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FILED

JAN 18 2008

DEPARTMENT OF REAL ESTATE

By *Jean Brunel*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-4284 SAC
)
JERROD JAMES STACY,)
)
Respondent.)
)

ORDER GRANTING REINSTATEMENT OF LICENSE

On February 9, 2006, a Decision was rendered herein revoking the real estate salesperson license of Respondent effective March 13, 2006.

On September 20, 2007, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence and arguments in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate salesperson license and that it would

1 not be against the public interest to issue said license to
2 Respondent.

3 NOW, THEREFORE, IT IS ORDERED that Respondent's
4 petition for reinstatement is granted and that a real estate
5 salesperson license be issued to Respondent if Respondent
6 satisfies the following conditions within nine (9) months from
7 the date of this Order:

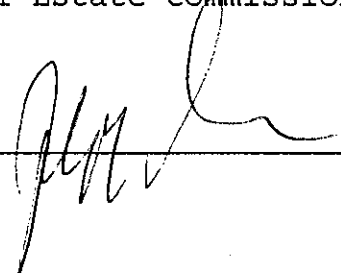
8 1. Submittal of a completed application and payment of
9 the fee for a real estate salesperson license.

10 2. Submittal of evidence of having, since the most
11 recent issuance of an original or renewal real estate license,
12 taken and successfully completed the continuing education
13 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
14 for renewal of a real estate license.

15 This Order shall be effective immediately.

16 DATED: _____

17 JEFF DAVI
18 Real Estate Commissioner

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FILED
FEB 21 2006
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By S. Ely

* * *

In the Matter of the Accusation of)
JERROD JAMES STACY,)
Respondent.)
_____)

NO. H-4284 SAC
N2005080171

DECISION

The Proposed Decision dated January 18, 2006, 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 Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

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.

This Decision shall become effective at 12 o'clock noon on MAR 13, 2006.

IT IS SO ORDERED 2/9, 2006.

JEFF DAVIS
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JERROD JAMES STACY,

Respondent.

Case No. H-4284 SAC

OAH No. N2005080171

PROPOSED DECISION

This matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings, in Sacramento, California, on December 22, 2005.

Michael B. Rich, Staff Counsel, Department of Real Estate, State of California, represented complainant Charles W. Koenig, Deputy Real Estate Commissioner.

Larry Pilgrim, Esq., was represented by Jerrod James Stacy (respondent).

Evidence was received and the matter deemed submitted on December 22, 2005.

FACTUAL FINDINGS

1. On May 17, 2005, Charles W. Koenig, Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California, filed the Accusation in his official capacity against respondent.
2. Respondent is licensed by the Department as a real estate salesperson (License No. 01400371).
3. On December 3, 2004, in the Superior Court of California, County of Sacramento, respondent, then 29, was convicted by jury of a violation of Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol), and a violation of Vehicle Code section 20002, subdivision (a) (hit and run), crimes substantially related to the qualifications, functions and duties of the licensed activity pursuant to the criteria enumerated in Title 10, California Code of Regulations, section 2910.¹ Respondent was placed on

¹ *People v. Eribarne* (2005) 124 Cal.App.4th 1463, 1467 [misdemeanor violation of Vehicle Code section 23152,

probation for three years and ordered, inter alia, to serve 10 days in the county jail on the driving under the influence conviction, and 30 days in the county jail on the hit and run conviction, pay various fines, and pay restitution in the sum of \$1,000.

4. The facts and circumstances underlying respondent's convictions occurred on May 23, 2004. Respondent was then 28 years old. Citizens reported a reckless vehicle on Highway 99 to the California Highway Patrol (CHP) dispatch. Shortly thereafter, citizens reported a hit and run to the CHP dispatch. Traveling at speeds up to 100 mph, respondent was followed by a citizen. He arrived at his home. Respondent admits to ingesting alcoholic beverages upon arriving at his home. Responding officers arrived at respondent's home. He responded to the police officers, admitted his culpability to the driving and the hit and run, and was arrested. Failing an administered field sobriety test, respondent was also arrested for driving under the influence.

