

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED

DEC - 7 2007

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DEPARTMENT OF REAL ESTATE

In the Matter of the Application of )  
MICHAEL EUGENE AYERS, )  
Respondent. )

By: K. Santolucito  
NO. H-4798 SAC  
N-2007070200

DECISION

The Proposed Decision dated October 29, 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 December 27, 2007

IT IS SO ORDERED December 7, 2007

JEFF DAVI  
Real Estate Commissioner

By: [Signature]  
JOHN R. LIBERATOR  
Chief Deputy Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

MICHAEL EUGENE AYERS,

Respondent.

Case No. H-4798 SAC

OAH No. N2007070200

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Trevor Skarda, State of California, Office of Administrative Hearings, on October 1, 2007, in Sacramento, California.

Daniel E. Kehew, Counsel, Department of Real Estate, appeared on behalf of complainant.

Michael Eugene Ayers (respondent) represented himself.

The case was submitted for decision on October 1, 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. Respondent applied for a real estate salesperson license on June 29, 2006.

*Respondent's Convictions*

3. On July 31, 1990, in the Superior Court of California, County of Contra Costa respondent was convicted upon his plea of guilty of violating Penal Code sections 459-460.2 (Burglary - Second Degree), commercial.

Respondent was placed on three years probation, the terms of which included 120 days in the county jail, 60 days of which were served through the work furlough program,

and payment of a restitution fine of \$100.00. On November 18, 1991, an order was issued deeming respondent's offense to be a misdemeanor under Penal Code section 17. His probation ended on September 17, 1993. Respondent complied with all the terms and conditions of his probation without incident.

4. The circumstances of respondent's arrest and conviction were that on February 24, 1990, he attempted to enter a Ford Mustang parts store through a roof air duct to take a Mustang grill, valued between \$300 and \$400. Respondent wanted this part for his own vehicle and intended to break into the store to take it when he was spotted by Richmond police.

5. On January 5, 1999, in the Municipal Court of California, County of Alameda, respondent was convicted of carrying a loaded weapon in violation of Penal Code section 12031, subdivision (a), a misdemeanor.

Respondent was placed on two years formal probation, the terms of which included 20 days in county jail.

6. The circumstances of respondent's arrest and conviction were that on December 11, 1998, an Oakland Police officer pulled respondent over while he was driving a car. He searched respondent and found a gun.

7. On July 18, 2000, in the Municipal Court of the California, County of Alameda, respondent was convicted upon his plea of no contest of driving under the influence of alcohol or drugs in violation of Vehicle Code section 23152, subdivision (a), a misdemeanor. Respondent was still on probation for his January 5, 1999 conviction at the time of his arrest.

Respondent was placed on three years of informal probation, the terms of which included two days in jail with credit for one day of time-served. Respondent was also ordered to pay fines and costs.

8. The circumstances of respondent's arrest and conviction were that on February 5, 2000, respondent was arrested for driving under the influence of alcohol. He spent one day in jail and was released.

9. On June 12, 2002, in the Superior Court of California, County of Alameda, respondent was convicted upon his plea of guilty of carrying a loaded weapon with a prior conviction in violation of Penal Code section 12031, subdivision (a), a felony.

Respondent was placed on three years of formal probation, the terms of which included two days in jail. Respondent successfully completed his probation in June 2005 without incident.

10. The circumstances of respondent's arrest and conviction were that on February 1, 2002, while on probation for his earlier conviction for driving under the influence of alcohol, two Oakland, California policemen witnessed respondent urinating in public. The police attempted to arrest respondent and he resisted, striking one of the officers. They eventually apprehended respondent, found a loaded handgun on his person, and arrested him.

*Prior Proceedings*

11. Respondent applied for a real estate salesperson license on June 11, 1992.

12. The Department denied respondent's application in Case No. H-6825 SF, effective February 18, 1993, based on his burglary conviction discussed above in Factual Findings 3 and 4.

13. Respondent re-applied for a real estate salesperson license on April 27, 1993.

14. The Department denied respondent's application in Case No. H-2951 SAC, effective April 11, 1994, based on his burglary conviction discussed above in Factual Findings 3 and 4. However, respondent was granted the right to a conditional-restricted salesperson license.

15. Respondent's conditional-restricted license was suspended on November 14, 1995, for failure to file proof with the Department that he had fulfilled the educational requirements.

