

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

FILED  
APR 22 2005

DEPARTMENT OF REAL ESTATE

By S. Kelly

In the Matter of the Application of)  
JASON ROBERT PALOMINO )  
Respondent. )

NO. H-9025 SF

OAH No. N2005010116

**DECISION**

The Proposed Decision dated March 16, 2005, 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, but the right to a 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 MAY 12 2005.

IT IS SO ORDERED 49 2005.

JEFF DAVI  
Real Estate Commissioner

[Signature]

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

JASON ROBERT PALOMINO,

Respondent.

Case No. H-9025 SF

OAH No. N2005010116

**PROPOSED DECISION**

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter in Oakland, California on February 24, 2005.

Department of Real Estate Counsel Michael B. Rich represented Complainant Les R. Bettencourt.

Joshua A. Rosenthal, Attorney at Law, represented Respondent Jason Robert Palomino.

The record closed on February 24, 2005.

**FACTUAL FINDINGS**

1. Complainant Les R. Bettencourt, Deputy Real Estate Commissioner, Department of Real Estate (Department), filed the Statement of Issues in his official capacity.

2. On February 19, 2004, Jason Robert Palomino (Respondent) filed an application for a real estate salesperson license with the Department. The application form requires the disclosure of criminal convictions. Respondent complied with the requirement by revealing three criminal convictions, including details such as the court, arresting agency, date and other matters. The application was made with the understanding that any license issued as a result would be subject to the conditions of Business and Professions Code section 10153.4.

*Criminal Convictions*

3. On August 28, 1997, in the Santa Clara County Municipal Court, Respondent was convicted by his plea of nolo contendere of a misdemeanor violation of Penal Code section 602, subdivision (j) (trespass).

As a result, he was ordered to pay miscellaneous fines and fees.

Although the conviction was for trespassing, Respondent was originally cited for reckless driving on his high school campus. A campus security officer observed Respondent drive his car, at about ten miles per hour, through an area the officer described as "basically a sidewalk," in an attempt to leave the campus. The parking lot gate was locked at the time.

4. On September 8, 1998, in the Santa Clara County Municipal Court, Respondent was convicted by his plea of guilty of a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of .08 or higher).

As a result, Respondent was placed on probation for three years pursuant to standard terms and conditions. In addition, he was ordered to pay fines and fees totaling over \$1,000, serve six days in jail and complete the First Offender Alcohol Program.

5. On October 15, 2002, in the Santa Clara County Superior Court, Respondent was convicted by his plea of nolo contendere of a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of .08 or higher).

As a result, Respondent was placed on probation for three years pursuant to standard terms and conditions. In addition, he was ordered to pay fines and fees totaling over \$1,400, serve 30 days in jail and complete the Multiple Offender Alcohol Program.

This conviction followed Respondent's arrest at about 2:00 a.m. on July 17, 2002. A police officer stopped Respondent's vehicle after observing him drive recklessly.

#### *Respondent's Evidence*

6. Respondent described the facts related to his criminal convictions as follows:

- 1997: He was still in high school, and needed to leave for a dentist appointment but the parking lot gate was locked. Respondent believes he was driving on a service road, but the campus police described it as a sidewalk and cited him for reckless driving. Respondent pled guilty after the charge was changed to trespassing, and paid the fine.
- 1998: Respondent was a freshman at San Jose State University. He was drinking beer at a party and stopped by police on his way home. He completed all of the probation conditions.
- 2002: Respondent was 23 years of age at the time of this conviction. He was going to summer school and went out drinking one night after studying. He is still on probation, but has completed all of the conditions. He enrolled in a traffic safety class, which entitled him to keep his driver's license. He has about six more months

of this class, which he attends once each week. Every other week he has a one-on-one session with the counselor who leads the class.

7. Respondent obtained a business degree from San Jose State University. He has taken finance, accounting and management classes. He is currently employed as a loan assistant. His duties include helping to set up loans and process them.

