

SEP 05 2006

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STATE OF CALIFORNIA

* * *

No. H-8251 SF

Respondent .

I have considered Respondent's Petition and the evidence submitted in support thereof including Respondent's

1 record as a restricted licensee. Respondent has demonstrated to
2 my satisfaction that Respondent meets the requirements of law for
3 the issuance to Respondent of an unrestricted real estate
4 salesperson license and that it would not be against the public
5 interest to issue said license to Respondent.

6 NOW, THEREFORE, IT IS ORDERED that Respondent's
7 Petition for removal of restrictions is granted and that a real
8 estate salesperson license be issued to Respondent subject to the
9 following understanding and conditions:

10 1. The license issued pursuant to this order shall be
11 deemed to be the first renewal of Respondent's real estate
12 salesperson license for the purpose of applying the provisions of
13 Section 10153.4.

14 2. Within nine (9) months from the date of this order
15 Respondent shall:

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

18 (b) Submit evidence of having taken and successfully
19 completed the courses specified in paragraphs (1) to (4)
20 inclusive of subdivision (a) of Section 10170.5 of the Real
21 Estate Law for renewal of a real estate license.

22 3. Upon renewal of the license issued pursuant to this
23 order, Respondent shall submit evidence of having taken and
24 successfully completed the continuing education requirements of
25 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a
26 real estate license.

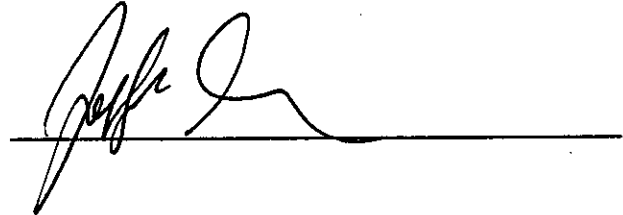
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This Order shall become effective immediately.

DATED: 8-15-86

JEFF DAVI
Real Estate Commissioner

A handwritten signature in dark ink, appearing to read "Jeff Davi", is written over a horizontal line.

PAULA REDDISH ZINNEBANN
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

ROMAN STAVCHANSKY,

Respondent.

No. H-8251 SF

OAH No. N 2003010096

PROPOSED DECISION

Administrative Law Judge Victor D. Ryerson, Office of Administrative Hearings, State of California, heard this matter on May 7, 2003, in Oakland, California.

Department of Real Estate Assistant Chief Counsel Larry A. Alamao represented complainant Les R. Bettencourt, Deputy Real Estate Commissioner, State of California.

Thomas C. Lasken, Lasken Law Offices, represented respondent Roman Stavchansky, who was present.

The matter was submitted on May 7, 2003.

FACTUAL FINDINGS

1. Respondent Roman Stavchansky submitted to the Department of Real Estate (Department) an application for a real estate salesperson license. The application was dated May 2, 2002.
2. On December 28, 1998, in the United States District Court, District of Texas, Austin Division, respondent was convicted on a plea of guilty of violating 21 U.S.C. section 846 and 21 U.S.C. section 841(a)(1) (Conspiracy to Possess with Intent to Distribute a controlled Substance (MDMA)), a felony. Respondent was sentenced to 30 months' imprisonment, but was instead placed in an Intensive Confinement Program (Boot Camp) for six months, followed by three years' supervised release.
3. The facts and circumstances of the conviction are as follows. Respondent had graduated from college and aspired to a career in the entertainment industry. He found an entry level position with International Artists Group, LLC, in the Los Angeles area. The position did not pay well, and after approximately a year he sought a means to augment his income. A person he knew put him in touch with someone respondent understood to be involved with drugs, and after making an abortive \$ 500 "investment" in an unspecified

scheme to make money, respondent became a middleman in a drug ring engaged in interstate operations. He was twenty-two years old at the time.

In his role as a middleman respondent received packages shipped via Federal Express from Texas to his home. He delivered these packages to someone at another Los Angeles area address, who gave him \$10,000 to \$15,000 cash. He retained \$3,000 of this money and sent the remainder back to Texas by Federal Express. He participated in 3 or 4 of these transactions before he was apprehended. He did not open any of these packages, and although he did not know exactly what was in them, he assumed that the contents were drugs, and that the activity was illegal.

He justified his participation in his own mind by believing that this was a victimless crime. Although he denies ever using any of the contents of the packages he delivered, on cross-examination he candidly admitted using drugs socially before his conviction, specifically marijuana, ecstasy (the drug he was charged with transporting), and cocaine ("sparsely"). He denies ever using drugs of any sort after his conviction, a claim that is supported by the results of his mandatory drug testing during his supervised release.

