

FILED

MAR 18 2010

DEPARTMENT OF REAL ESTATE

By K. Max

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Application of )  
 ) NO. H-4034 SD  
DALE JAMES KNOTT, )  
 ) OAH NO. 2009120706  
Respondent. )  
\_\_\_\_\_ )

DECISION

The Proposed Decision dated February 16, 2010, 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, but the right to a restricted real estate salesperson license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

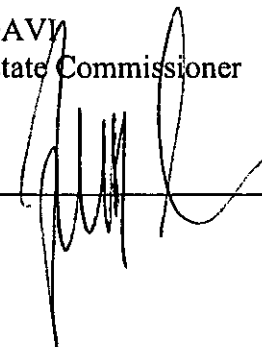
If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria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

This Decision shall become effective at 12 o'clock noon on

APR - 8 2010

IT IS SO ORDERED \_\_\_\_\_

3/17/2010  
JEFF DAVIS  
Real Estate Commissioner



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

DALE JAMES KNOTT,

Respondent.

Case No. H-4034 SD

OAH No. 2009120706

**PROPOSED DECISION**

On January 21, 2010, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

John W. Barron, Real Estate Counsel, represented complainant.

Respondent represented himself.

The matter was submitted on January 28, 2010.

**FACTUAL FINDINGS**

1. Joseph Aiu, Deputy Real Estate Commissioner of the Department of Real Estate of the State of California (Department) filed Statement of Issues No. H-4034 SD in his official capacity on December 3, 2009. Respondent filed a timely Notice of Defense.

At the conclusion of the hearing, the record was left open to allow respondent to submit additional evidence. Respondent submitted three letters which were marked Respondent's Exhibit A and admitted into evidence as hearsay.

2. On December 23, 2008, respondent signed a Salesperson License Application and submitted it to the Department. Respondent had been licensed previously as a salesperson in California, but he allowed the license to expire in 1999.

3. On April 21, 1999, in the Superior Court of San Diego County, respondent pled no contest and was convicted of one count of violating Vehicle Code section 23152,

subdivision (a), driving under the influence of alcohol causing injury, a felony. On May 19, 1999, the court placed respondent on probation for three years on condition, among others, he serve 90 days in custody, perform 100 hours of volunteer work which respondent had already performed, pay a restitution fine of \$1,000.00 which the court deemed satisfied, and pay a fine of \$1,000.00.

On May 29, 2009, the court reduced the conviction to a misdemeanor and granted relief pursuant to Penal Code section 1203.4.

Respondent's offense is substantially related to the qualifications, functions, and duties of a real estate licensee. Title 10, California Code of Regulations, section 2910, subdivision (a).

Respondent committed the offense on November 20, 1998. He testified at the hearing that he was driving home from a country club when he was involved in an accident causing bodily injury to another person, and his blood alcohol level at the time was 0.05 percent (0.05%).

4. Question number 23 of the Salesperson License Application asks: "Have you ever been convicted of any misdemeanor or felony? **Convictions expunged under Penal Code section 1203.4 must be disclosed. However, you may omit traffic citations which do not constitute a misdemeanor or felony. If yes, complete item 27.**" Respondent answered the question by checking the "No" box.

Respondent's answer to question number 23 was false in that he had been convicted of driving under the influence of alcohol causing bodily injury 1999.

5. Respondent testified at the hearing that he believed that his no contest plea to the driving under the influence charge would be stricken from his record after he completed probation, and he did not know it was still on his record. He did not believe the question applied to him. He testified that he had filled out applications in other states, and had not revealed the conviction, and suffered no adverse consequence from doing that. He did not realize his understanding was wrong until he spoke to Mr. Aiu. Respondent testified he was sorry for his mistake and was not trying to lie.

Respondent served 45 days in a work furlough program and paid the fines and restitution imposed on him by the court. He performed his community service at Camp Kupfer in Escondido. In his Detail Conviction Report, he provided to the Department, respondent noted that no serious injury resulted from his accident.

Respondent explained that he owned a mortgage company in partnership with another person during the 1990s, and he did not need a real estate license to make loans because the company was licensed by the Department of Corporations. Consequently, he allowed his real estate salesperson license to expire.

Respondent testified that he expects to be working for Andy Levin, a broker who at one time worked for respondent at Rite Value Real Estate. He would also work for Peter Dinell, a broker who also had worked for respondent. Both brokers know about respondent's conviction.

Respondent is 47 years old, married, and has a 24-year-old daughter and a three-year-old son. Respondent worked continuously until a year ago, when his employer closed. He is presently unemployed. His wife works as a dental hygienist.

Respondent received a bachelor of science degree in marketing, but has not taken any classes recently except for continuing education courses in mortgage fraud. Respondent testified that because of his background in the mortgage field dating back to 1990, he can contribute to the community by selling properties and helping others obtain loans. He described himself as being "on the good side of real estate."

