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FILED

SEP - 3 2008

DEPARTMENT OF REAL ESTATE

By H. Max

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of

MICHAEL WILLIAM AGUIRRE,

Respondent.

No. H-4363 SAC

ORDER GRANTING UNRESTRICTED LICENSE

On January 30, 2006, a Decision was rendered herein denying the Respondent's application for a real estate salesperson license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on February 16, 2006, and Respondent has operated as a restricted licensee since that time.

On March 4, 2008, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

I have considered Respondent's petition and the evidence submitted in support thereof including Respondent's record as a restricted licensee. 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 not be against the public interest to issue said license to Respondent.

1                    NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal of  
2 restrictions is granted and that a real estate salesperson license be issued to Respondent subject to  
3 the following understanding and conditions:

4                    1. The license issued pursuant to this order shall be deemed to be the first renewal  
5 of respondent's real estate salesperson license for the purpose of applying the provisions of  
6 Section 10153.4.

7                    2. Within nine (9) months from the date of this order respondent shall:

8                    (a) Submit a completed application and pay the appropriate fee for a real estate  
9 salesperson license, and

10                    (b) Submit evidence of having taken and successfully completed the courses  
11 specified in subdivisions (a) (1), (2), (3), (4) and (5) of Section 10170.5 of the Real Estate Law  
12 for renewal of a real estate license.

13                    3. Upon renewal of the license issued pursuant to this order, respondent shall  
14 submit evidence of having taken and successfully completed the continuing education  
15 requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate  
16 license.

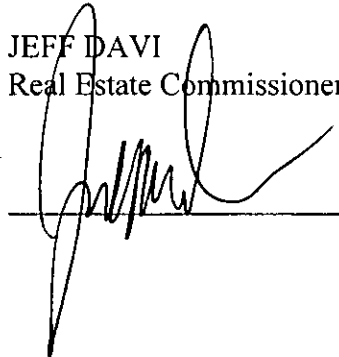
17                    This Order shall become effective immediately.

18                    IT IS SO ORDERED

8-27-08

19  
20                    JEFF DAVI  
Real Estate Commissioner

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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

**FILED**

JAN 25 2006

DEPARTMENT OF REAL ESTATE

By *L. Frost*

In the Matter of the Application of )  
MICHAEL WILLIAM AGUIRRE, ) NO. H-4363 SAC  
Respondent. ) OAH NO. N2005100865  
\_\_\_\_\_ )

DECISION

The Proposed Decision dated January 5, 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 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 FEB 14 2006.

IT IS SO ORDERED

1-20-06  
JEFF DAVI  
Real Estate Commissioner

*Jeff Davi*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

MICHAEL WILLIAM AGUIRRE,

Respondent.

Case No. H-4363 SAC

OAH No. N2005100865

**PROPOSED DECISION**

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on December 14, 2005, in Sacramento, California.

John Van Driel, Counsel, appeared on behalf of Charles Koenig, a Deputy Real Estate Commissioner (complainant).

Michael William Aguirre (respondent) appeared on his own behalf.

Evidence was received, the record was closed, and the matter was submitted on December 14, 2005.

**FACTUAL FINDINGS**

1. On August 31, 2005, complainant, in his official capacity, made the Statement of Issues, which was filed with the Department of Real Estate (Department) on October 5, 2005.
2. On or about March 14, 2005, respondent filed an application with the Department for a real estate salesperson license.
3. On May 5, 1991, in the Solano County Superior Court, respondent was convicted of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor.
4. On or about February 24, 1994, in the Sacramento County Superior Court, respondent was convicted of violating Vehicle Code section 23103, reckless driving, a

misdemeanor. Respondent was placed on three years' informal probation and ordered to serve 20 days in jail/Sheriff's Work Project. Respondent satisfactorily completed the conditions of probation on February 23, 1997. Respondent described his conviction in 1994 as an alcohol-related "wet reckless."

On November 23, 2005, respondent's February 24, 1994 conviction was expunged, pursuant to Penal Code section 1203.4.

5. On March 21, 1997, in the Sacramento County Superior Court, respondent, upon a plea of nolo contendere, was convicted of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol with two priors, a misdemeanor. Respondent was given a suspended sentence and placed on five years' informal probation. Respondent was ordered to pay fines and fees, and to serve 120 days in the county jail, with the last 90 days on work furlough. On June 14, 1997, respondent's jail sentence was converted to straight time. On April 10, 1998, respondent completed his jail sentence. Respondent's driver's license was revoked for three years. Respondent was also ordered to enroll in an SB-38 multiple offender drinking driver program. On September 1, 1998, respondent was deleted from the SB-38 program for failure to complete the program.