*Rehabilitation*

16. Respondent has not been arrested or convicted of a crime since 2002.

17. Respondent has been gainfully employed as a truck driver since June 2001. He owns his own truck and works for Universal Trucking as a subcontractor. He also owns one home and two rental properties.

18. Respondent has a stable family life. He is married and has three children, ages five, nine and thirteen.

19. Respondent no longer associates with the individuals with whom he associated at the time of his most recent criminal activity. He moved out of West Oakland to Elk Grove, California after his last conviction.

20. Respondent submitted several letters which were admitted as administrative hearsay regarding his character. All of the letters attest to his good character. They were all written, however, in 2002, in preparation for his sentencing hearing for his felony conviction for possession of a concealed weapon.

21. Respondent submitted a letter from Roger Vuilleumier, MFCC, dated March 28, 2002. In the letter, Mr. Vuilleumier attributed respondent criminal conduct largely to alcohol abuse and recommended that he be given the minimum sentence for his 2002 conviction for possession of a loaded weapon.

## LEGAL CONCLUSIONS

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

2. Respondent’s conviction for burglary was a felony.

3. Respondent’s first (misdemeanor) conviction for carrying a loaded firearm was a crime involving moral turpitude because it evinced a readiness to do evil.

4. Respondent’s second conviction for carrying a loaded firearm was a felony.

5. Driving under the influence of alcohol, *may* be a crime of moral turpitude. In *In re Kelly* (1990) 52 Cal.3d 487, 494, the court noted that driving under the influence was not a crime evidencing moral turpitude absent some “particular circumstances” surrounding the conviction. In *People v. Forster* (1994) 29 Cal.App.4th 1746, 1757, the Court of Appeal found that, for purposes of impeaching a witness, a felony conviction for violating Vehicle Code section 23175 (driving under the influence with three or more convictions for the same conduct within seven years) constituted a crime of moral turpitude. In particular, *Forster* found that a person with three or more convictions for driving under the influence was presumptively aware of the risk of injury to others, yet ignored the risk by continuing to continue to engage in the conduct. (*Ibid.*)

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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.

Complainant failed to establish that respondent's single conviction for reckless driving was a crime involving moral turpitude. His conduct did not evince a readiness to do evil.

6. In addition to establishing that respondent was convicted of a misdemeanor involving moral turpitude or of 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, 564-67.) 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.

[¶]...[¶]

(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.

7. Pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8), respondent's convictions for carrying a loaded weapon bear a substantial relationship to the qualifications, functions and duties of a real estate licensee. Respondent's convictions,

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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 licentiate 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.

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

8. Pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(1) and (8), respondent's conviction for burglary bears a substantial relationship to the qualifications, functions and duties of a real estate licensee. Respondent's conviction, therefore, establish cause to deny respondent's license application under Business and Professions Code section 10177, subdivision (b).

9. Pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(10), respondent's conviction for burglary and his two convictions for carrying a loaded firearm bear a substantial relationship to the qualifications, functions and duties of a real estate licensee. Respondent's convictions, therefore, establish cause to deny respondent's license application under Business and Professions Code section 10177, subdivision (b).

10. 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 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.

11. Respondent has shown rehabilitation consistent with many of the factors set forth in section 2911. Respondent has a stable family life, and has not been convicted of a crime for five years. He no longer associates with the people with whom he associated during his criminal activity, and has remained gainfully employed.

Respondent has not met other rehabilitation factors. While it has been more than five years since his last conviction, it has been little more than two years since his probation terminated. Additionally, respondent was convicted of a myriad of crimes over a period of 12 years. Given the number of crimes respondent committed over a long period of time, respondent must show additional rehabilitation, and over a longer period of time, to establish that licensure is consistent with the public interest.

12. The above matters having been considered, it would be contrary to the public interest and welfare to issue respondent a real estate salesperson license, even on a restricted basis, at this time.

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(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.

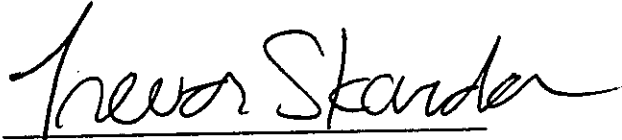
(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.



ORDER

The application of respondent MICHAEL EUGENE AYERS for a real estate salesperson license is DENIED.