5. Respondent is now age 30. His convictions occurred a little more than a year ago. He readily acknowledges his 2004 convictions and an earlier conviction suffered on December 3, 1996, in the Municipal Court, County of Sacramento, State of California, for another violation of Vehicle Code section 23152, subdivision (a) (driving under the influence).² Respondent claims he is an alcoholic. While his abuse of alcohol was largely binge drinking, he relates having commenced the ingestion of alcohol at 12. On September 18, 2004, he ceased the further ingestion of alcohol. He has hurled himself into Alcoholics Anonymous (A.A.) and takes significant pride in his sobriety.

Circumstances in Aggravation

6. Respondent has suffered multiple convictions of crimes involving conduct warranting discipline.³ His recent conduct posed a serious threat to persons and an actual threat to property.⁴

7. Respondent, by and through his counsel, questions whether his driving under the influence convictions involve moral turpitude to the same extent as other penal violations. His subsequent conviction, compounded with a prior and with his "hit and run", does.⁵

8. Respondent's more recent convictions occurred less than two years ago.

9. Respondent is presently on probation to the Superior Court.

subdivision (b) constitutes "a misdemeanor conviction involving...the threat of physical injury to another person."].

² Respondent, then 21 years old, was placed on probation for a period of three years.

³ See *In re Carr* (1988) 46 Cal.3d 1089; and California Code of Regulations, title 10, sections 2910 and 2911.

⁴ "There is no question that the drunk driver is an 'extremely dangerous' person (see, e.g., *Berg v. Municipal Court* (1983) 35 Cal.3d 257) who obviously poses more danger when he or she drives on public streets and highways and encounters the general public in greater numbers (see e.g., *Henslee v. Department of Motor Vehicles* (1985) 168 Cal.App.3d 445)." *People v. Malvitz* (1992) 11 Cal.App.4th Supp. 9.

⁵ *Berg, supra*; *Henslee, supra*; and *Malvitz, supra*; *People v. Mansfield* (1988) 200 Cal.App.3d 82, 88; *People v. Campbell* (1994) 23 CA4th 1488, 1493; cf. *Grannis v. Board of Medical Examiners* (1971) 19 Cal.App.3d 551.

10. Respondent, still effecting restitution, has neither sought nor obtained Penal Code section 1203.4 relief.

11. On January 19, 2005, respondent completed and executed a Department "Confidential—Interview Information Statement." Respondent, by his signature, certified that his statements in the form were true and correct. In this document, the Department asked, "Does your record indicate a drinking and/or drug problem?" And the form further provided, "If yes, state any particular reason for it, if treatment has been obtained, list who, what, where and how long. If you are now or have been a member of A.A., state how long and how active, etc." Respondent replied, "No."

Respondent's statement was less than candid and cooperative.

Respondent testified that he felt the Department question was intrusive. Now, nearly a year later, and at this licensed disciplinary hearing, respondent relates he does not view his A.A. participation or prior problems with alcohol compelling particular confidentiality.

Circumstances in Mitigation

12. Respondent readily admits he is an alcoholic. He does not ingest any alcoholic beverages. He regularly and laudably participates in A.A. meetings.

13. Respondent, employed with his father as a real estate salesperson with Lyon Real Estate, seeks continued licensure to maintain and expand his financial opportunities. He has advised his broker of his convictions and been assured that he would be employed even with a restricted license.

15. Respondent presented character reference letters and witnesses who have observed his honesty, laudable work ethic, and commitment to sobriety.

16. Respondent, a little more than one year into his probation, is complying with all the terms and conditions of that probation grant.

17. To his credit, respondent has otherwise completed a prior grant of court probation.

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend the real estate salesperson license of respondent for convictions of crimes involving moral turpitude substantially related to the qualifications, functions or duties of a real estate professional pursuant to Business and Professions Code sections 490, and 10177, subdivision (b), in conjunction with California Code of Regulations title 10, section 2910, and as set forth in Findings 2 through 4.