8. Respondent does not believe he is an alcoholic. Nonetheless, he has chosen to no longer drink alcohol. Respondent attributes the second driving under the influence offense to stupidity and immaturity. He believes he has matured and now focuses on his family and his career. Respondent is engaged to be married. Respondent has learned a great deal from the alcohol programs he has taken, including the fact that he if continues to drink he could cause harm to others as well as himself. Respondent testified in a forthcoming manner that was consistent with credibility.

9. Respondent presented two written declarations concerning his character.

A. Nelson Spaulding is a certified state counselor for the National Traffic Safety Institute. He has worked for twelve years as a counselor. Spaulding has known Respondent for one year and has seen him an average of once per week. He writes that he has gotten to know Respondent well and believes he has demonstrated an understanding regarding the serious consequences of drinking and driving. Spaulding reports that Respondent understands the problems that alcohol can cause.

B. Lorenzo Lopez is Vice President of First Capital Group, Inc., in San Jose. He has held a real estate salesperson license since 2001 and is Respondent's supervisor. Lopez has observed Respondent's work for one and one-half years and believes him to be a hard-working person of the highest character. Lopez writes that he would be happy to supervise Respondent if Respondent receives a restricted license.

### LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), provides that a real estate license may be denied if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of the profession. The Department has enacted a regulation (Cal. Code Regs., tit. 10, § 2910) that sets forth criteria to assist in the determination of whether a crime is substantially related to the real estate profession. The criteria provide that two or more convictions grounded in alcohol or drug consumption, when at least one conviction involved driving while under the influence of alcohol or other drugs, constitute conduct substantially related to the profession (Cal. Code Regs., tit. 10, § 2911, subd. (10)). Consequently, cause for denial of Respondent's application exists based upon Respondent's two convictions for driving under the influence of alcohol (Findings 4 and 5).

Respondent's 1997 conviction for trespassing does not constitute a substantially related conviction.

2. Business and Professions Code section 10177, subdivision (b), provides that a real estate license may be denied if the applicant has been convicted of a crime involving moral turpitude. None of the three offenses that Respondent was convicted of involved moral turpitude per se, nor do the facts and circumstances surrounding the commission of the offenses demonstrate such gravity that the offenses should be characterized as involving moral turpitude as committed. Accordingly, no cause for denial was established pursuant to that charged section.

3. A primary purpose of the licensing scheme for real estate professionals is to protect the public from dishonest and unscrupulous licensees. It is particularly important that real estate salespersons possess the character traits of honesty and integrity, and criminal convictions often demonstrate that an individual does not possess such traits and therefore presents a risk to the public. Respondent's convictions for driving under the influence of alcohol raise concerns about his judgment and commitment to follow the law and therefore bring his suitability as a real estate salesperson into question.

The Department's guidelines (Cal. Code Regs., tit. 10, § 2911) provide criteria to assist in the difficult assessment of rehabilitation and consequent risk to the public safety. Measured against the criteria and other relevant considerations, evidence of rehabilitation is sufficient in this matter to justify issuance of a restricted salesperson license, despite the fact that Respondent is still on probation for the 2002 conviction. Respondent's convictions, while substantially related, were not for crimes of dishonesty; it has been over two years since the convictions; he revealed the convictions in his application; he is gainfully employed; he has been enrolled in programs that address the issue of drinking and driving; and his life appears stable. In addition, Respondent testified in a forthcoming fashion that inspired confidence in his truthfulness.

It is concluded that the public interest will be sufficiently protected by the issuance of a restricted license.

