

FILED

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

OCT 12 2009

DEPARTMENT OF REAL ESTATE

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In the Matter of the Application of )  
DENISE RENEE ATTEBERY, )  
Respondent. )

NO. H-5233 SAC

OAH NO. 2009070401

By *L. Henry*

DECISION

The Proposed Decision dated August 29, 2009, 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.

Pursuant to Section 11517(c)(2)(C) of the Government Code:

FACTUAL FINDINGS #1, on page 2 of the Proposed Decision, is revised to read:

“Tricia D. Sommers, acting for Joe Carrillo, a Deputy Real Estate Commissioner, made the allegations contained in the Statement of Issues in her official capacity as a Deputy Real Estate Commissioner, Department of Real Estate (The Department), State of California.”

The first paragraph of the Order of the Proposed Decision, on page 10, is revised to read:

“The application for a real estate salesperson license is denied, but the right to a conditional and 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.”

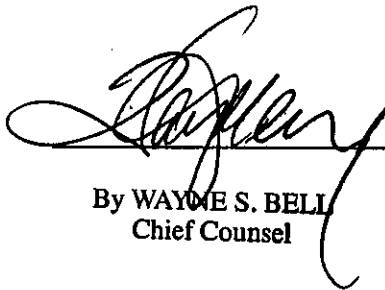
This Decision shall become effective at 12 o'clock noon on

NOV 02 2009

IT IS SO ORDERED

10/8/2009

JEFF DAVI  
Real Estate Commissioner



By WAYNE S. BELL  
Chief Counsel

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In The Matter of the Application of:

Case No. H-5233 SAC

DENISE RENEE ATTEBERY,

OAH No. 2009070401

Applicant.

**PROPOSED DECISION**

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on August 4, 2009.

Kenneth C. Espell, Counsel, represented the Department of Real Estate.

Denise Renee Attebery appeared and represented herself.

Evidence was taken and the parties agreed to hold the record open for the receipt of additional documents from the Sacramento Superior Court and a potential broker's letter for applicant Ms. Attebery. Both parties submitted additional documents from the Superior Court on August 18, 2009, reflecting that certain records of convictions suffered by Ms. Attebery and post-judgment relief she obtained from those convictions had been purged from the Superior Court's permanent records. Ms. Attebery also submitted a broker's letter and a handwritten declaration signed under penalty of perjury explaining the problem with the records at the Superior Court and her efforts to obtain those documents.

Counsel for the Department also submitted written comment in the form of a Written Evidence Brief, setting forth his own efforts to obtain the certified copies of the additional records and his arguments on the state of the evidence following discovery that the originals had been purged.

On August 20, 2009, applicant Ms. Attebery submitted an additional unsigned declaration. The declaration seeks more time to try to obtain the Superior Court records, and offers what amounts to additional testimony and argument in a supplemental paragraph. Counsel for the Department submitted a written opposition dated the same day, August 20, in which he opposed granting of any additional time to look for records, and the additional testimony and argument. He contends the presentation of additional testimony regarding the facts and Ms. Attebery's rehabilitation is untimely, was known at the time of the hearing, and offering it now precludes him from being able to cross examine Ms. Attebery on the

contents. Ms. Attebery followed with additional letters on August 24, 2009 and August 26, 2009. Counsel for the Department submitted written objections on August 26, 2009.

Ms. Attebery submitted a second letter and a facsimile copy of an uncertified Department of Justice Criminal Investigation and Information (CII) print out later in the day on August 26, 2009. The print out confirms the existence of the Penal Code section 1203.4 Order Ms. Attebery contends was issued by the Superior Court as she testified during the hearing. Ms. Attebery added two sentences of additional argument to the letter.

The ALJ ruled in writing on August 27, 2009 regarding the additional submissions. The additional declaration and documents submitted by both parties on August 10, 2009, in accordance with the ALJ's Order at the close of the hearing on August 4, 2009, were admitted and were made part of the record. The CII print out is admitted as hearsay only. The remainder of the additional arguments, documents and written testimony were excluded.

The record was closed and the matter was submitted on August 27, 2009.