4. Respondent cooperated fully with the investigation after his arrest, including participation in a "sting" operation. His cooperation was helpful, and his sentence was reduced upon motion by the prosecution for downward departure from federal sentencing guidelines, based upon his substantial assistance with the investigation. Instead of a potential minimum sentence of 37 months and a \$7500 minimum fine, he was sentenced to 30 months' imprisonment, a \$5000 fine, and 3 years' supervised release, with the Court's recommendation that he be placed in Boot Camp. He satisfied the qualifications for Boot Camp, completed that program, and commenced what was to have been 3 months' residency at a halfway house in Inglewood, California. However, he was released from the halfway house after three weeks, and served one year of home confinement. He then began 3 years of supervised release, which was terminated early, on February 10, 2003, because of his positive performance. Consequently, he has completed his formal program of rehabilitation.

5. Respondent paid a \$100 special assessment required by the Victims of Crimes Act immediately after his sentencing. In addition to paying the \$5000 fine he agreed not to contest the forfeiture of his property and forfeited more than \$20,000 in a money market account and more than \$5000 in a checking account. He claims that some of this money was not earned through illegal activities, but funds he had received from his parents.

6. Respondent testified that he had learned from his involvement with the criminal justice system that there is no such thing as a victimless crime. He claims that the worst aspect of his conviction was the pain he had caused his mother and father, a fact that he apprehended immediately upon being arrested and initially incarcerated. He admits that he made a serious mistake, and feels that this was an isolated incident that will not recur. His expressions of contrition and determination not to commit any further violation of law were sincere and credible when he testified.

7. Respondent has had full time employment continuously since the second day after his release from the halfway house. Initially he had a succession of jobs in the Los Angeles area in the technology industry, but in January 2002 he moved to the San Francisco Bay Area at the urging of a college friend, Brandon Colker, with whom he had stayed in contact before and after his conviction. Colker worked for a company called Innovative Mortgage, and respondent accepted a position as an administrative assistant there. Respondent and Colker were dissatisfied with their employment at that company, and the two of them discussed forming a partnership to start a mortgage company or branch office. They did so about a year ago, and now operate the Walnut Creek branch office of The Mortgage Center, Inc. Respondent provided the capital to start the business with loans from each of his parents and several credit cards. He and Colker, who is a licensed salesperson and supervises loan origination, have equal partnership shares. Respondent currently manages day to day office operations for which a real estate license is not required, but aspires to be a loan originator, for which licensing is required.

8. Respondent is now twenty-eight years of age. He is the son of Russian émigrés who arrived in the United States and settled in the Los Angeles area in 1978, when respondent was three years old. Although his parents had professional careers before they immigrated, they could not be employed in equivalent jobs after their arrival here. His father initially worked as a valet parking attendant, and his mother as a bookkeeper. He now owns an insurance company in Los Angeles, and she is the Executive Vice President for Master Card International, headquartered in Brussels, Belgium. (Respondent's parents were in the process of getting divorced around the time he was convicted, and he claims that their domestic problems contributed to the emotional state that led him to commit the underlying criminal acts.) Respondent had a strict European upbringing, in which education and family values were stressed, and good work ethic was important. His parents instilled high moral standards of honesty and truthfulness in him.

9. Respondent attended magnet schools (schools for students with a higher aptitude for learning) and graduated from Chatsworth High School. He then attended the University of California at Santa Barbara (UCSB) and graduated in 1997 with a Bachelor of Arts degree in political science. Professor James Adams, from whom respondent received "A" grades in two political science courses, ranked respondent among the top five per cent of political science majors Professor Adams had taught at UCSB.

10. Respondent's performance at International Artists Group, LLC, his place of employment before his conviction, was excellent. After four months on the job he was promoted to the position of First Assistant by the CEO, Rodney Omanoff. This was a very demanding job. In a letter to the judge who sentenced respondent, Omanoff states that respondent ultimately became the best assistant Omanoff ever had. Respondent's employment with this employer terminated only because of his arrest and incarceration.

11. Colker, respondent's current business partner, provided a recent letter attesting to respondent's maturity, integrity, ethics, and truthfulness. William Hand, President of The Mortgage Center, Inc., and supervising Broker of Record for Colker and respondent's

business, provided a letter attesting to respondent's "strong moral character," based upon his one-year association with respondent. Hand also describes respondent as "extremely ethical", and expresses his willingness to serve as his sponsoring broker.

