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JAN 08 2009

DEPARTMENT OF REAL ESTATE

By L. Frost

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
GARY GENE STANGE,
Respondent.

No. H-8454 SF

ORDER GRANTING REINSTATEMENT OF LICENSE

On April 28, 2004, a Decision was rendered herein revoking the real estate broker license of Respondent effective May 6, 2004, but granting Respondent the right to the issuance of a restricted real estate broker license on terms and conditions. A restricted real estate broker license was issued to Respondent on May 6, 2004, and Respondent has operated as a restricted licensee since that time.

On February 27, 2007, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence and arguments in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate broker license and that it would not be against the public interest to issue said license to Respondent.

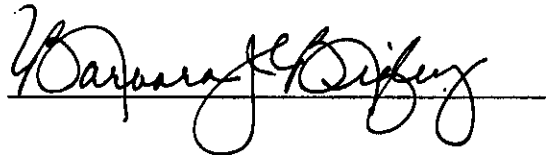
1 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
2 reinstatement is granted and that a real estate broker license be issued to Respondent if
3 Respondent satisfies the following conditions within nine (9) months from the date of this Order:

- 4 1. Submittal of a completed application and payment of the fee for a real estate
5 broker license.
6 2. Submittal of evidence of having, since the most recent issuance of an original
7 or renewal real estate license, taken and successfully completed the continuing education
8 requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate
9 license.

10 This Order shall become effective immediately.

11 IT IS SO ORDERED 12-29-08

12 JEFF DAVI
13 Real Estate Commissioner

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17 BY: Barbara J. Bigby
18 Chief Deputy Commissioner
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1 (60) day suspension ordered in this case, under the following
2 conditions:

3 The entire sixty (60) days of said suspension shall be
4 stayed upon the condition that Respondent pays a monetary penalty
5 pursuant to Section 10175.2 of the Business and Professions Code
6 at a rate of \$166.66 for each day of the suspension for a total
7 monetary penalty of \$9,999.60.

8 (a) Said payment shall be in the form of a cashier's
9 check or certified check made payable to the
10 Recovery Account of the Real Estate Fund. Said
11 check must be delivered to the Department prior to
12 the effective date of the Order in this matter.

13 (b) No further cause for disciplinary action against
14 the Real Estate licenses of Respondent occurs
15 within two (2) years from the effective date of
16 the Order in this matter.

17 (c) If Respondent fails to pay the monetary penalty in
18 accordance with the terms and conditions of the
19 Order, the Commissioner may, without a hearing,
20 order the immediate execution of all or any part
21 of the stayed suspension, under this Order, in
22 which event Respondent shall not be entitled to
23 any repayment nor credit, prorated or otherwise,
24 for the money paid to the Department under the
25 terms of this Order.

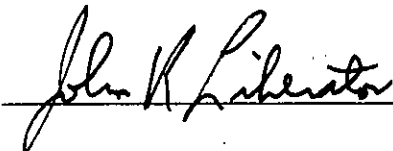
26 (d) If Respondent pays the monetary penalty and
27 satisfies the other conditions specified in the

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Order in the decision in this matter, and if no further cause for disciplinary action against the real estate license of Respondent occurs within two (2) years from the effective date of the Order, the entire stay hereby granted under this Order shall become permanent.

IT IS HEREBY ORDERED April 28, 2004

JOHN R. LIBERATOR
Acting Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of Accusation Against:

GARY GENE STANGE,

Respondent.

Case No. H-8454 SF

OAH No. N2003080118

PROPOSED DECISION

Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on January 6, 2004.

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

Steve McNichols, Attorney at Law,¹ represented Gary Gene Stange, the respondent.

By a letter dated January 7, 2004, counsel for respondent submitted additional argument. That letter was marked as Exhibit R-4 for identification. By a letter dated January 20, 2004, counsel for complainant replied to the additional argument. That letter was marked as Exhibit C-7 for identification, and the record was closed.

FACTUAL FINDINGS

1. In 1971 the department of Real Estate licensed Gary Gene Stange, the respondent, as a real estate salesperson. And in 1993 the department licensed him as a broker.

