

FILED
SEP 13 2006

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

[Signature]

* * *

In the Matter of the Application of)
DONALD EDWARD DELANEY, JR.,) NO. H-4464 SAC
Respondent.) OAH NO. N-2006050819

DECISION

The Proposed Decision dated August 10, 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 with the following correction:

The first two sentences of the "ORDER" on Page 10 of the Proposed Decision are hereby amended to read:

"The application of Respondent DONALD EDWARD DELANEY, JR. 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 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 OCT - 4 2006.

IT IS SO ORDERED September 12, 2006.

JEFF DAVI
Real Estate Commissioner



A handwritten signature in cursive script, reading "John R. Liberator", is written over a horizontal line.

BY: **John R. Liberator**
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

DONALD EDWARD DELANEY, JR.,

Respondent.

Case No. H-4464 SAC

OAH No. N2006050819

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on July 12, 2006.

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

Donald Edward Delaney, Jr. appeared and represented himself.

The record was closed and the matter was submitted on July 12, 2006.

FACTUAL FINDINGS

1. Charles W. Koenig made the allegations contained in the Statement of Issues in his official capacity as a Deputy Real Estate Commissioner, Department of Real Estate (the Department), State of California. The Statement of Issues was filed April 28, 2006. Donald Edward Delaney, Jr., timely filed a Notice of Defense on Application in response to the Statement of Issues. The Department has jurisdiction to issue, deny the issuance of, or issue on a restricted basis any real estate salesperson license in the State of California.¹

2. Mr. Delaney filed an application for a real estate salesperson's license with the Department on September 8, 2005. The application is subject to the provisions of Business and Professions Code section 10153.4.

3. The Department's official records as of May 2, 2006, reflect that Mr. Delaney has not completed the courses required by Business and Professions Code section 10153.4.

¹ Business and Professions Code sections 480, 10152 and 10156.

4. Mr. Delaney was convicted upon his plea of guilty in July 1988, in the Superior Court, County of Tehama, of a misdemeanor violation of Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol. Mr. Delaney was sentenced to serve three years on informal, unsupervised court probation, the terms of which included payment of fines and penalties totaling approximately \$1,300, and a restriction of his driver's license for approximately 30-60 days.

5. The events leading to Mr. Delaney's July 1988 driving under the influence conviction are only known because Mr. Delaney disclosed them on his application and briefly described the facts in his written statements made to the Department in his Conviction Detail Report. Mr. Delaney drove his pickup truck while under the influence, lost control of the vehicle and wrecked it in a dry creek bed. He was arrested when officers responded to the scene of the accident. It does not appear anyone was injured.

6. Mr. Delaney was convicted upon his plea of guilty on May 17, 1994, in the Superior Court, County of Tehama, of a misdemeanor violation of Penal Code section 415, disturbing the peace. Mr. Delaney was sentenced to serve ten days in the county jail, with that sentence suspended for a period of one year, along with the payment of fines and penalties totaling \$255.

7. The incident that led to Mr. Delaney's May 1994 disturbing the peace conviction stemmed from an incident that occurred on April 14, 1994 in Los Molinos, California. Mr. Delaney advised the Department in writing in his Conviction Details Report that he was in the process of breaking up with his girlfriend and she lied to him about seeing another man, which made him very angry. He wrote that he was convicted because, "I raised too much Hell in a quiet neighborhood." He noted in the portion of the form reserved for an explanation of the crime, "This was one of those things that was stupid on my part and should have never happened. I just can't take being lied to. Pisses me off."

8. Mr. Delaney testified at the evidentiary hearing that the incident was the result of an altercation between himself and another man who was dating his girlfriend. He got into an argument and a pushing match with the man and two of his companions. He left, but then returned, which he described as his "biggest mistake." He drove his vehicle to an area near where the man lived and reengaged in the dispute. Mr. Delaney reached into his truck and pulled out his shotgun, which was loaded with light load shells for quail and dove. He fired three shots into the air directly over his own head, "Yosemite Sam" style, to frighten the men off. The men fired back three rounds from a .22, but it was not clear whether the gun was a pistol or rifle. Mr. Delaney reloaded his shotgun and fired three more rounds off, again into the air directly over his head. The police investigating the matter did not find evidence of the .22 Mr. Delaney claimed was fired at him. There was no allegation that Mr. Delaney fired his shotgun at any person or at any building. Mr. Delaney was intoxicated at the time of the altercation, and he commented in his testimony that he would not have returned and fired the shots had he not been drinking. No one was injured during the incident. Mr. Delaney was forthright and cooperative with local law enforcement's investigation of the incident, including making candid incriminating admissions about his

conduct. However, the incident involved considerably more than merely "raising too much hell in a quiet neighborhood," as Mr. Delaney initially reported to the Department.