12. Respondent performed volunteer work for the United Children's Fund during his period of home confinement, fingerprinting children and doing door-to-door public awareness training. He received two certificates of achievement from the agency for that work. A letter of recommendation from the agency refers to him as mature, enthusiastic, and quick to learn. Respondent has not performed any volunteer work since he moved to the Bay Area, but he attends church regularly about every other week.

13. With the permission of the sentencing judge, the Senior U.S. Probation Officer who conducted respondent's presentence investigation recently provided a letter stating that because of respondent's positive response to supervision, she does not oppose issuance of a real estate license to respondent.

14. Respondent has not completed all of the courses required under Business and Professions Code Section 10153.4.

LEGAL CONCLUSIONS

1. Respondent's 1998 conviction is for an offense involving moral turpitude, and is substantially related to the qualifications, functions or duties of a real estate licensee, in that it involved doing an unlawful act for personal financial gain. The conviction constitutes cause to deny respondent's license application under Business and Professions Code sections 480(a) and 10177(b).

2. Respondent is substantially rehabilitated. Complainant contends that the respondent's letters of recommendation to the sentencing judge have limited probative value because of their age, the termination of his supervised release was too recent to provide a rehabilitation track record, and the absence of current involvement in community and social activities or post-conviction educational efforts diminish his claim of rehabilitation, but these contentions are not persuasive. Respondent has admitted his unlawful activities with candor, demonstrated remorse for his behavior, and shown by his actions, and not by words alone, that he has moved on with his life. He had no violations while he was incarcerated, in home confinement, or under supervised release. He had no contact with the other perpetrators of his crime after he was released from Boot Camp, performed meaningful community service soon thereafter, left the career and the community where his troubles with the law had occurred, and started his own business. He is bright and well motivated, and has great potential to succeed in the business he has started without feeling any need to resort to criminal behavior. Perhaps most significantly, he continues to have a close relationship with his parents (particularly his mother), is conscious of the high standards of achievement in his family, and will strive to avoid any conduct of the sort that caused him to suffer the most painful sort of opprobrium when his parents and friends first learned about his criminal conduct.

4. Respondent has clearly matured since his conviction, a process that began almost at the moment of his arrest. He demonstrates no propensity to engage in the sort of criminal activity that resulted in his conviction, nor any other conduct involving moral turpitude. He has a remarkably strong and supportive circle of family and friends who are aware of his past mistake, and their presence in his life will be both a powerful deterrent against engaging in criminal activity and a powerful incentive to attain his professional goals.

3. It would not be contrary to the public interest to grant respondent a restricted real estate license.

ORDER

The application of respondent Roman Stavchansky for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

a. Respondent's conviction, including by a plea of nolo contendere, of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

b. Receipt of evidence that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to respondent.

3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate, which shall certify as follows:

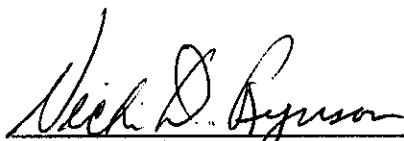
a. That the employing broker has read the decision which is the basis for the issuance of the restricted license; and

b. That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a real estate license is required.

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

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

DATED: May 20, 2003



VICTOR D. RYERSON

Administrative Law Judge

Office of Administrative Hearings

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)
7

FILED

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DEPARTMENT OF REAL ESTATE

[Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 ROMAN STAVCHANSKY,)
13 Respondent.)

No. H-8251 SF

STATEMENT OF ISSUES

14
15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against ROMAN STAVCHANSKY (hereinafter "Respondent")
18 alleges as follows:

19 I

20 Respondent made application to the Department of Real
21 Estate of the State of California for a real estate salesperson
22 license on or about May 2, 2002 with the knowledge and
23 understanding that any license issued as a result of said
24 application would be subject to the conditions of Section 10153.4
25 of the California Business and Professions Code.

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II

Complainant, Les R. Bettencourt, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity.

III


On or about December 18, 1998, in the United States District Court, Western District of Texas, Austin Division, Respondent was convicted of violation of 21 USC 846 and 21 USC 841(a)(1) (Conspiracy to Possess with Intent to Distribute a Controlled Substance (MDMA), a felony and a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations (herein "the Regulations"), to the qualifications, functions or duties of a real estate licensee.

IV

The crime of which Respondent was convicted, as alleged in Paragraph III above constitutes 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.

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

7
8 
9 LES R. BETTENCOURT
Deputy Real Estate Commissioner

10 Dated at Oakland, California,
11 this 29th day of October, 2002.