6. Respondent submitted two letters in support of his application for a real estate license:

a. Peter Dinell wrote that he is a licensed broker and has known respondent since 1998 when he accepted a position in respondent's company, HMC Funding. Mr. Dinell worked for respondent over the next decade and indicated that he has always known respondent to be open and honest in his business practices, and always hired others with the same standards. He added that he would not hesitate to hire respondent as a salesperson with or without a restricted license.

b. Andy R. Levin wrote that he is the broker for Rite Value Realty and has known respondent since April 2000 when he worked for respondent in the mortgage industry. He described respondent as an excellent boss, showing care and compassion for all who worked for him. He has found respondent to be fair and ethical. Mr. Levin indicated he has had a broker's license since 1991, and would not hesitate to hire respondent even with a restricted license.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 480 provides in part:

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

(1) *Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting*

*probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.*

*[¶]...*

*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.*

*[¶]...*

*(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.*

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

*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 . . .*

*(a) Procured or attempted to procure, a real estate license or license renewal, for himself . . . by fraud, misrepresentation, or deceit, or by making any material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.*

*(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 not guilty, or dismissing the accusation or information.*

3. Cause was established to deny respondent's real estate salesperson license application pursuant to Business and Professions Code sections 480, subdivision (a)(1) and 10177, subdivision (b), conviction of a crime substantially related to the qualifications, functions, and duties of a real estate licensee, by reason of Finding 3.

4. Cause was established to deny respondent's real estate salesperson license application pursuant to Business and Professions Code sections 480, subdivision (c), and 10177, subdivision (a), making a false and material statement of fact on an application, by reason of Findings 3 and 4.

5. The Department's criteria of rehabilitation are set forth in Title 10, California Code of Regulations, section 2911. The evidence in light of those criteria shows that respondent was convicted of a felony offense more than ten years ago, he completed his sentence and had the conviction reduced to a misdemeanor and then expunged, and he has committed no subsequent offenses. He is now 47 years old, married, has two children, and until 2008, worked to support himself and his family. Based on respondent's evidence of rehabilitation, there is no reason to deny respondent's application for a real estate salesperson based upon his conviction.

The same conclusion should be drawn regarding respondent's false statement on his application. Respondent presented at the hearing as a mature, knowledgeable, and sincere person who made an honest mistake on his application. It did not appear that he had any reason to hide his conviction. Respondent has been in the field of real estate as a mortgage broker, and knows the importance of disclosing information. Respondent's remorse for his failing to disclose his conviction was sincere, and his past successful work in the field should afford him a second chance. The letters from Mr. Dinell and Mr. Levin, two experienced brokers who know respondent well, and who both offered to hire him even if respondent had a restricted license, provide ample support for the conclusion that respondent's mistake in failing to disclose his conviction is not indicative of his character or suggestive of someone who would fail to disclose information when required to do so.

Based upon all the evidence presented, it may be concluded that it would not be against the public interest if respondent were issued a restricted license as a real estate salesperson.

### ORDER

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

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

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

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

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

3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

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

DATED:

2/16/2010

  
A handwritten signature in black ink, appearing to read 'Alan S. Meth', is written over a horizontal line.

ALAN S. METH

Administrative Law Judge  
Office of Administrative Hearings

1 JOHN W. BARRON, Counsel (SBN 171246)  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007  
5 Telephone: (916) 227-0792  
6  
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DEC - 9 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Application of )  
12 DALE JAMES KNOTT, )  
13 Respondent. )  
14 )

H-4034 SD

STATEMENT OF ISSUES

15 The Complainant, JOSEPH AIU, a Deputy Real Estate Commissioner of the  
16 State of California, for Statement of Issues against DALE JAMES KNOTT, (hereafter  
17 "Respondent"), is informed and alleges as follows:

18 1

19 Complainant makes this Statement of Issues against Respondent in his official  
20 capacity.

21 2

22 Respondent made application to the Department of Real Estate of the State of  
23 California for a real estate salesperson license on or about December 26, 2008.

24 3

25 In response to Question 23 of said application, to wit: "Have you ever been  
26 convicted of a misdemeanor or felony? Convictions expunged under Penal Code Section 1203.4  
27 must be disclosed. However, you may omit traffic citations which do not constitute a



1 misdemeanor", Respondent concealed and failed to disclose the conviction described in  
2 Paragraph 4, below.

3 4

4 On or about May 19, 1999, in the Superior Court of the State of California,  
5 County of San Diego, Case No. SCN090069, Respondent was convicted of violating Section  
6 23153(a) of the California Vehicle Code (Driving Under the Influence Causing Injury), a felony  
7 and a crime which bears a substantial relationship under Section 2910, Title 10, of the California  
8 Code of Regulations (hereafter "the Code"), to the qualifications, functions or duties of a real  
9 estate licensee.

10 5

11 Respondent's criminal conviction, described in Paragraph 4, above, constitutes  
12 cause for denial of Respondent's application for a real estate salesperson license pursuant to the  
13 provisions of Section 480(a) and 10177(b) of the Code.

14 6

15 Respondent's failure to reveal in his application for a real estate salesperson  
16 license the conviction set forth in Paragraph 4, above, constitutes the procurement of or attempt  
17 to procure a real estate license by fraud, misrepresentation, or deceit, or by making a material  
18 misstatement of fact in said application, which failure is cause for denial of Respondent's  
19 application for a real estate salesperson license pursuant to the provisions of Sections 480(c)  
20 and 10177(a) of the Code.

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23 ///

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25 ///

26 ///

27 ///

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

6  
7  
8                      
                         JOSEPH AIU  
                         Deputy Real Estate Commissioner

9                    Dated at San Diego, California,  
10 this 23 day of November, 2009.