2. On May 16, 2001, in the Municipal Court of the State of California for the County of Alameda, respondent was convicted of a violation of subdivision (b) of section 23152 of the Vehicle Code, driving with a blood alcohol level of .08 percent or more, a misdemeanor. The conviction was based on a plea of guilty. The court suspended the imposition of sentence and placed respondent on probation for 36 months. Among the conditions of probation were the following: The court required respondent to serve two days in jail with credit for two days served. The court restricted respondent's driver's license to driving for limited purposes for 90 days. The court required respondent to attend a drinking driver program and pay fines and fees totaling \$1,400. At the time of the incident that gave rise to this

¹ Steve McNichols, Attorney at Law, 5000 Hopyard Road, Suite 400, Pleasanton, CA 94588-3348.

conviction, respondent's blood alcohol level was 0.12 percent. Respondent's probation is scheduled to terminate in May of 2004.

3. On May 14, 2002, in the Superior Court of the State of California for the County of Placer, respondent was convicted of a violation of subdivision (a) of section 23152 of the Vehicle Code, driving under the influence of alcohol or drugs, a misdemeanor. The conviction was based on a plea of no contest. At the time of this conviction, respondent was still on probation in connection with the 2001 Alameda County conviction. The court suspended the imposition of sentence and placed respondent on probation for four years. Among the conditions of probation were the following: The court required respondent to serve 12 days in jail with credit for two days served. The court permitted respondent to satisfy the condition of jail time by participating in a weekend work program. The court restricted respondent's driver's license to driving for work and for alcohol education programs. The restriction was for 18 months. The court required respondent to use an interlock breathalyzer device on his vehicle, attend 18 months of a drinking driver program, and pay penalties totaling \$1,645. At the time of the incident that gave rise to this conviction, respondent's blood alcohol level was 0.1 percent. Respondent's probation is scheduled to terminate in May of 2006.

4. By an application dated June 26, 2002, respondent applied to renew his broker's license. In response to a question on the application form regarding convictions of violations of the law, respondent disclosed the Placer County conviction but failed to disclose the Alameda County conviction. Respondent testified that he did not know why he failed to disclose the first conviction. He said that he did not intend to fail to disclose.

5. The crimes of which respondent was convicted are ones that are substantially related to the qualifications, functions, or duties of the licensed activity.

6. From 1971 to 1993, respondent worked as a real estate salesperson in the San Francisco bay area and in Tahoe. In 1993, when he was licensed as a broker, he began working as a mortgage broker. Today 90 percent of his practice is as a mortgage broker in Pleasanton, which is in Alameda County. Respondent employs three people, and they arrange approximately six loans each month.

7. In satisfaction of the condition of the Alameda County probation that respondent attend a drinking driver program, he attended for six months. In satisfaction of the condition of the Placer County probation that respondent attend a drinking driver program, he attended for 18 months. Respondent also participated in Alcoholic's Anonymous (AA) meetings. Between May of 2002 and November of 2003, he attended approximately 70 AA meetings -- which is approximately one meeting each week. Respondent has paid the fines, fees, and penalties he was required to pay as conditions of his probations.

8. The restriction on respondent's driver's license terminated in November of 2003.

9. Respondent says that this is the first time any disciplinary charges have been made against him.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 2, 3, and 5, it is determined that respondent has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the licensed activity. Complainant cites subdivision (a)(11) of section 2910 of title 10 of the California Code of Regulations in support of complainant's contention that the crimes of which respondent has been convicted are crimes that are substantially related to the qualifications, functions, or duties of the licensed activity. That subdivision, which concerns crimes involving the consumption of alcohol or drugs, was recently added to the California Code of Regulations, becoming effective on October 5, 2003. Respondent's conduct and convictions predate the effective date of the subdivision, and he contends that the new subdivision may not be applied retroactively. Complainant contends that it may be applied retroactively. There is no need to resolve that issue, however, because, even without the new subdivision, respondent's convictions should be determined to be for crimes that are substantially related. Section 2910 is not exhaustive. Conduct may be substantially related to the qualifications, functions, or duties of a real estate salesperson or broker even though it is not described in section 2910. Two convictions involving alcohol consumption and driving reflect a lack of sound judgment. Driving after consuming alcohol to the extent that one's driving ability is affected evidences a disregard for the welfare of others.² And in this case, respondent was still on probation in connection with his first conviction at the time he suffered his second conviction. Moreover, realtors often drive clients to open houses and to appointments to inspect properties that are for sale. It is true that 90 percent of respondent's practice is in the mortgage loan business, but he is licensed to sell real estate. Thus, pursuant to section 490 of the Business and Professions Code³ there are grounds to suspend or revoke his license.