## FACTUAL FINDINGS

1. Tricia D. <sup>Sommers</sup>~~Sommers~~, acting for Joe Carillo, a Deputy Real Estate Commissioner, made the allegations contained in the Statement of Issues in her official capacity as a Deputy Real Estate Commissioner, Department of Real Estate (The Department), State of California. The Statement of Issues was filed June 26, 2009. Denise R. Attebery 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.<sup>1</sup>

2. Ms. Attebery filed an application for a real estate salesperson's license with the Department on March 27, 2009.

3. Ms. Attebery was convicted upon her plea of guilty on July 6, 1988, in the Superior Court, County of Sacramento, of a misdemeanor violation of Penal Code section 484, subdivision (a), petty theft. Ms. Attebery was sentenced to serve one year on informal, unsupervised court probation, the terms of which included payment of a fine and penalties. The original documents from the Superior Court evidencing the conviction have been purged and cannot be produced. Ms. Attebery candidly acknowledged the conviction and the circumstances leading to it. What little evidence that still exists regarding this conviction reveals the conviction was for misconduct that occurred when Ms. Attebery was a juvenile. The conviction occurred less than four months after Ms. Attebery's 18<sup>th</sup> birthday. Buried within the police report the Department offered in evidence is a page that reflects that the matter against Ms. Attebery was disposed by the issuance of a Juvenile Citation. The fact that these charges were disposed of through the juvenile court explains why the considerable

<sup>1</sup> Business and Professions Code sections 480, 10152 and 10156.

efforts of Ms. Attebery and the Department's counsel could find no remaining record of the conviction after the record was purged.

4. The events leading to Ms. Attebery's July 1988 petty theft conviction are only known because Ms. Attebery disclosed them on her application and described the facts in her written statements made to the Department in her Conviction Detail Report. She also wrote a supplement to this report and testified regarding the facts during the evidentiary hearing. Ms. Attebery was employed by Payless Drugs as a cashier. She took small amounts of cash from her till from time to time over an extended period of time. She attributed her conduct to being very young and naive, as well as being subject to the influence of a "horrible" boyfriend who encouraged her to steal. She immediately admitted the conduct when an investigation was opened. She is now quite embarrassed and humiliated by her conduct.

5. Ms. Attebery was convicted upon her plea of guilty on June 24, 1991, in the Superior Court, County of Sacramento, of a misdemeanor violation of Penal Code section 11365, frequenting a place where illegal narcotics were being used. Ms. Attebery was sentenced to serve three years on informal, unsupervised court probation, 28 days in the county jail, and to pay a fine and penalties. She was required to serve the jail term because she failed to complete her community service obligation, which was the original sentence requirement. Although the court records regarding Ms. Attebery's guilty plea were presented, the disposition documents were not part of the package of the court records produced. The only disposition documents in the package are those for Ms. Attebery's boyfriend and codefendant, who pled guilty to a felony count of possession of methamphetamine for sale.

6. The incident that led to Ms. Attebery's June 1991 conviction for being in a place where illegal drugs were being used stemmed from incidents that occurred in the spring of 1990 through the middle of May 1991, when she and her boyfriend were arrested after a lengthy investigation. Ms. Attebery had rented a storage room in a self-storage facility. She gave access to the facility to her boyfriend, who was a drug dealer. A search warrant was served on the basis of an affidavit made by an informant that the boyfriend was dealing drugs and using the storage room to keep drugs, ingredients for drug manufacture and stolen property. The search found quantities of crack (rock or enriched cocaine), methamphetamine, ephedrine (used in the manufacture of methamphetamine) and a considerable quantity of electronics, such as stereo components and cellular phones suspected to be stolen property. Two days later, Ms. Attebery was arrested with her boyfriend when she was riding in her boyfriend's car. An additional quantity of methamphetamine was found in the glove compartment of the car just above where Ms. Attebery was sitting.

7. Ms. Attebery significantly downplayed the circumstances that led to her arrest and conviction in June 1991 in her testimony and in her disclosures to the Department in her Conviction Details Report. Ms. Attebery denied any knowledge that her boyfriend was using the storage room to store drugs and denied knowing that there were drugs in the glove compartment of the car when she and her boyfriend were stopped and arrested. She testified

that she was arrested and convicted because she would not tell the police the drugs in her storage room belonged to her boyfriend. She wrote in her Conviction Details Report that after finding and figuring things out, she learned that life could be better if she had better friends.