On November 23, 2005, respondent's March 21, 1997 conviction was expunged, pursuant to Penal Code section 1203.4.

6. On August 5, 1998, in the Sacramento County Superior Court, respondent, upon a plea of nolo contendere, was convicted of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol with three priors, a felony. Respondent was also convicted of violating Vehicle Code section 23152, subdivision (b), driving with an alcohol level of .08 percent or more; Vehicle Code section 14601.2, driving with a suspended license; Vehicle Code section 2800.1, fleeing a pursuing officer; and Penal Code section 148, subdivision (a), willfully resisting a peace officer, all misdemeanors.<sup>1</sup>

Respondent was placed on formal probation for five years, and ordered to serve 365 days in county jail. Respondent was also ordered to pay fines and fees, to participate in an alcohol rehabilitation program and a Victim Impact Panel, and to submit to chemical testing of his blood, breath or urine as directed by his probation officer. Respondent's driving privileges were revoked for four years.

Respondent complied with all the requirements of his sentence. He served most of his jail time under house arrest, participating in a work release program. While he was on house arrest, he was tested every week for drugs and alcohol. He spent approximately 30-40 days in jail. Respondent completed his probation on August 5, 2003.

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<sup>1</sup> Although the minute order appears to show that respondent's conviction for violating Vehicle Code section 23152, subdivision (b), was a felony, respondent's sentencing with respect to that count indicates that it was treated as a misdemeanor.

On November 23, 2005, respondent's August 5, 1998 convictions were expunged, pursuant to Penal Code section 1203.4.

7. Respondent fully disclosed his convictions on his Salesperson License Application. At hearing, he was very forthcoming when describing his convictions and taking responsibility for them. He explained that he engaged in the criminal conduct underlying his convictions because he was "young, immature, careless and reckless."

In compliance with his 1998 convictions, respondent participated in an 18-month DUI Offender Program. In accordance with that program, twice a week, he attended a group counseling session, and for one hour every two weeks, he attended individual sessions with a counselor. The program had a strong effect upon respondent; it made him understand the privilege it was to drive a vehicle and the responsibility that comes with it.

8. Respondent completely stopped drinking five years ago. He attended a few Alcoholics Anonymous classes, but did not find them helpful. Instead, with the guidance and help of family and friends, he stopped drinking on his own.

9. Respondent got married two years ago. He works with his wife in her picture framing business. He builds frames, performs installations and makes sales. He enjoys the business's commercial work, including the installations they do for galleries participating in Second Saturday. In 1992, respondent obtained an AA degree from Sacramento City College. Respondent will be 35 years old in January.

10. Respondent's best friend since high school testified on respondent's behalf. He described their "reckless youth" and the "noticeable and significant" changes respondent has made in his life since his last conviction. They have both married and settled down. They now live mature, responsible, and productive lives.

11. Respondent did not submit sufficient documentation to the Department to show that he has successfully completed all the courses required pursuant to Business and Professions Code section 10153.4.<sup>2</sup>

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<sup>2</sup> Business and Professions Code section 10153.4, in relevant part, provides:

(a) Every person who is required to comply with Section 10153.3 to obtain an original real estate salesperson license shall, prior to the issuance of the license, or within 18 months after issuance, submit evidence, satisfactory to the commissioner, of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance, or advanced real estate appraisal.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), provides that an applicant may be denied a license for having been convicted of a crime that is substantially related to the qualifications, functions or duties of the business or profession for which the application was made. California Code of Regulations, title 10, section 2910, subdivision (a), sets forth criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee, and, in relevant part, provides that convictions shall be deemed to satisfy the requirements of substantial relationship when they involve:

(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.

Pursuant to section 2910, subdivision (a)(11), respondent's three DUI convictions and one conviction for alcohol-related reckless driving bear a substantial relationship to the qualifications, functions and duties of a real estate licensee. His convictions, therefore, establish cause to deny his application for a real estate salesperson license under Business and Professions Code section 480, subdivision (a).

2. Business and Professions Code section 10177, subdivision (b), provides that a license may be denied to any applicant who has been convicted of a felony or a crime involving moral turpitude. Respondent's 1998 DUI conviction with three priors was a felony.

"'Moral turpitude' means a general 'readiness to do evil'... i.e., 'an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.'" (*People v. Mansfield* (1988) 200 Cal.App.3d 82, 87, citations omitted.) Respondent's misdemeanor DUI and alcohol-related reckless driving convictions constitute crimes involving moral turpitude. These convictions indicate an inability or unwillingness to obey the legal prohibition against drinking and driving and constitute a serious breach of a duty owed to society. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770-771.) Respondent's DUI and reckless driving convictions, therefore, establish cause to deny his application under Business and Professions Code section 10177, subdivision (b).