9. Mr. Delaney was convicted upon his plea of guilty on May 20, 1996, in the Municipal Court, County of Tehama, of a misdemeanor violation of Vehicle Code section 23152, subdivision (b), driving with a blood alcohol level of .08 percent or more by volume. It does not appear Mr. Delaney was charged with or was required to admit his prior conviction for driving under the influence. Mr. Delaney was sentenced to serve three years on informal, unsupervised probation, the terms of which included 240 hours in jail, to be served in 48 hour increments; fines and penalties totaling \$1,547; and to enroll in and successfully complete a first offender drinking driver program. He was also ordered not to drive within six hours of consuming any alcohol, or to drive with any measurable amount of alcohol in his system.

10. The facts leading to the May 1996, conviction is drawn from Mr. Delaney's Conviction Details Report to the Department and his testimony at the evidentiary hearing. Mr. Delaney consumed alcohol while attending a rodeo mixer. He drove himself home and was detained by a California Highway Patrol officer for speeding and weaving in his lane on Highway 99 near Red Bluff. Hearsay evidence in the court records and the Highway Patrol officer's report, undisputed by Mr. Delaney, show that his blood alcohol level was measured by an Intoxilyzer test at .17/.19 percent by volume after his arrest. Two open containers of beer were found in the vehicle by the arresting officer.

11. Mr. Delaney was convicted upon his plea of no contest on March 21, 2000, in the Superior Court, County of Tehama, of a misdemeanor violation of Vehicle Code section 23152, subdivision (b), driving with a blood alcohol level of .08 percent or more by volume. Mr. Delaney admitted his 1996 prior conviction for driving under the influence. Mr. Delaney was sentenced to serve three years on informal, unsupervised probation, the terms of which included ten days in jail; fines and penalties totaling \$1,827; and to enroll in and successfully complete an eighteen month second offender drinking driver program. His driver's license was restricted to driving to and from work and to and from his drinking driver program. He was ordered to absolutely abstain from consuming any alcohol, not to drive with any measurable amount of alcohol in his system, and not to drive without a valid driver's license. Court records reflect that Mr. Delaney filed proof of successful completion of the second offender drinking driver program on January 10, 2002, and that he completed all the obligations of his probation on March 26, 2003.

12. Mr. Delaney's March 2000 driving under the influence conviction stemmed from his consumption of alcohol while at a friend's birthday party on December 4, 1999. He drove himself home and was detained by a California Highway Patrol officer close to his home in Los Molinos. Hearsay evidence in the court records show that his blood alcohol level was measured by an Intoxilyzer test at .16/.17 percent by volume after his arrest.

13. Mr. Delaney's conduct, resulting in three driving under the influence convictions set forth above, and a fourth conviction that was alcohol related for disturbing

the peace, is conduct involving moral turpitude and is substantially related to the qualifications, functions and duties of a real estate salesperson licensee. Mr. Delaney's conduct reveals a course of misconduct over a ten year period that reflects abuse of alcohol. Mr. Delaney exhibited poor judgment when he continued to consume alcohol with friends and then drove, even after having been convicted twice and having attended two drinking driver programs. The Department has determined that two or more convictions where alcohol consumption is a factor, when at least one involves driving, is conduct substantially related to the qualifications, duties and functions of a real estate licensee, within the meaning of section 2910, subdivision (a) (11).

14. Mr. Delaney has been steadily employed as a counter salesperson and later manager of SYS Auto Parts in Los Molinos, California, since 2000, but has actually been steadily employed at this store as a parts counter person for the store's previous owner for the past 17 years. Mr. Delaney now oversees most aspects of the store's operations, including purchasing parts. He has an excellent reputation for his diligence, his ability to work successfully with customers and for his professionalism, honesty and trustworthiness. In 2002, Mr. Delaney's employer purchased a tow truck and gave Mr. Delaney the task of operating it. Mr. Delaney's employer vouched for him to the California Highway Patrol in the process of obtaining a contract to respond to all CHP calls for towing service in the area including Los Molinos that extends above and below Red Bluff, California. Mr. Delaney's employer expressed his great satisfaction with how well Mr. Delaney has discharged his duties operating the tow truck over the past four years in a letter he wrote in support of Mr. Delaney's application. Mr. Delaney is on call 24 hours per day, seven days per week for the towing service. Mr. Delaney testified the CHP has a "zero tolerance" policy for tow truck drivers who work under their contracts and respond to their calls. If he is ever found to have consumed any alcohol and then responded to a tow call, he will lose his job and his employer will lose the contract. He observed in his testimony that he has now gone out on several "DUI wrecks" where he has been able to see "what could have happened."

