

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**  
JUN 15 2007  
DEPARTMENT OF REAL ESTATE  
BY L. Zirin

\* \* \*

In the Matter of the Application of )  
STEVE JAMES MC MULLEN, ) NO. H-4615 SAC  
Respondent. ) OAH NO. N-2007010130

DECISION

The Proposed Decision dated May 18, 2007, 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. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon  
on JUL - 6 2007.

IT IS SO ORDERED

6/13/07  
JEFF DAVI  
Real Estate Commissioner

[Signature]

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

STEVE JAMES MCMULLEN,

Respondent.

Case No. H-4615 SAC

OAH No. N2007010130

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Trevor Skarda, State of California, Office of Administrative Hearings, on April 19, 2007, in Sacramento, California.

Angela L. Cash, Counsel, Department of Real Estate, appeared on behalf of complainant.

C. Breck Jones, Attorney at Law, represented respondent Steve James McMullen.

The case was submitted for decision on April 19, 2007.

**FACTUAL FINDINGS**

1. Complainant Charles W. Koenig is a Deputy Real Estate Commissioner of the State of California. He made the Statement of Issues in his official capacity.

2. Steve James McMullen (respondent) applied to the Department of Real Estate (Department) for a real estate salesperson's license on or about June 5, 2006.

*Respondent's Convictions*

3. On or about May 7, 1990, in Sacramento County Superior Court, respondent was convicted on a plea of nolo contendere of violating Penal Code section 484, petty theft, a misdemeanor.

Respondent was sentenced to two days in jail.

Respondent could not recall his arrest and conviction for petty theft. According to court records, respondent was arrested on April 11, 1990, for petty theft.

4. On or about October 22, 1992, in Marin County Superior Court, respondent was convicted on a plea of guilty of violating Vehicle Code section 23152, subdivision (a), driving under the influence, a misdemeanor.

Respondent was placed on informal probation for a period of three years and his license was restricted for 90 days. Respondent was also ordered to pay fines and costs, and to attend a first-offender/post-conviction drinking driver program.

The circumstances of respondent's conviction for driving under the influence were that, on or about May 14, 1992, respondent was arrested by a California Highway Patrolman for driving under the influence of alcohol.

5. Respondent's probation was revoked for the conviction described in Fact Finding 4, and a bench warrant was issued on March 11, 1993, because respondent failed to pay his court-ordered fines. On February 3, 2004, the court recalled the bench warrant and reinstated the original terms and conditions of respondent's sentence.

6. On or about May 20, 1996, in Sacramento County Superior Court, respondent was convicted of violating Vehicle Code section 23152, subdivision (a), driving under the influence with one prior, a misdemeanor.

Respondent was sentenced to 180 days in jail. Imposition of the sentence was suspended, and respondent was placed on informal probation for four years. He was also ordered to pay fines, costs and to serve 10 days in jail. Finally, respondent's license was restricted for 12 months and he was required to attend a drinking driver program designed for individuals with multiple convictions.

The circumstances of respondent's conviction were that on or about April 3, 2006, respondent was arrested for driving a vehicle under the influence of alcohol.

7. On or about May 18, 2000, in Sacramento County Superior Court, respondent was convicted on a plea of nolo contendere of violating Vehicle Code section 23152, subdivision (a), driving under the influence with two priors, a misdemeanor.

Respondent was sentenced to 180 days in jail. Imposition of the sentence was suspended, and respondent was placed on informal probation for four years. He was also ordered to pay fines and costs, and to serve 10 days in jail. Additionally, respondent's license was suspended for 18 months and he was required to attend another drinking driver program for individuals with multiple offenses, and to attend eight alcoholics anonymous (AA) meetings.

The circumstances of respondent's conviction were that on or about July 21, 1999, respondent was driving a vehicle under the influence of alcohol.

8. On or about December 5, 2003, in Placer County Superior Court, respondent was convicted on a plea of nolo contendere of violating Vehicle Code section 2800.2, subdivision (a), evading an officer, a felony.

The circumstances of respondent's conviction were that on or about July 7, 2003, while respondent was still on probation for his May 18, 2000, conviction, a Roseville police officer observed respondent weaving in his lane on a motorcycle. The officer attempted to stop respondent, and respondent accelerated. The pursuit continued into a residential area at high speeds. Respondent drove in a reckless manner. Respondent was eventually stopped on his motorcycle and ran away. He was apprehended by a canine officer. Respondent fled because his license was suspended and he had been drinking alcohol.