2. Complainant alleges that respondent's convictions are for crimes that involve moral turpitude and that, therefore, there are further grounds to suspend or revoke his license pursuant to subdivision (b) of section 10177 of the Code. It is determined that complainant failed to prove that respondent's convictions were for crimes that involve moral turpitude.

3. By reason of the matters set forth in Findings 2, 3, 4, and 7, it is determined that respondent knowingly omitted a material fact that was required to be revealed in the application for renewal of his license. His omission constituted a material misstatement of fact. Respondent's application for renewal of his license is dated June 26, 2002. The Alameda County conviction was on May 16, 2001 – just 13 months earlier. Respondent was still attending a drinking driver's program in November of 2001 – just seven months before he

² See *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770.

³ All references to the Code are to the Business and Professions Code unless otherwise specified.

signed the application. Respondent offered no explanation as to why he did not disclose the Alameda County conviction. On this record the only reasonable determination is that he knowingly and intentionally chose not to disclose that conviction. Thus, pursuant to section 498 of the Code and subdivision (a) of section 10177 of the Code, there are grounds to suspend or revoke his license.

4. If it were not for respondent's failure to disclose the Alameda County conviction in his application for renewal, the appropriate disposition of this matter would be to revoke his license but stay the revocation and issue a restricted license. It has been 21 months since respondent's most recent conviction. While suffering two convictions for crimes regarding alcohol and driving is a serious matter, it is significant that, on both occasions, respondent's blood alcohol level was only moderately above the lawful level. Respondent satisfied the conditions of his probations requiring him to attend drinking driver programs. And he participated in AA meetings. He paid the fines, fees, and penalties he was required to pay. Respondent's failure to disclose the Alameda County conviction in his application, however, is very troubling, because it involves dishonesty. There is some circumstantial evidence that respondent is honest. He has worked in the field of real estate sales and loans for over 32 years without any prior disciplinary action. That is circumstantial evidence that he has been honest, and it supports a determination that the public can be adequately protected by issuing a restricted license with appropriate conditions and imposing an actual suspension.

ORDER

All licenses and licensing rights of respondent, Gary Gene Stange, under the real estate law are revoked. A restricted real estate broker license, however, shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent applies for a restricted license and pays the appropriate fee to the Department of Real Estate within 90 days from the effective date of this decision. 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 conditions imposed under authority of section 10156.6 of the Code:

1. The restricted license issued to respondent may be suspended prior to hearing by order of the real estate commissioner in the event of respondent's conviction or plea of nolo contendere to a crime that is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent may be suspended prior to hearing by order of the real estate commissioner on evidence satisfactory to the commissioner that respondent has violated provisions of the California real estate law, the subdivided lands law, regulations of the real estate commissioner, or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for the removal of any of the conditions of a restricted license until two

years have elapsed from the effective date of this decision or both of his probations have terminated – whichever is later in time.

4 Within nine months from the effective date of this decision, respondent shall present evidence satisfactory to the real estate commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of article 2.5 of chapter 3 of the real estate law for renewal of a real estate license. If respondent fails to satisfy this condition, the commissioner may order the suspension of the restricted license until respondent presents such evidence. The commissioner shall afford respondent the opportunity for a hearing pursuant to the administrative procedure act to present such evidence.


5. Any restricted real estate license issued to respondent pursuant to this decision shall be suspended for 60 days from the date of issuance of the restricted license.

6. Within six months from the effective date of this decision, respondent shall take and pass the professional responsibility examination administered by the department and shall pay the appropriate examination fee. If respondent fails to satisfy this condition, the commissioner may order a suspension of respondent's license until respondent passes the examination.

7. Respondent shall report in writing to the department of real estate as the real estate commissioner shall direct by a separate written order issued while the restricted license is in effect. The order may require respondent to report concerning any activity for which a real estate license is required. The matters on which the commissioner may require respondent to report include, but are not limited to, periodic independent accountings of trust funds in respondent's custody or control and periodic summaries of the real estate transactions in which respondent engaged during the reporting period.

DATED:

March 4, 2004


ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings

FILED
NOV - 4 2003

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

DEPARTMENT OF REAL ESTATE

By [Signature]

In the Matter of the Accusation of

GARY GENE STANGE,

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}

Case No. H-8454 SF

OAH No. N-2003080118

Respondent

**FIRST CONTINUED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at

**THE OFFICE OF ADMINISTRATIVE HEARINGS
THE ELIHU HARRIS STATE BUILDING
1515 CLAY STREET, SUITE 206
OAKLAND, CA 94612**

on **JANUARY 6, 2004**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: OCTOBER 30, 2003

By Larry Alamo
LARRY A. ALAMO, Counsel

FILED
AUG - 6 2003

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

By Kathleen Continuas

GARY GENE STANGE,

Case No. H-8454 SF

OAH No.

