

FILED  
JUN -8 2005  
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

By L. J. J. J.

DECISION

The Proposed Decision dated May 11, 2005, 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 right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

IT IS SO ORDERED *6-1-05*

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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

LOUIS ORLANDO,

Respondent.

Case No. H-4136

OAH No. N2004120432

AMENDED PROPOSED DECISION

On March 23, 2005, in Sacramento, California, Denny R. Davis, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David Seals, Department of Real Estate Counsel, represented the complainant.

Louis Orlando, respondent, represented himself.

Evidence was received; the record was held open until April 1, 2005, for the submission of letters, whereupon the receipt of which the record was closed and the matter was submitted on April 1, 2005.

FACTUAL FINDINGS

1. Complainant, Charles W. Koenig, Deputy Real Estate Commissioner of the State of California, filed the Accusation against respondent in his official capacity only and not otherwise.
2. Respondent was licensed as a Real Estate Salesperson under the laws of the State of California in 1991 and as a Real Estate Broker on October 30, 2001. His Broker's license will expire on October 29, 2005, unless surrendered, revoked, suspended, or otherwise terminated.
3. In November 1999, respondent was convicted of violating California Vehicle Code section 23103.5, (alcohol related reckless driving) in Solano County, California. Imposition of sentence was suspended and he was placed on summary probation for three years. Terms and conditions of probation include an order prohibiting respondent from driving without a driver's license, and to refrain from driving with any amount of alcohol in his system. He was ordered to pay a fine of \$530.00, and to pay restitution in the amount of

\$110.00. He was also ordered to enroll in driver's school, specifically the course designed for those cited of wet-reckless violations. All terms of his probation have been satisfied.

4. On June 8, 2004, in Sacramento County, California, respondent was convicted of violating California Vehicle Code section 23103.5, (alcohol related reckless driving). Imposition of sentence was suspended for three years and respondent was placed on informal probation subject to various terms and conditions. Those terms and conditions included requirements that respondent serve 60 days in jail (with 57 days suspended) not drive without a license, refrain from driving with any amount of alcohol in his system, enroll in and complete a drinking driver's education class, and pay fines and assessments totaling \$1,026.75. Respondent is presently compliant with all of the terms and conditions of his probation, which is scheduled to terminate in June 2007.

5. Respondent uses his Broker's license as a property manager. He does not transport buyers to review property. Nevertheless, the conduct for which respondent was convicted is substantially related to the functions and duties of a Department of Real Estate licensee because as a real estate broker he would be authorized to show property to prospective buyers and because it is common practice for licensees to transport buyers to property sites for inspection and review. Transporting clients under licensure is considered of such significance that specific provision is made at Title 10, California Code of Regulations section 2910 (a)(11). When two or more convictions involving the consumption or use of alcohol and when at least one of the convictions involves driving while under the influence of alcohol, section 2910 (a)(11) provides for discipline including revocation. Additionally, under section 2910(a)(11) a substantial relationship between that conduct and the functions and duties of a licensed person is deemed to exist. In this case both of respondent's convictions involved driving while under the influence of alcohol.

6. Respondent regrets and is remorseful for having been involved in the consumption of alcohol and driving. He realizes such conduct is wrong and he is ashamed and sorry for violating California Vehicle Code section 23103.5. Respondent has altered his life style in significant ways including his disassociation from persons and groups he associated with in the past, when he consumed alcohol to excess. He now limits his consumption of alcoholic beverages to one glass of wine with dinner, and then only on occasion. The June 2004, conviction resulted in his spending seven days in jail. He attended a Mother's Against Drunk Driving course and now understands the seriousness of the offense of driving while intoxicated. Respondent was persuasive when he assured this tribunal that he no longer abuses alcohol.

7. Respondent has earned the respect of others through numerous professional and civic activities and organizations. In the year 2000, he became a volunteer member of the Board of Directors of Sacramento's Fairytale Town. He has been elected and is now serving as President of that Board. Respondent served as Secretary of the Society for the Prevention of Cruelty to Animals (SPCA). He is a board member of BOMA (Building Owners & Managers Association) of Sacramento. He has received high praise from that organization as well as from Fairytale Town for his civic involvement and his dedication to

the public good. Respondent is engaged to be married. He has established and is maintaining a stable social and professional life.

### LEGAL CONCLUSIONS

1. Business and Professions Code section 10177(b), provides:

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, 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.

2. Cause exists to discipline respondent's broker's license under Business and Professions Code section 10177(b).

3. Business and Professions Code section 490, provides:

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. 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.

4. Respondent was convicted of violating Vehicle Code section 23103.5. The commission of that offense involves conduct that is substantially related to the qualifications, functions, and duties of the profession for which respondent seeks to remain licensed. Driving a vehicle while under the influence of intoxicants places prospective property buyers, as well as the general public, at risk. The fact that respondent engages in property management and not sales under the authority of his Broker's license is not controlling. Under licensure respondent would be entitled to transport prospective buyers as members of the consuming public. Whether or not he actually transports clients is not the controlling criteria. What controls is that licensure as a Broker entitles him to show property and that can involve transporting clients. For that reason such conduct is substantially related to the duties of a real estate broker. For that reason cause exists under section 490 of the Business and Professions Code to discipline respondent's license.