*Respondent's application*

9. The real estate application contained the following statements:

Carefully read and provide detailed answers to questions #24-26. You must provide a *yes* or *no* response to all questions.

"Convicted" as used in Question 25 includes a verdict of guilty by judge or jury, a plea of guilty or of nolo contendere, or a forfeiture of bail in municipal, superior or federal court. All convictions must be disclosed whether or not the plea of verdict was set aside, the conviction against you was dismissed, or expunged or if you have been pardoned. Convictions occurring while you were a minor must be disclosed unless the record of conviction has been sealed under Section 1203.45 of the California Penal Code or Section 781 of the California Welfare and Institutions Code.

9. Question 25 asked:

HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE.  
[Capitalization in the original.]

10. Respondent failed to disclose his 1990, 1992 and 1996 convictions in his application.

11. Respondent was subsequently required by the Department to complete a conviction detail report. Respondent explained in the report dated November 13, 2006 that he did not disclose his 1990 theft conviction because he was not aware that it was on his record. He explained that he failed to disclose his 1996 conviction for driving under the influence because he was "under the impression" that he had disclosed this conviction. Respondent again failed to disclose his 1992 conviction for driving under the influence in the conviction detail report. Respondent subsequently disclosed his 1992 conviction in another conviction detail report and explained that he "did not fully understand to disclose conviction past 10 years ... made the assumption."

*Respondent's rehabilitation*

12. Respondent has not been arrested or charged with any crimes since his last conviction in 2003. He has successfully completed the terms of that probation.

13. Respondent stopped drinking alcohol in August 2006.

14. Until recently, respondent has worked as a chef. He is a graduate of the California Culinary Academy in San Francisco, California. Respondent left the culinary industry because he is an alcoholic and believes there is wide-spread alcohol and drug abuse in that industry. Respondent has worked at Lyons Realty since August 2006 as an assistant.

15. Respondent is not married. He has a two-year old child.

16. Respondent has been attending weekly counseling sessions since late December 2006. His counselor is Michael A. Streit. Mr. Streit testified that respondent is making progress. However, as late as March 2007, respondent was still being deceptive during counseling sessions, according to Mr. Streit. Respondent lied to the Department about his first three convictions because he "thought he could get away with it," and that this behavior was consistent with a practicing alcoholic, according to Mr. Streit. Mr. Streit believes that respondent will likely drink alcohol again if he does not continue to seek help. Respondent has only recently begun to attend AA meetings. According to Mr. Streit, respondent will be a "new-bee" in the AA process for about one year.

17. Several character witnesses testified on behalf of respondent. The consensus of the character witnesses was that respondent's attitude began to improve in November and December of 2006.

One of respondent's character witnesses was Michael Patrick Lyon. Mr. Lyon is the owner of the largest independent real estate company in Northern California, and a friend of respondent's mother. He testified about his personal experiences with alcoholics and Lyon's strict policies regarding alcohol use and abuse. Mr. Lyon explained that, if respondent is granted a restricted license, Lyon would employ him as a real estate agent, subject to strict

terms and conditions related to respondent's ongoing treatment for alcoholism. Respondent would have to attend weekly AA meetings. Respondent would have to continue to see Mr. Streit on a weekly basis and to allow Mr. Streit to notify Lyon directly if respondent missed a counseling session or if he started drinking again. If respondent failed to meet any of those conditions, Mr. Lyon would immediately terminate his employment.

18. Respondent has begun to change his attitude from that which existed at the time of his numerous crimes. As discussed above, respondent recently started treatment for his alcoholism. Respondent testified that he has changed both his attitude and life because of his two-year old child. He does not want his child to be exposed to his alcoholism. Respondent was forthright in his testimony about his criminal history, and appeared to sincerely regret his criminal past.

### LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivision (a), provides that a real estate license may be denied to an applicant who has attempted to procure a real estate license by misrepresentation or by "making any material misstatement of fact in an application ..."

2. The Department established that respondent made a material misstatement of fact in his application. Respondent failed to disclose three of his conviction on the application. His explanation regarding his nondisclosures was not credible; the instruction on the application was neither vague nor ambiguous.

3. Respondent's material misstatement of facts, therefore, establish cause to deny respondent's license application under Business and Professions Code section 10177, subdivision (a).