8. Ms. Attebery's testimony regarding her conviction for being in a place where illegal drugs were being used, and her statements regarding the circumstances leading to this conviction on her Conviction Details Report lacks persuasiveness. Ms. Attebery told the police at the time that she had not used the storage room herself, and that she rented it on the possibility that she might want to move out of the home where she lived with her parents. She had been dating this seriously criminally oriented boyfriend for about a year, and at one time was staying in his home to watch it for him while he was away. When the police contacted her parents and asked to speak to her about her storage room and how it was being used, she tried to flee and had to be physically restrained by her father until the police could come and question her. Ms. Attebery was not known at the time for being truthful and honest, and, in the words of her father, was "partying and running with the wrong crowd." There was some evidence in the police report that Ms. Attebery rented the storage room in her name so her boyfriend's name could not be readily tied to the room. Under the circumstances proved, it strains credulity beyond the breaking point to believe that she did not know her boyfriend was using drugs, stored drugs and other contraband in the storage room, or that there were drugs in the car when she was arrested.

9. Ms. Attebery's testimony that the 1991 misdemeanor conviction for being in a place where illegal drugs are being used was expunged pursuant to Penal Code section 1203.4 was not disputed. Unfortunately the official court records of this action cannot be located to confirm the action. Nevertheless, there is no reason to question the veracity of the claim that the sentencing court took this action. It cannot be determined when the expungement took place, other than the fact that it occurred before the year 2000.

10. Ms. Attebery was convicted upon her plea of guilty on November 25, 2003, in the Superior Court, County of Sacramento, of a misdemeanor violation of Vehicle Code section 23152, subdivision (b), driving with a blood alcohol level of .08 percent or more by volume. Ms. Attebery was sentenced to serve three years on informal, unsupervised probation, the terms of which included fines and penalties totaling \$480.00, a restriction on her driver's license and to enroll in and successfully complete a first offender drinking driver program. She was also ordered not to drive after consuming any alcohol, or to drive with any measurable amount of alcohol in her system. Ms. Attebery successfully completed her probation on November 25, 2006.

11. The facts leading to Ms. Attebery's 2003 driving under the influence conviction occurred on September 30, 2003. Ms. Attebery described the events as "this horrible evening." She attended a friend's birthday party and had drinks. She tried to drive herself home and got into an accident. Her blood alcohol level at the time she was tested was a .14 percent by volume. She blamed this conviction on having bad friends and described her need to weed out the good from the bad. She learned in the classes she was ordered to

take that drinking and driving is not worth possibly killing someone or getting killed herself. She found the incident quite frightening.

12. Ms. Attebery's conduct leading to her two convictions (the petty theft conviction as a juvenile is not considered here) is substantially related to the qualifications, functions and duties of a real estate salesperson licensee. Ms. Attebery's conduct reveals exceptionally poor judgment, responsibility for which she quickly off-loaded upon her "poor choices of friends." In her 1991 conviction, she misused real estate in assisting and facilitating her boyfriend's drug dealing behavior, renting the storage room and permitting him to use it so it would be more difficult for the police to connect him to the room and his use of it to store and deal drugs. Ordinarily a driving under the influence conviction, by itself, does not necessarily reflect conduct substantially related to the qualifications, functions and duties of a real estate licensee. But modern real estate professionals in California drive vehicles extensively in their work and frequently transport clients. The facts reveal Ms. Attebery was more intoxicated than her .14 blood alcohol level showed, as the test sample was obtained a considerable period past her last drink. She got behind the wheel and drove at a level of intoxication approximately twice the legal limit. She got into an accident and appreciates now the risk she exposed herself and others to when she drove drunk. The problem is, that appreciation of risk should have been obvious to her before the incident. Her behavior demonstrated shows exceptionally poor judgment and a disregard of the safety of others that were forced to share the road with her that evening. She exhibited this exceptionally poor judgment while engaged in an activity that is commonplace in modern real estate practice.

13. Ms. Attebery presented significant evidence of rehabilitation and a changed attitude and approach to her life. In 1997 she was confirmed as a member of the Catholic Church and repented of her sins. She has become involved in charitable activities through her church. In 1995, she realized she needed a career. She finished a college degree in business shortly thereafter. She has made a commitment to live a healthy, active, productive life for herself. She obtained an Order of the Superior Court pursuant to penal Code section 1203.4, expunging her 1991 conviction for being in a place where narcotics were being used, in approximately 1996. She has changed her friends and associates and only spends time with persons who are honest, have integrity and are good citizens. She testified, "I no longer live my past life, I constantly watch my steps." She presented herself as genuinely contrite for the conduct that led not only to her convictions but for a rebellious lifestyle she followed when she was younger.