15. Mr. Delaney described the most recent six years as the "best in my life." Significantly increased responsibilities and trust invested in him by his employer have resulted in him exhibiting more responsibility in his personal life. He described how much he has grown as a person. He bought a home and is caring for his sixteen year old nephew. He has seen a big change in himself, as he is now "not sitting in some bar someplace," like he once did. He has enjoyed the responsibility of being the on-call tow truck operator and has found that the service he provides needs to be even more effective and professional, as they now have competition for the calls with another operator in the same area.

16. Mr. Delaney testified, "I decided to drink. I corrected that decision." He qualified that statement by noting that he was referring to drinking and driving, and he does not currently abstain entirely from alcohol consumption. He agreed that he checked the box "No," indicating that he does not have a problem with alcohol, where he was prompted on the Department's written Confidential Interview Information Statement. He described the change in his drinking behavior as no longer drinking every day at home and in bars, but now only socially once every two weeks or so. He testified he will have some drinks with friends

on a special occasion or a glass of wine with dinner with his girlfriend. He no longer keeps any alcohol in the house. He is very careful to try to set a good example for his teenaged nephew. Mr. Delaney acknowledged that he has not participated in any alcohol rehabilitation or treatment programs. He does not participate in Alcoholics Anonymous or any other such 12 step program.

17. Mr. Delaney has made significant contributions to his community, and has earned the respect and support of some of Los Molinos' leading businessmen and community leaders. He helps the Central Tehama Kiwanis Club run its fundraiser booth at the Tehama County Fair each year, and participates in several other club community service activities. He assists the Los Molinos Chamber of Commerce's annual Fourth of July fundraiser and parade, even serving as honorary mayor. For the past ten years, he has volunteered his time to the local high school, operating the scoreboard at the team's home football games.

18. Two friends took the time and trouble to travel to Sacramento to testify in support of Mr. Delaney. Both are licensed by the Department and are active in real estate. Both are well aware of Mr. Delaney's convictions and problem drinking. Mr. Garstang is Mr. Delaney's proposed broker. He has known Mr. Delaney for almost 20 years and is very familiar with his character. He once hired Mr. Delaney to work in a feed store he managed and found him to be an excellent, honest and trustworthy worker. Mr. Garstang has been a licensed broker for ten years and currently operates six branch offices with thirty salespersons. He does not recruit sales agents and is very particular about who he allows to associate with his brokerage. He testified that he can teach anyone to be a competent real estate sales agent, but he cannot teach a person to be ethical and honest. He has seen the changes Mr. Delaney has made and encouraged Mr. Delaney to seek this license and join him in working in his real estate brokerage in his spare time. He promised to oversee and train Mr. Delaney.

Mr. Huntsman has known Mr. Delaney since 1980. He is well aware of Mr. Delaney's problems with alcohol, but, like Mr. Garstang and those who wrote letters of support like Mr. Delaney's employer, he views Mr. Delaney as a man of excellent character for trustworthiness and honesty. He has seen the changes Mr. Delaney has made since his last conviction six years ago, and especially praised him for how he has taken his "sometimes wayward" nephew into his home. He would welcome Mr. Delaney into real estate and would feel very comfortable working with him. He commented that he has seen many practicing real estate licensees with "one quarter" Mr. Delaney's ethics.

19. Mr. Delaney submitted three additional hearsay letters of reference that echoed the testimony of his two witnesses. The letters are from Mr. Delaney's employer, the bookkeeper at the auto parts store where Mr. Delaney works and from a 25 year friend who works for the local hardware store. The letters were impressive in how personable and descriptive they were of Mr. Delaney's many positive personal and character traits. The letters made it clear Mr. Delaney is held in very high esteem in his community for his good character, and even more so since all have noticed his efforts to stop drinking like he once

did. Each observed in closing their respective testimony that Mr. Delaney would "give the shirt off his back" to help someone in time of need.

LEGAL CONCLUSIONS

1. In application matters such as this, the burden of proof is on the applicant to prove his or her fitness for issuance of the license he or she seeks.²

2. Business and Professions Code section 480 provides in pertinent part:

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.

3. California Code of Regulations, title 10, section 2910, subdivision (a) provides, in pertinent part:

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 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:

[¶]...[¶]

² Business and Professions Code section 485, Government Code section 11504, *Martin v. Alcoholic Beverage Appeals Board* (1950) 52 Cal.2d 259, 265.

(10) Conduct which demonstrates a pattern of repeated and willful disregard of law.

[¶]...[¶]

(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 of consumption of alcohol or drugs.