#### ORDER

The application of Jason Robert Palomino for a real estate salesperson license is denied; 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 the 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 said 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

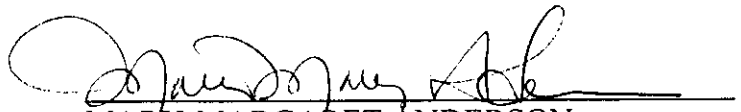
suspend the right to exercise any privileges granted under this restricted license in the event of:

- a. The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or
  - b. The 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 this 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 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 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 eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in section 10153.2, other than real estate principles, advanced aspects of real estate, advanced real estate finance or 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 eighteen (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.

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: March 16, 2005

A handwritten signature in cursive script, appearing to read "Mary-Margaret Anderson", written over a horizontal line.

MARY-MARGARET ANDERSON  
Administrative Law Judge  
Office of Administrative Hearings

FILED

JAN 20 2005

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

DEPARTMENT OF REAL ESTATE

By A. El

*In the Matter of the Application of*

JASON ROBERT PALOMINO

Case No. H-9025 SF

OAH No. N2005010116

*Respondent*

**NOTICE OF HEARING ON APPLICATION**

***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, ELIHU M. HARRIS BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **THURSDAY--FEBRUARY 24, 2005**, at the hour of **1:30 P.M.**, or as soon thereafter as the matter can be heard, upon the Statement of Issues 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.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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:* JANUARY 20, 2005

By Michael B. Rich  
MICHAEL B. RICH, Counsel J.E.



1 MICHAEL B. RICH, Counsel  
2 State Bar No. 84257  
3 Department of Real Estate  
4 P.O. Box 187007  
5 Sacramento, CA 95818-7007  
6  
7 Telephone: (916) 227-0789

FILED  
NOV 17 2004

DEPARTMENT OF REAL ESTATE

By Shelly Ely

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Application of )  
12 JASON ROBERT PALOMINO, )  
13 Respondent. )

NO. H-9025 SF

STATEMENT OF ISSUES

14  
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16 The Complainant, LES R. BETTENCOURT, a Deputy Real  
17 Estate Commissioner of the State of California, for Statement of  
18 Issues against JASON ROBERT PALOMINO (hereinafter "Respondent"),  
19 is informed and alleges as follows:

20 I

21 Respondent made application to the Department of Real  
22 Estate of the State of California for a real estate salesperson  
23 license on or about February 19, 2004, with the knowledge and  
24 understanding that any license issued as a result of said  
25 application would be subject to the conditions of Section 10153.4  
26 of the 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 and not otherwise.

III

On or about August 28, 1997, in the Municipal Court, County of Santa Clara, State of California, in case number C9744377, Respondent was convicted of a violation of Section 602(j) of the California Penal Code (Trespass: Entering property with for the purpose of injuring property or property rights or with the intention of interfering or obstructing the lawful business or occupation of the owner), a crime involving moral turpitude and/or a crime which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

IV

On or about September 8, 1998, in the Municipal Court, County of Santa Clara, State of California, in case number C9894659, Respondent was convicted of a violation of Section 23152(b) of the California Vehicle Code (Driving under the influence while having a blood alcohol level of .08% or more), a crime involving moral turpitude and/or a crime which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

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1 V

2 On or about October 15, 2002, in the Superior Court,  
3 County of Santa Clara, State of California, in case number  
4 CC256823, Respondent was convicted of a violation of Section  
5 23152(b) of the California Vehicle Code (Driving under the  
6 influence while having a blood alcohol level of .08% or more), a  
7 crime involving moral turpitude and/or a crime which bears a  
8 substantial relationship under Section 2910, Title 10, California  
9 Code of Regulations, to the qualifications, functions, or duties  
10 of a real estate licensee.

11 VI

12 The crimes of which Respondent was convicted, as  
13 alleged above, individually and/or collectively, constitute cause  
14 for denial of Respondent's application for a real estate license  
15 under Sections 480(a) and/or 10177(b) of the California Business  
16 and Professions Code.

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

23  
24   
25 Les R. Bettencourt  
Deputy Real Estate Commissioner

26 Dated at Oakland, California,  
27 this 2nd day of November, 2004.