was
16 convicted of the crime of Driving Under The Influence Of Alcohol
17 in violation of Vehicle Code Section 23152(a), a misdemeanor and
18 a crime involving moral turpitude which bears a substantial
19 relationship under Section 2910 of the Regulations to the
20 qualifications, functions or duties of a real estate licensee.

21 V

22 On or about January 13, 2000, in the Superior Court of
23 the State of California, County of Sacramento, Respondent was
24 convicted of the crime of Driving With Blood Alcohol In Excess
25 of .08% With One Prior in violation of Vehicle Code Section
26 23152(b), a misdemeanor and a crime involving moral turpitude
27 which bears a substantial relationship under Section 2910 of the

1 Regulations to the qualifications, functions or duties of a real
2 estate licensee.

3 VI

4 On or about February 26, 2003, in the Superior Court
5 of the State of California, County of Sacramento, Respondent was
6 convicted of the crime of Driving Under The Influence Of Alcohol
7 With Two Priors in violation of Vehicle Code Section 23152(a),
8 and of the crime of Driving With Suspended License in violation
9 of Vehicle Code Section 14601.2(a), each a misdemeanor and a
10 crime involving moral turpitude which bears a substantial
11 relationship under Section 2910 of the Regulations to the
12 qualifications, functions or duties of a real estate licensee.

13 VII

14 Respondent's criminal convictions described in
15 Paragraphs III through VI, inclusive, above, individually and
16 collectively constitute cause for denial of Respondent's
17 application for a real estate license under Sections 480(a) and
18 10177(b) of the 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.

Charles W. Koenig
CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 21st day of January, 2004.