DATED: October 29, 2007



TREVOR SKARDA  
Administrative Law Judge  
Office of Administrative Hearings

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FILED  
JUN 21 2007

DEPARTMENT OF REAL ESTATE

By K. Contreras

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

11 \* \* \*

12 In the Matter of the Application of )  
13 MICHAEL EUGENE AYERS, ) H-4798 SAC  
14 Respondent. ) STATEMENT OF ISSUES

15  
16 The Complainant, CHARLES W. KOENIG, a Deputy Real  
17 Estate Commissioner of the State of California, for Statement of  
18 Issues against MICHAEL EUGENE AYERS (hereinafter "Respondent"),  
19 is informed and alleges as follows:

20 I

21 Complainant, CHARLES W. KOENIG, a Deputy Real Estate  
22 Commissioner of the State of California, makes this Statement of  
23 Issues against Respondent in his official capacity.

24 II

25 Respondent made application to the Department of Real  
26 Estate of the State of California for a real estate salesperson  
27 license on or about June 29, 2006, with the knowledge and

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

4 CAUSE OF ACTION

5 III

6 On or about July 31, 1990, in the Superior Court of  
7 the State of California, County of Contra Costa, Respondent was  
8 convicted of Burglary in the Second Degree in violation of Penal  
9 Code Sections 459/460.2, a felony and a crime involving moral  
10 turpitude that bears a substantial relationship under Section  
11 2910, Title 10, California Code of Regulations (hereinafter  
12 "Regulations"), to the qualifications, functions, or duties of a  
13 real estate licensee.

14 IV

15 On or about January 5, 1999, in the Municipal Court  
16 of the State of California, County of Alameda, Respondent was  
17 convicted of Carrying a Loaded Weapon in violation of Penal Code  
18 Section 12031(a), a misdemeanor and a crime involving moral  
19 turpitude that bears a substantial relationship under Section  
20 2910, Title 10, of the Regulations, to the qualifications,  
21 functions, or duties of a real estate licensee.

22 V

23 On or about July 18, 2000, in the Municipal Court of  
24 the State of California, County of Alameda, Respondent was  
25 convicted of Driving Under the Influence of Alcohol and/or Drugs  
26 in violation of Vehicle Code Section 23152(a), a misdemeanor and  
27 a crime involving moral turpitude that bears a substantial

1 relationship under Section 2910, Title 10, of the Regulations,  
2 to the qualifications, functions, or duties of a real estate  
3 licensee.

4 VI

5 On or about June 12, 2002, in the Superior Court of the  
6 State of California, County of Alameda, Respondent was convicted  
7 of Carrying a Loaded Weapon with a Prior Conviction in violation  
8 of Penal Code Section 12031(a), a felony and a crime involving  
9 moral turpitude that bears a substantial relationship under  
10 Section 2910, Title 10, of the Regulations, to the  
11 qualifications, functions, or duties of a real estate licensee.

12 VII

13 Respondent's convictions, described in Paragraphs III,  
14 IV, V, and VI, above, constitute cause for denial of Respondent's  
15 application for a real estate license under Section 10177(b) of  
16 the Code.

17 FIRST PRIOR PROCEEDING

18 VIII

19 Respondent made prior application to the Department  
20 of Real Estate of the State of California for a real estate  
21 salesperson license on or about June 11, 1992.

22 IX

23 Effective on or about February 18, 1993, in Case No.  
24 H-6825 SF, before the State of California Department of Real  
25 Estate, Respondent's 1992 real estate salesperson license  
26 application, described above, was denied pursuant to Sections  
27 480(a) and 10177(b) of the Code. The grounds for denial were

1 based upon Respondent's 1990 Burglary conviction, described in  
2 Paragraph III, above.

3 SECOND PRIOR PROCEEDING

4 XI

5 Respondent made a second prior application to the  
6 Department of Real Estate of the State of California for a real  
7 estate salesperson license on or about April 27, 1993.

8 XII

9 Effective on or about April 11, 1994, in Case No.  
10 H-2951 SAC before the State of California Department of Real  
11 Estate, Respondent's 1993 real estate salesperson license  
12 application, described above, was denied pursuant to Sections  
13 480(a) and 10177(b) of the Code. The grounds for denial were  
14 based upon Respondent's 1990 Burglary conviction, described in  
15 Paragraph III, above. Respondent was granted a right to a  
16 restricted real estate salesperson license.

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

23   
24 CHARLES W. KOENIG  
25 Deputy Real Estate Commissioner

26 Dated at Sacramento, California  
27 this 29<sup>th</sup> day of May, 2007.