4. As set forth in Factual Findings 4-12, Mr. Delaney has been convicted of three driving under the influence violations between 1988 and 2000. He was convicted of a fourth misdemeanor offense in 1994 that, in Mr. Delaney's words, would not have occurred, had he not been intoxicated. The convictions reveal an overall pattern of disregard of the law, within the meaning of section 2910, subdivision (a)(10), and multiple convictions involving alcohol and driving, within the meaning of section 2910, subdivision (11), and are therefore substantially related to the qualifications, functions and duties of a real estate salesperson licensee, as set forth in Factual Finding 13. Therefore, legal cause exists within the meaning of section 480 for the Department to refuse to issue Mr. Delaney a real estate salesperson license.

5. 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, 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.

[¶]...[¶]

6. When a criminal conviction does not necessarily involve moral turpitude, proof of specific facts underlying the conviction may be introduced to establish that the conduct underlying the conviction actually involved moral turpitude.³ California courts have not been hesitant to find repeated driving under the influence convictions, taken together, reflect conduct involving moral turpitude.⁴ The *Forster* court noted that continuing to drive while intoxicated despite the knowledge of the serious risks it imposes upon other drivers is indicative of a "conscious indifference or 'I don't care attitude' concerning the ultimate consequences" to others that is reflective of conduct involving moral turpitude.⁵ Although a single DUI conviction may or may not, in and of itself, constitute a crime involving moral turpitude, respondent's second and third successive DUI convictions, under the circumstances set forth in Factual Findings 4-12, inclusive, demonstrated disregard for the lives of others. The *Griffiths* court observed that licensing agencies are not required to wait until a person who continues to drink and drive actually harms someone before taking action to protect the public, even if the only evidence of drinking is entirely in the licensee's private life.⁶ Mr. Delaney's three driving under the influence convictions reflect moral turpitude, as does his conviction for disturbing the peace, where he irresponsibly discharged his shotgun to scare away men with whom he was having an argument, while he was under the influence of alcohol. Separate legal cause therefore exists within the meaning of Business and Professions Code section 10177, subdivision (b), for the Department to deny the issuance of a real estate salesperson license to Mr. Delaney.

7. Once cause for denial is proved, the applicant must produce persuasive evidence that he or she 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. The Department has enacted a nonexhaustive list of criteria in its Regulations against which to weigh and evaluate an applicant's evidence of rehabilitation.⁷ Mr. Delaney's evidence of rehabilitation and good character was evaluated by the Department's criteria.

³ *Adams v. Commission on Judicial Performance* (1994) 8 Cal.4th 630, 653-654.

⁴ *People v. Forster* (1994) 29 Cal.App.4th 1746, 1757, *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 773.

⁵ *Id.*, citing *People v. Ochoa* (1993) 6 Cal.4th 1199, 1208, and *People v. Mansfield* (1988) 200 Cal.App.3d 82, 87.

⁶ *Griffiths*, at p. 773, citing *In re Kelley* (1990) 52 Cal.3d 487, 495.

⁷ "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.

8. Mr. Delaney's evidence of good character is impressive. His evidence of his character for honesty and trustworthiness in his small town was very persuasive, and he has earned the respect of good men who were willing to come to court to vouch for him. But there is a lingering concern regarding Mr. Delaney's spotty evidence of rehabilitation from his decade long abuse of alcohol. He denied in his Confidential Interview Statement that he has a problem with alcohol. His description of the facts and circumstances leading to the disturbing the peace conviction were inaccurate and omitted many salient details, such as the

(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." California Code of Regulations, title 10, section 2911.

discharge of the shotgun and the fact that he was intoxicated. He continues to drink socially from time to time and has not completed any significant alcohol rehabilitation program. Yet in person, Mr. Delaney was candid to a fault, as he was with the police investigating the disturbing the peace incident. Those who know him best and have a considerable amount to lose if he drinks and drives again uniformly and unreservedly support his application. He is six years past his last conviction and has powerful incentives to stay out from behind the wheel if he has had a drink or two, particularly the potential loss of the towing contract he holds dear. It was also evident that he holds the trust of his employer and the men who took the trouble to make the trip to Sacramento to vouch for him and agreed to supervise him, should he be granted a license. On balance, these positive factors slightly tip the balance toward granting Mr. Delaney a restricted license. The evidence was impressive and leaves little doubt that Mr. Delaney will conduct himself honestly and with integrity toward the money and property of others, and that is the Department's paramount concern in putting its imprimatur on new licensees. Therefore, it would not be contrary to the public interest to grant Mr. Delaney a restricted license, limited to practice under Mr. Garstang as his supervising broker.