2. A fundamental objective of the Department is to protect the public, the licensed profession, maintain integrity, high standards, and preserve public confidence in the Department's licensure process.⁶ Indeed, the statutes relating to Department licensure are designed to protect the public from any potential risk of harm.⁷

When respondent was age 20, he was arrested for driving under the influence. At age 21, he was convicted. At age 24, his probation terminated.

Four years later, respondent, then age 28, was again arrested for driving under the influence, and hit and run. At age 29, he was again convicted of driving under the influence, and also convicted of hit and run. He is on probation, and has been for the last year.

The law looks with favor on one who is reformed.⁸

Respondent has presented rehabilitation worthy of salutary consideration.

On the other hand, respondent has spent a significant part of his young adult life and the last decade on probation.

The difficulty posed to the undersigned is whether his "reformation" is sustained or situational. His road to recovery only began last year. And such reformation has been largely concurrent with the Superior Court's probation. What is particularly troubling and compelling doubt as to a determination that such reformation is sustained is his January 19, 2005, response to the Department.⁹

Licensure does not rest merely on knowledge as evinced by passage of an examination but also character. It is not merely respondent's sobriety that compels concern but also his character.

Honesty and trustworthiness are qualities of utmost importance in a real estate licensee who must frequently act in a fiduciary capacity. "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee."¹⁰ "If appellant's offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson."¹¹ "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."¹² At the time of the completion of his questionnaire to the Department, respondent remained a Department licensee. Respondent

⁶ *Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 816.

⁷ *Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.

⁸ See *Resner v. State Bar* (1967) 67 Cal.2d 799, 811.

⁹ Finding 11.

¹⁰ *Harrington v. Department of Real Estate* (1989) 214 C.A.3d 394, 402.

¹¹ 1 bid.

¹² 1 bid.

owed a particular duty to be scrupulously candid with the Department. Following on the footsteps of his September 2004 sobriety, his December convictions, and his imposed probation, respondent was not fully candid.

Giving due consideration to the facts and circumstances underlying the Accusation (Legal Conclusion 1) and the circumstances in mitigation (Findings 12 through 17) and aggravation (Findings 6 through 11), the undersigned concludes that the public interest will be harmed by the continued issuance of a real estate salesperson's license, at this time,¹³ to respondent.

ORDER

The real estate salesperson license (License No. 01400371) issued by the Department of Real Estate, State of California, to respondent Jerrod James Stacy is revoked.

Dated: January 18, 2006



JAIME RENÉ ROMAN
Administrative Law Judge
Office of Administrative Hearings

¹³ Although this Decision and Order are adverse to respondent, he must not lose heart from the issuance of this Decision. It is clear that he is embarking on a path of rehabilitation sufficient to compel his future relicensure. To that end, he should continue with such efforts.

1 MICHAEL B. RICH, Counsel
State Bar No. 84257
2 Department of Real Estate
P.O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0789

FILED
MAY 17 2005

DEPARTMENT OF REAL ESTATE

By J. E. [Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 JERROD JAMES STACY,) NO. H-4284 SAC
13 Respondent.) ACCUSATION
14)

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

19 I

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

24 II

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

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III

On or about December 3, 2004, in the Superior Court, County of Sacramento, State of California, in case number 04T02814, Respondent was convicted of violating Section 23152(a) of the California Vehicle Code (Unlawfully driving a vehicle while under the influence of alcohol) and Section 20002(a) of the California Vehicle Code (Leave the scene of a vehicle accident resulting in property damage), crimes involving moral turpitude and/or crimes which bear a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

MATTER IN AGGRAVATION

IV

On or about December 3, 1996, in the Municipal Court, County of Sacramento, State of California, in case number 96T06146, Respondent was convicted of a violation of Section 23152(a) of the California Penal Code (Driving under the influence of alcohol or drugs), a crime involving moral turpitude and/or a crime which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.


V

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

///

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

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CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 13th day of May, 2005.