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at

**OFFICE OF ADMINISTRATIVE HEARING, THE ELIHU HARRIS STATE BUILDING,
1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612**

on **NOVEMBER 5, 2003**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

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Dated: AUGUST 5, 2003

DEPARTMENT OF REAL ESTATE
By [Signature]
For **LARRY A. ALAMAO, Counsel**

1 DEIDRE L. JOHNSON, Counsel
SBN 66322
2 Department of Real Estate
P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

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DEPARTMENT OF REAL ESTATE

By *Kathleen Centers*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

10 In the Matter of the Accusation of)
11) NO. H- 8454 SF
12 GARY GENE STANGE,)
13 Respondent.) ACCUSATION

14 The Complainant, LES R. BETTENCOURT, a Deputy Real
15 Estate Commissioner of the State of California, for cause of
16 Accusation against GARY GENE STANGE, is informed and alleges as
17 follows:

18 I

19 GARY GENE STANGE (hereafter Respondent) is presently
20 licensed and/or has license rights under the Real Estate Law,
21 Part 1 of Division 4 of the California Business and Professions
22 Code (hereafter Code) as a real estate broker.

24 II

25 The Complainant, LES R. BETTENCOURT, a Deputy Real Estate
26 Commissioner of the State of California, makes this Accusation
27 against Respondent in his official capacity and not otherwise.

1 III

2 Respondent's real estate broker license was due to
3 expire on or about August 17, 2002. Respondent made application
4 to the Department of Real Estate of the State of California
5 (hereafter the Department) for a renewal real estate broker
6 license on or about June 27, 2002. In response to Question 3 of
7 said application, to wit: "Within the past four year period, have
8 you been convicted of any violation of law?", Respondent answered
9 "Yes," and disclosed the conviction alleged in Paragraph IV
10 below. Respondent failed to disclose the conviction alleged in
11 Paragraph V below.

12 IV

13 On or about May 14, 2002, in the Superior Court of
14 California, County of Placer, Respondent was convicted of
15 violation of Vehicle Code Section 23152(a) (DRIVING UNDER THE
16 INFLUENCE OF ALCOHOL OR DRUGS), a crime involving moral
17 turpitude, and/or a crime which is substantially related under
18 Section 2910, Title 10, California Code of Regulations to the
19 qualifications, functions, or duties of a real estate licensee.

20 V

21 On or about May 16, 2001, in the Municipal Court of the
22 State of California, County of Alameda, Respondent was convicted
23 of violation of Vehicle Code Section 23152(b) (DRIVING WITH BLOOD
24 ALCOHOL .08 PERCENT OR MORE), a crime involving moral turpitude,
25 and/or a crime which is substantially related under Section 2910,
26 Title 10, California Code of Regulations to the qualifications,
27 functions, or duties of a real estate licensee.


1 VI

2 The facts alleged in Paragraphs IV and V above
3 constitute cause, jointly and severally, under Sections 490 and
4 10177(b) of the Code for suspension or revocation of all license(s)
5 and license rights of Respondent under the Real Estate Law.

6 VII

7 Respondent's failure to reveal the conviction alleged
8 in Paragraph IV above in said application for license renewal
9 constitutes the procurement of a real estate license by fraud,
10 misrepresentation, or deceit; and/or by making a material
11 misstatement of fact; and/or by knowingly omitting to state a
12 material fact in said application; and constitutes cause under
13 Sections 498 and 10177(a) of the Code for suspension or
14 revocation of all licenses and license rights of Respondent under
15 the Real Estate Law.

16 WHEREFORE, Complainant prays that a hearing be
17 conducted on the allegations of this Accusation and that upon
18 proof thereof a decision be rendered imposing disciplinary action
19 against all license(s) and license rights of Respondent under the
20 Real Estate Law (Part 1 of Division 4 of the Business and
21 Professions Code), and for such other and further relief as may
22 be proper under other provisions of law.

23
24 
25 LES R. BETTENCOURT
26 Deputy Real Estate Commissioner

26 Dated at Oakland, California,
27 this 3rd day of June, 2003.