ORDER

Amended - See pg. 1 of Decision

The application of Donald Edward Delaney, Jr. to the Department of Real Estate for the issuance of a real estate salesperson license is DENIED. However, the denial is stayed and a conditional and restricted real estate salesperson license shall be issued to Mr. Delaney pursuant to section 10156.5 of the Business and Professions Code, if he makes application therefore 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 Mr. Delaney 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. The Commissioner may, in his or her discretion, summarily suspend the restricted license prior to hearing upon receipt of notice by the Commissioner that respondent has been arrested for any public offense involving alcohol consumption and driving a motor vehicle, or any offense involving alcohol consumption that is substantially related to the qualifications, functions or duties of 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. During the period of issuance of the restricted license, respondent's employment shall be limited to supervising broker Mark Stuart Garstang, as set forth in respondent's application, unless the Department approves another supervising broker in writing in advance of the employment. Respondent shall submit with any application for license under any employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within eighteen (18) months of the issuance of the restricted license under the provisions of section 10153.4 of the Business and Professions Code, submit evidence satisfactory to the Real Estate Commissioner of successful completion, at an accredited institution, of a course in real estate practices, and one of the courses listed in Business and Professions Code 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 present satisfactory evidence of successful completion of these courses, the restricted license shall be automatically suspended effective eighteen (18) months after issuance of the restricted license. The suspension shall not be lifted until respondent has submitted the required evidence of course completion and the Commissioner has given written notice to the respondent of the lifting of the suspension.

DATED: 8-10-06

Stephen J. Smith, by Catherine B. Fink
STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings

1 JAMES L. BEAVER, Counsel (SBN 60543)
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FILED
APR 28 2006

DEPARTMENT OF REAL ESTATE

By 

7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Application of)

) No. H-4464 SAC

11 DONALD EDWARD DELANEY, JR.,)

) STATEMENT OF ISSUES

12 Respondent.)

13
14 The Complainant, Charles W. Koenig, a Deputy Real
15 Estate Commissioner of the State of California, for Statement of
16 Issues against DONALD EDWARD DELANEY, JR. (herein "Respondent"),
17 alleges 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 On or about September 8, 2005, Respondent made
24 application to the Department of Real Estate of the State of
25 California (herein "the Department") for a real estate
26 salesperson license with the knowledge and understanding that,
27 pursuant to the provisions of Section 10153.3 of the Business

1 and Professions Code, any license issued as a result of said
2 application would be subject to the conditions of Section
3 10153.4 of the California Business and Professions Code (herein
4 "the Code").

5 III

6 On or about July, 1988, in the Municipal Court of the
7 State of California, County of Tehama, Respondent was convicted
8 of the crime of Driving Under The Influence Of Alcohol in
9 violation of Vehicle Code Section 23152(a), a misdemeanor and a
10 crime involving moral turpitude which bears a substantial
11 relationship under Section 2910, Title 10, California Code of
12 Regulations (herein "the Regulations"), to the qualifications,
13 functions or duties of a real estate licensee.

14 IV

15 On or about May 17, 1994, in the Municipal Court of
16 the State of California, County of Tehama, Respondent was
17 convicted of the crime of Disturbing The Peace in violation of
18 Penal Code Section 415.2, a misdemeanor and a crime involving
19 moral turpitude which bears a substantial relationship under
20 Section 2910 to the qualifications, functions or duties of a
21 real estate licensee.

22 V

23 On or about May 20, 1996, in the Municipal Court of
24 the State of California, County of Tehama, Respondent was
25 convicted of the crime of Driving With Blood Alcohol Over .08%
26 in violation of Vehicle Code Section 23152(b), a misdemeanor and
27 a crime involving moral turpitude which bears a substantial

1 relationship under Section 2910 to the qualifications, functions
2 or duties of a real estate licensee.

3 VI

4 On or about March 21, 2000, in the Superior Court of
5 the State of California, County of Tehama, Respondent was
6 convicted of the crime of Driving With Blood Alcohol Over .08%
7 in violation of Vehicle Code Section 23152(b), a misdemeanor and
8 a crime involving moral turpitude which bears a substantial
9 relationship under Section 2910 to the qualifications, functions
10 or duties of a real estate licensee.

11 VII

12 Respondent's criminal convictions, as described in
13 Paragraphs III through VI, inclusive, above, constitute cause
14 for denial of Respondent's application for a real estate license
15 under Sections 480(a) and 10177(b) of the California Code.

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

22
23 
24 CHARLES W. KOENIG
Deputy Real Estate Commissioner

25 Dated at Sacramento, California,
26 this 14th day of April, 2006.