5. Title 10, California code of Regulations section 2910 (a) (11), provides:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves:

...

(11) Two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs.

6. The criteria adopted by the Department for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation been initiated includes the requirement that not less than two years lapse from the most recent criminal conviction to the present. A longer period is required if there is a history of criminal convictions. Respondent was convicted of violating California Penal Code section 23103.5, (Wet Reckless) on two occasions. The first was in 1999, and the second was in June 2004. Respondent's most recent violation was less than one year ago. Not only is respondent unable to show the passage of two years, the fact that he committed the same violation two times would, under the disciplinary guidelines, require a showing that more than two years had passed. Respondent is unable to satisfy the requirements of the guidelines.

7. Notwithstanding, respondent's evidence of mitigation and rehabilitation was weighed and considered. It is found that respondent has made praiseworthy changes in his life. He has improved himself personally and professionally. He has altered his life style. He has been able to control his drinking practices. He conducts himself as a productive member of his community. He has earned the trust of both civic and business associates within the community. The conduct that resulted in his criminal conviction was serious. The

consuming public is entitled to expect that real estate brokers conduct themselves in a professional manner. The pattern of behavior engaged in by respondent was limited to the two incidents cited. He has no prior criminal history and he has had no recurrence of past violations nor has he been part of any other criminal involvement. Those facts combined with his civic activities and his behavior rehabilitative modifications, compel the conclusion that respondent warrants a consideration for licensure. Respondent has demonstrated that he is rehabilitated such that he can be licensed at the present time without risk of harm to the public, provided that such licensure is granted under terms and conditions, which include supervision.

### ORDER

All licenses and licensing rights of respondent Louis Orlando under the Real Estate Law are revoked; provided, however, a restricted real estate Broker's license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to 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 that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three (3) years have elapsed from the effective date of this Decision.
4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the

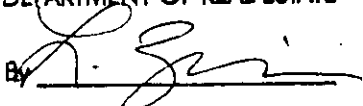
restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.

Dated: May 11, 2005

D. R. Davis  
DENNY R. DAVIS  
Administrative Law Judge  
Office of Administrative Hearings

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

**FILED**  
JAN 18 2005  
DEPARTMENT OF REAL ESTATE  
By 

*In the Matter of the Accusation of*

LOUIS ORLANDO,

} Case No. H-4136 SAC

} OAH No. N-2004120432

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*Respondent*

**NOTICE OF HEARING ON ACCUSATION**

***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 **WEDNESDAY, MARCH 23, 2005**, at the hour of **10:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Accusation 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.

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:* JANUARY 18, 2005

By

  
DAVID B. SEALS, Counsel 

1 DAVID B. SEALS, Counsel (SBN 69378)  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0792 (Direct)

FILED  
OCT 20 2004

DEPARTMENT OF REAL ESTATE

By Laurie A. Zier

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

11 \* \* \*

12 In the Matter of the Accusation of )  
13 ) NO. H-4136 SAC  
14 LOUIS ORLANDO, )  
15 ) ACCUSATION  
Respondent. )

16 The Complainant, Charles W. Koenig, a Deputy Real  
17 Estate Commissioner of the State of California for cause of  
18 Accusation against LOUIS ORLANDO (hereinafter "Respondent") is  
19 informed and alleges as follows:

20 I

21 The Complainant, Charles W. Koenig, a Deputy Real  
22 Estate Commissioner of the State of California, makes this  
23 Accusation in his official capacity.

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1 II

2 Respondent is licensed and/or has license rights under  
3 the Real Estate Law, Part 1 of Division 4 of the California  
4 Business and Professions Code (hereinafter "Code") as a real  
5 estate broker.

6 III

7 On or about June 8, 2004, in the Superior Court of  
8 California, County of Sacramento, Respondent was convicted of  
9 violation of California Vehicle Code Section 23103(r/r to 23152  
10 of the Vehicle Code) (Wet Reckless), a crime involving moral  
11 turpitude and/or which is substantially related under Section  
12 2910, Title 10, California Code of Regulations (hereinafter the  
13 "Regulations") to the qualifications, functions or duties of a  
14 real estate licensee.

15 MATTERS IN AGGRAVATION

16 IV

17 On or about November 3, 1999, in the Superior Court of  
18 California, County of Solano, Respondent was convicted of  
19 violation of California Vehicle Code Section 23103.5 (Wet  
20 Reckless), a crime involving moral turpitude and/or which is  
21 substantially related under Section 2910 of the Regulations to  
22 the qualifications, functions or duties of a real estate  
23 licensee.

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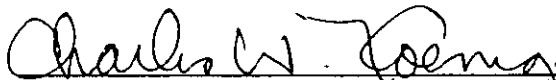
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V

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

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

  
CHARLES W. KOENIG  
Deputy Real Estate Commissioner

Dated at Sacramento, California,  
this 21<sup>st</sup> day of September, 2004.