14. Ms. Attebery became licensed as a Cosmetologist 12 years ago and has been working in this industry ever since. She is an independent contractor at Modern Image Salon, where the owner trusts her with the keys to the door and alarm. Her employer wrote her a reference letter, describing Ms. Attebery as diligent, honest and trustworthy.

15. Ms. Attebery seeks the license to improve her income earning potential and expand her business opportunities. She testified cosmetology is a good career but is very limited in income potential. In her document submission after the hearing, she presented a

letter from Edgar Randolph, a licensed broker willing to hire her with his firm, First American Realty, if she obtains her license.

16. Ms. Attebery called two witnesses to testify in support of her contention that she is a person of such good character that she should be granted an unrestricted license, her father and an elderly gentleman she cares for in his home. She also presented additional letters of reference attesting to her good character. Ms. Attebery's father confirmed the character and lifestyle changes in his daughter from the time she was running with the wrong crowd and got herself into trouble with the law. The elderly gentleman described Ms. Attebery's gentle and loving care for his now deceased wife and himself over the past six months. She cooks, cleans and keeps house for him, as well as provides him some company.

### 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.<sup>2</sup>

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.

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



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:

[¶]...[¶]

(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.

[¶]...[¶]

4. As set forth in the Factual Findings, Ms. Attebery has been convicted of two criminal offenses. Although the convictions themselves do not necessarily reveal an overall pattern of disregard of the law, within The meaning of section 2910, subdivision (a) (10), the conduct underlying the 1991 conviction reveals Ms. Attebery lived a lengthy period of time before and leading up to that conviction that did reflect a pattern of disregard for the law. Her 2003 driving under the influence conviction, as set forth in the Findings, reveals exceptionally poor judgment in a setting where real estate professionals can find themselves almost daily. Thus, Ms. Attebery's convictions, and the conduct leading up to them, are substantially related to the qualifications, functions and duties of a real estate salesperson licensee. Therefore, legal cause exists within the meaning of section 480 for the Department to refuse to issue Ms. Attebery a real estate salesperson license.

5. Once cause for denial of issuance of the license is proved, in order to overcome the denial, 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.<sup>3</sup> Ms. Attebery's evidence of rehabilitation and good character was evaluated by the Department's criteria. Ms. Attebery meets or exceeds many of the Department's criteria.

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<sup>3</sup> "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.

6. Ms. Attebery's evidence of rehabilitation was substantial and worthy of praise. She is a zealous and persuasive advocate for herself and the changes she has made in her life, almost all of which are positive and impressive. Her claim that she is now a good, responsible citizen of honesty, integrity and trustworthiness has substantial support in the record. She produced persuasive evidence of her character for honesty and trustworthiness in her work and social communities, and she has earned back the respect of her father, who was one of the people most harmed by her previously rebellious and lawless lifestyle. As counsel for the Department observed in his closing argument, an outright denial of the license Ms. Attebery seeks here is not warranted, upon the strength of her presentation of herself and her evidence of rehabilitation. The dispute here centers upon Ms. Attebery's contention that she qualifies for and is suitable for issuance of an unrestricted license, and the Department's contention that she is not. Based upon an assessment of all the evidence, it is the Department's contention that has the better evidentiary support.

7. Ms. Attebery was largely candid in her presentation, with two notable exceptions. Ms. Attebery's denial of any knowledge of how her storage shed was being used by her drug dealing, criminally oriented boyfriend of more than one year was not credible, then in her statements to the police, or now. Ms. Attebery may deeply want to forget that dark part of her past and her unsavory year long association with this boyfriend for more than a year, who the police report reveals was a significant drug dealer and thief, and likely still finds it humiliating and embarrassing to discuss it. But it does not serve her well here to fail to completely come forward with all the facts about her involvement in that lifestyle when recounting her past. It does not enhance her claim to honesty, credibility and trustworthiness to continue to claim that she had no knowledge of his activities or that she had no idea she was at least passively furthering his criminal enterprise by renting the storage room and giving him access to it to cover and facilitate his criminality. Those matters are adjudicated, and it serves not her claim of rehabilitation to continue to deny her knowledge and involvement in his criminality, even if she was not actively involved. Passive facilitation is still involvement.