3. California Code of Regulations, title 10, section 2911 sets forth criteria for determining whether an applicant who has previously been convicted of a crime has sufficiently rehabilitated to support the issuance of a license.<sup>3</sup>

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<sup>3</sup> California Code of Regulations, title 10, section 2911 provides as follows:

Criteria of Rehabilitation (Denial).

Respondent produced evidence of rehabilitation in accordance with many of the rehabilitation criteria set forth in section 2911. He completely stopped drinking five years

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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:

- (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.



ago. He has not committed any crimes since 1998. He successfully completed his most recent probation. His 1994, 1997, and 1998 convictions have all been expunged. He appears to have a stable family life and is fulfilling his familial responsibilities. He is gainfully employed. He expressed a change in attitude from that which existed at the time of his conviction. His best friend attested to the significant changes respondent has made in both his behavior and attitudes since his most recent conviction. Given these factors, it would not be contrary to the public interest or welfare to issue respondent a conditional restricted real estate salesperson license at this time.

### ORDER

Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code. 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 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 (2) 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:

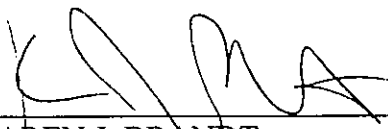
(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(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.

4. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, respondent has submitted the required evidence of course completion and the Commissioner has given written notice to respondent of lifting of the suspension.

4. Pursuant to Section 10154, if respondent has not satisfied the requirements for an unqualified license under Section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

DATED: 1/5/06

  
\_\_\_\_\_  
KAREN J. BRANDT  
Administrative Law Judge  
Office of Administrative Hearings

1 JOHN VAN DRIEL, Counsel (SBN 84056)  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0787 (Direct)

FILED  
OCT - 4 2005

DEPARTMENT OF REAL ESTATE

By *L. J. West*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Application of )

No. H-4363 SAC

12 MICHAEL WILLIAM AGUIRRE, )

STATEMENT OF ISSUES

13 Respondent. )  
14 )

15 The Complainant, Charles Koenig, a Deputy Real Estate  
16 Commissioner of the State of California, for Statement of Issues  
17 against MICHAEL WILLIAM AGUIRRE (hereinafter "Respondent"), is  
18 informed and alleges as follows:

19 I

20 Complainant makes this Statement of Issues in his  
21 official capacity and not otherwise.

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 March 14, 2005 with the knowledge and  
26 understanding that any license issued as a result of said

27 ///

1 application would be subject to the conditions of Section 10153.4  
2 of the Business & Professions Code.

3 III

4 On or about August 5, 1998, in the Sacramento County  
5 Superior Court, Respondent was convicted of a violation of  
6 Vehicle Code Sections 23152(A)&(B) (DUI w/ 3 priors), 14601.2  
7 (driving w/ suspended license), 2800.1 (fleeing a pursuing police  
8 officer), and Penal Code Section 148(A) (obstruction of justice),  
9 crimes involving moral turpitude and which bear a substantial  
10 relationship under Section 2910, Title 10, California Code of  
11 Regulations, to the qualifications, functions, or duties of a  
12 real estate licensee.

13 IV

14 On or about March 21, 1997, in the Sacramento County  
15 Superior Court, Respondent was convicted of a violation of  
16 Vehicle Code Section 23152(A) (DUI w/ 2 priors), a crime  
17 involving moral turpitude and which bears a substantial  
18 relationship under Section 2910, Title 10, California Code of  
19 Regulations, to the qualifications, functions, or duties of a  
20 real estate licensee.

21 V

22 On or about September 18, 1993, in the Sacramento  
23 County Superior Court, Respondent was convicted of a violation of  
24 Vehicle Code Section 23152(A)&(B) (DUI), a crime involving moral  
25 turpitude and which bears a substantial relationship under  
26 Section 2910, Title 10, California Code of Regulations, to the  
27 qualifications, functions, or duties of a real estate licensee.


1 VI

2 On or about May 5, 1991, in the Solano County Superior  
3 Court, Respondent was convicted of a violation of Vehicle Code  
4 Section 23152(A) (DUI), a crime involving moral turpitude and  
5 which bears a substantial relationship under Section 2910, Title  
6 10, California Code of Regulations, to the qualifications,  
7 functions, or duties of a real estate licensee.

8 VII

9 The crimes of which Respondent was convicted, as  
10 alleged in Paragraphs III through VI, constitute cause for denial  
11 of Respondent's application for a real estate license under  
12 Sections 480(a) and 10177(b) of the California Business and  
13 Professions Code.

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

20  
21  
22   
23 CHARLES KOENIG  
Deputy Real Estate Commissioner

24 Dated at Sacramento, California,  
25 this 31<sup>st</sup> day of August, 2005.