4. Business and Professions Code section 10177, subdivision (b), provides that a real estate license may be denied to an applicant who has been convicted of a felony or a crime involving moral turpitude.<sup>1</sup> "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

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<sup>1</sup> Business and Professions Code section 10177, in relevant part, provides:

The commissioner ... may deny the issuance of a license to an applicant, who 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.

rule of right and duty between man and man.” (*People v. Mansfield* (1988) 200 Cal.App.3d 82, 87, citations omitted).

5. Respondent’s conviction for evading an officer was a felony.

6. Petty theft is a crime involving moral turpitude. (*In re Rothrock* (1944) 25 Cal.2d 588.)

7. Respondent’s second and third convictions for driving under the influence were crimes involving moral turpitude because respondent showed an inability or unwillingness to obey the legal prohibition against drinking and driving. In *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, the court found that, following the California Supreme Court’s decision in *In re Kelley* (1990) 52 Cal. 3d 487, multiple DUI convictions may be considered as evidence of unprofessional conduct by a physician and subject him or her to discipline by the licensing agency, even if the conduct had not yet caused actual harm to the public.

8. In addition to establishing that respondent was convicted a misdemeanor involving moral turpitude or a felony, complainant must also establish that respondent’s convictions were substantially related to the qualifications, functions or duties of a real estate licensee in accordance with Business and Professions Code section 480.<sup>2</sup> (*Petropoulos v. Department of Real Estate* (2006) 142 Cal. App. 4th 554, 564-7.) In California Code of Regulations, title 10, section 2910, subdivision (a), the Department has set forth criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. In relevant part, section 2910, subdivision (a) provides that a crime will be deemed to satisfy the requirements of substantial relationship when it involves:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

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<sup>2</sup> Business and Professions Code section 480, in relevant part, provides:

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

(1) Been convicted of a crime.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

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.

[¶]...[¶]

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

[¶]...[¶]

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

[¶]...[¶]

(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 or consumption of alcohol or drugs.

9. Pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(1), (4) and (8), respondent's conviction for theft bears a substantial relationship to the qualifications, functions and duties of a real estate licensee.

10. Pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(10) and (11), respondent's felony conviction for evading arrest and his second and third driving under the influence convictions all bear a substantial relationship to the qualifications, functions and duties of a real estate licensee. Respondent's numerous alcohol-related convictions from 1992 through 2003 constitute a pattern of willful and repeated disregard for the law. All three convictions involve the consumption of alcohol and driving.

11. Respondent's convictions, therefore, establish cause to deny respondent's license application under Business and Professions Code section 10177, subdivision (b).

12. California Code of Regulations, title 10, section 2911 sets forth criteria for determining whether an applicant who has been convicted of a crime has been 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).

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



13. Respondent has shown rehabilitation consistent with some of the factors set forth in section 2911. Respondent has a relatively stable family life; has quit alcohol, and is involved in an ongoing treatment program for his alcoholism. He has surrounded himself with individuals at Lyon Realty who support his rehabilitation efforts. Respondent changed jobs to stay away from alcohol.

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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.

14. Respondent has not met other rehabilitation factors. It has been less than four years since respondent was convicted of a serious felony, and during much of that period, respondent was on formal probation. Regarding the time respondent was on formal probation, the court in *In Re Gossage* (2000) 23 Cal.4th 1080, 1099, wrote:

Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a bar applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole.

Thus, respondent's actions while on probation are afforded little weight in determining whether he has rehabilitated himself and whether he presents a danger to the public welfare if licensed as a real estate sales person.

15. Moreover, respondent only recently stopped consuming alcohol and started counseling. While respondent is to be commended for his recent efforts, a longer period of abstinence and counseling is necessary to protect the public, primarily because of respondent's decade of criminal activity directly related to his alcohol abuse. Additionally, respondent has been through court-ordered alcohol offender programs on multiple occasions, and he has previously attended AA meetings.

16. Particularly troubling was respondent's failure to disclose all of his criminal convictions on his application and in his conviction detail reports.

17. Considering all of the above, respondent has not shown that he has been sufficiently rehabilitated. It would be contrary to the public interest and welfare to issue respondent a real estate license, even on a restricted basis, at this time.

#### ORDER

The application of respondent STEVE JAMES MCMULLEN for a real estate salesperson license is DENIED.