8. Second, her road to rehabilitation, starting with her deep religious commitment in 1997 and many acts consistent with those changes after that, hit a rather significant bump in the road in 2003 with her driving under the influence conviction. Again, Ms. Attebery gave the distinct impression of a less than through disclosure of all the underlying facts, coupled with what appeared to be a pattern of blaming poor friends for her behavior. She avoided discussing the obvious conflict between her claims to have made lasting and significant changes in her character and lifestyle in 1996 and 1997 with driving very intoxicated in 2003. She was very drunk, not just mildly intoxicated, and drove her vehicle

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(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.

away from a party, with a predictable outcome. In sum, she was less than candid and forthright about all the surrounding facts regarding the conduct leading to her convictions.

9. Ms. Attebery chose instead to focus her presentation on her good works and rehabilitation, presenting the positives. That is fine, but it neglects one of the most important elements of rehabilitation, that of full and unqualified disclosure of all the surrounding facts and circumstances and acknowledgement and acceptance of full and unqualified responsibility for one's own acts. Therefore, at this time, it would be contrary to the public interest to issue Ms. Attebery an unrestricted real estate salesperson's license, but it would not be contrary to the public interest to grant Ms. Attebery a restricted license.

#### ORDER

The application of Denise Renee Attebery 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 Ms. Attebery pursuant to section 10156.5 of the Business and Professions Code, if she 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 Ms. Attebery 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 Ms. Attebery may be suspended prior to hearing by Order of The Real Estate Commissioner in the event of her conviction or plea of nolo contendere to a crime which is substantially related to her fitness or capacity as a real estate licensee. The Commissioner may, in his or her discretion, summarily suspend the restricted license prior to shearing upon receipt of notice by the Commissioner that Ms. Attebery 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 Ms. Attebery may be suspended prior to hearing by Order of The Real Estate Commissioner on evidence satisfactory to the Commissioner that Ms. Attebery 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. Ms. Attebery 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 two (2) years have elapsed from the effective date of this Decision.


4. Ms. Attebery 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.

DATED: August 29, 2009

  
STEPHEN J. SMITH  
Administrative Law Judge  
Office of Administrative Hearings

1 KENNETH C. ESPELL, Counsel (SBN 178757)  
2 Department of Real Estate  
3 P. O. Box 187007  
Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789  
5 -or- (916) 227-0868 (Direct)

FILED

JUN 25 2009

DEPARTMENT OF REAL ESTATE

By L. Henry

7 BEFORE THE DEPARTMENT OF REAL ESTATE  
8 STATE OF CALIFORNIA

9 \* \* \*

10 In the Matter of the Application of )

) NO. H- 5233 SAC

11 )  
12 DENISE R. ATTEBERY, )

) STATEMENT OF ISSUES

13 )  
14 Respondent. )  
15 )

16 The Complainant, JOE CARRILLO, in his official capacity as a Deputy Real  
17 Estate Commissioner of the State of California, for this Statement of Issues against DENISE R.  
18 ATTEBERY, (hereinafter "Respondent"), is informed and alleges as follows:

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20 On or about March 27, 2009, Respondent made application to the Department of  
21 Real Estate of the State of California for a real estate salesperson license.

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23 On or about July 6, 1988, in the Sacramento County Superior Court, State of  
24 California, case number 88M08732, Respondent was convicted of violating Section 484 of the  
25 California Penal Code (Petty Theft), a misdemeanor which bears a substantial relationship  
26 under Section 2910, Title 10, California Code of Regulations (the "Regulations"), to the  
27 qualifications, functions, or duties of a real estate licensee.

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On or about June 24, 1991, in the Sacramento County Superior Court, State of California, case number CR99246, Respondent was convicted of violating Section 11365 of the California Health and Safety Code (Aiding and Abetting the Use of a Controlled Substance While Present at a Drug House), a misdemeanor which bears a substantial relationship under Section 2910 of the Regulations to the qualifications, functions, or duties of a real estate licensee.

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On or about November 26, 2003, in the Sacramento County Superior Court, State of California, case number 3T05861, Respondent was convicted of violating Section 23152(b) of the California Vehicle Code (DUI with a BAL of 0.08% or Greater), a misdemeanor which bears a substantial relationship under Section 2910 of the Regulations to the qualifications, functions, or duties of a real estate licensee.

5

The crimes of which Respondent was convicted, as alleged in paragraphs 2 through 4 above, constitute cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

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

  
JOE CARRILLO  
Deputy Real Estate Commissioner

Dated at Sacramento, California,  
this 18<sup>th</sup> day of June, 2009.