DATED: May 18, 2007



TREVOR SKARDA  
Administrative Law Judge  
Office of Administrative Hearings

1 ANGELA L. CASH, Counsel (SBN 230882)  
2 Department of Real Estate  
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4 Sacramento, CA 95818-7007

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FILED  
DEC 12 2006

DEPARTMENT OF REAL ESTATE

*[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Application of )  
12 STEVE JAMES MC MULLEN, ) No. H-4615 SAC  
13 Respondent. ) STATEMENT OF ISSUES  
14 )

15 The Complainant, Charles W. Koenig, a Deputy Real  
16 Estate Commissioner of the State of California, for Statement of  
17 Issues against STEVE JAMES MC MULLEN (herein "Respondent"),  
18 alleges as follows:

19 I

20 Complainant, Charles W. Koenig, a Deputy Real Estate  
21 Commissioner of the State of California, makes this Statement of  
22 Issues in his official capacity.

23 II

24 On or about June 5, 2006, Respondent made application  
25 to the Department of Real Estate of the State of California  
26 (herein "the Department") for a real estate salesperson license  
27 with the knowledge and understanding that, pursuant to the

1 provisions of Section 10153.3 of the Business and Professions  
2 Code, any license issued as a result of said application would  
3 be subject to the conditions of Section 10153.4 of the  
4 California Business and Professions Code (herein "the Code").

5 III

6 In response to Question 25 of said application, to  
7 wit: "Have you ever been convicted of any violation of law?  
8 Convictions expunged under Penal Code Section 1203.4 must be  
9 disclosed. However, you may omit minor traffic citations which  
10 do not constitute a misdemeanor or felony offense", Respondent  
11 concealed and failed to disclose the convictions described in  
12 Paragraphs IV through VI, below.

13 IV

14 On or about May 7, 1990, in the Superior Court of the  
15 State of California, County of Sacramento, Respondent was  
16 convicted of the crime of Petty Theft in violation of Penal Code  
17 Section 484, Case Number 90M05628, a misdemeanor and a crime  
18 involving moral turpitude which bear a substantial relationship  
19 under Section 2910, Title 10, California Code of Regulations  
20 (herein "the Regulations"), to the qualifications, functions or  
21 duties of a real estate licensee.

22 V

23 On or about October 22, 1992, in the Superior Court of  
24 the State of California, County of Marin, Respondent was  
25 convicted of the crime of Driving Under the Influence in  
26 violation of Vehicle Code Section 23152(a), a misdemeanor and a  
27 crime involving moral turpitude which bears a substantial

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

3 VI

4 On or about May 20, 1996, in the Superior Court of the  
5 State of California, County of Sacramento, Case Number 96T02367,  
6 Respondent was convicted of the crime of Driving Under the  
7 Influence With One Prior in violation of Vehicle Code Section  
8 23152(a), a misdemeanor and a crime involving moral turpitude  
9 which bears a substantial relationship under Section 2910 of the  
10 Regulations to the qualifications, functions or duties of a real  
11 estate licensee.

12 VII

13 On or about May 18, 2000, in the Superior Court of the  
14 State of California, County of Sacramento, Case Number 99T03872,  
15 Respondent was convicted of the crime of Driving Under the  
16 Influence With Priors in violation of Vehicle Code Section  
17 23152(a), a misdemeanor and a crime involving moral turpitude  
18 which bears a substantial relationship under Section 2910 of the  
19 Regulations to the qualifications, functions or duties of a real  
20 estate licensee.

21 VIII

22 On or about December 5, 2003, in the Superior Court of  
23 the State of California, County of Placer, Case Number 62-37072,  
24 Respondent was convicted of the crime of Evading An Officer,  
25 Willful Disregard in violation of Vehicle Code Section 2800.2(a),  
26 a felony and a crime involving moral turpitude which bears a  
27 substantial relationship under Section 2910 of the Regulations to

1 the qualifications, functions or duties of a real estate  
2 licensee.

3 IX

4 In failing to reveal the convictions described in  
5 Paragraphs IV through VI, above, Respondent procured or attempted  
6 to procure a real estate license by fraud, misrepresentation, or  
7 deceit, or by making a material misstatement of fact in said  
8 application, which constitutes cause for denial of Respondent's  
9 application for a real estate license under Sections 480(c) and  
10 10177(a) of the Code.

11 X

12 Respondent's criminal convictions, as described in  
13 Paragraphs IV through VIII above, constitute cause for denial of  
14 Respondent's application for a real estate license under Sections  
15 480(a) and 10177(b) of the 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 7th day of December, 2006.