



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

DOUGLAS EARL HEYDON,

Respondent.

Case No. H-9190 SF

OAH No. N2005050023

**PROPOSED DECISION**

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter in Oakland, California, on May 17, 2006.

John Van Driel, Counsel, Department of Real Estate, represented Complainant E. J. Haberer II, Deputy Real Estate Commissioner.

J. Anne Rawlins, Attorney at Law, represented Respondent Douglas Earl Heydon.

The record closed on May 17, 2006.

**FACTUAL FINDINGS**

1. Complainant E. J. Haberer II filed the Statement of Issues in his official capacity as a deputy real estate commissioner for the Department of Real Estate, State of California.

2. On July 16, 2004, Douglas Earl Heydon (Respondent) filed an application for a real estate salesperson license with the Department. The application form requires the disclosure of all criminal convictions. Respondent complied with the requirement by attaching a Santa Clara County Criminal History Review document that contains the information requested. The application was filed 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 October 24, 1984, in the Santa Clara County Municipal Court, Respondent was convicted by his plea of guilty of a misdemeanor violation of Penal Code section 415, disturbing the peace. He was fined \$340.

Respondent testified that the conviction arose from an altercation in the parking lot of his automotive machine shop. He had just finished cleaning the lot when he saw some men dump ashes out of their car. When he approached them, "they jumped me." Police responded and took all of them to jail.

4. On December 15, 1993, in the Santa Clara County Municipal Court, Respondent was convicted by his plea of nolo contendere of a misdemeanor violation of Penal Code section 273.5, corporal injury upon a spouse. He was placed on probation for two years under certain conditions, including serving four days in county jail. The court minute order also reflects that he was ordered to participate in a program, and the words "batter treatment prog, domestic violence" (sic) are written on the form. It is not clear whether the reference is to one program or two.

Respondent testified that this conviction arose from an altercation with his wife at his business. The couple had recently started divorce proceedings, and the situation was highly charged. She appeared demanding money and a physical struggle ensued. Respondent asserts that his wife hit him first, and repeatedly. He believes the injury she complained of was a bruise on her arm that she received when he picked her up and tried to sit her down in a chair. Respondent asserted that he did not intend to harm his wife.

5. On June 26, 1996, in the Santa Clara County Municipal Court, Respondent was convicted by his plea of guilty of a misdemeanor violation of Penal Code section 273.6, subdivision (a), violation of a protective order. He was placed on probation for three years upon certain conditions, including paying a fine of \$100, serving three days in county jail and participating in a domestic violence program.

The police report that was presented as connected with this conviction describes an incident that occurred on October 22, 1995. It states that Respondent's now ex-wife called "911" and told police that Respondent had called her on the telephone and threatened to kill her.

The testimony Respondent presented, purportedly in explanation of this conviction, recounted an entirely different event. He was picking up his girlfriend's child at school – an unplanned trip – and accidentally violated a protective order. Respondent's daughter had not yet been picked up because the relative who was supposed to do so had not arrived. Rather than leave his daughter at the school when everyone had left, Respondent opted to violate the order by transporting his daughter. Respondent called police for a civil standby while he delivered his daughter, and he was arrested.

6. On July 24, 2001, in the Santa Clara County Superior Court, Respondent was convicted by his plea of nolo contendere of a misdemeanor violation of Vehicle Code section 14601.1, subdivision (a), driving with a suspended license. He was placed on probation for two years upon certain conditions and ordered to pay fines and fees totaling \$250.

The police report connected with this conviction documents an arrest of Respondent on April 21, 2001. Police observed Respondent driving on a sidewalk and discovered that his driver's license had been suspended for failure to pay child support. In addition, Respondent gave a statement to the police that he had smoked methamphetamine about three or four days prior; that he had purchased the methamphetamine police found in the car for \$90; and that "he needs the drug to help him get through his hard hours at work."

Respondent testified that his license had been suspended for failure to pay child support, but he was unaware of this at the time. He admitted drug use and making the statements to police. Respondent was also arrested on drug charges, but was not prosecuted because he was eligible for and completed a diversion program.

7. On June 21, 2004, in the Santa Clara County Superior Court, Respondent was found in violation of Code of Civil Procedure section 1209.5, contempt of court. The court minute orders surrounding this matter are confusing. They state that probation was revoked, but the underlying order placing him on probation is not included. One of the forms used is entitled Child Support Contempt Attachment to Minutes and it is therefore inferred that Respondent had violated a previous order to pay child support. Respondent was ordered to serve ten days in the county jail. Probation was reinstated and scheduled to expire on August 27, 2006. He was also ordered to return to court for a "payment review" on September 16, 2004.

Respondent testified that this conviction resulted from his failure to appear at a hearing during the divorce proceedings. He had two lawyers at the time, and the lawyer handling the child support portion of the case died. Respondent believes that he missed a court date in the resulting confusion. He discovered a warrant for his arrest when he was compiling the court records for this license application. Respondent appeared in court to resolve the matter and received the sentence set forth above.

#### *Respondent's evidence*

8. Respondent is a life-long resident of Milpitas, and he currently resides with his parents in the house he grew up in. After high school, Respondent opened an automotive machine shop. It was a success, and at one time he employed ten people. His divorce, which began in about 1993, was extremely contentious and financially devastating. Respondent used methamphetamine during this period in an effort to deal with the stress and to work enough hours to keep his business afloat. However, the divorce process took many years, he went through bankruptcy proceedings and eventually Respondent lost his business.

9. Respondent states that he stopped drug use the day he was arrested in 2001. He successfully completed the drug diversion program and those charges were dismissed. A certificate from ESO/STEPS corroborates Respondent's testimony. It states that Respondent began the Sobriety Through Education & Peer Support program on June 6, 2001 and completed it on October 2, 2001. Respondent learned how to deal with problems without resorting to drugs. Also, as he no longer had his business and his divorce was final, the stress of daily living was greatly reduced. Since that time he has not used drugs or alcohol. He believes it is a sign of weakness and that he is now strong enough to avoid substance abuse. Respondent now considers himself to be a very mellow person.

10. Respondent no longer has contact with his ex-wife, except as necessary concerning their daughter, who is now 17 years of age. He gets along very well with people. Working out at the gym four to five times a week helps to keep him focused and disciplined. Respondent contributes to his daughter's support and also to his parents. He is current with all of his past child support obligations.

11. Currently, Respondent is employed as a credit card processing salesman. He primarily works with new businesses to help them set up to take credit cards and Telecheck. The company he works for, Credit Card International, is the provider for large banks such as Wells Fargo and Citibank. Respondent has access to a great deal of personal information about his client accounts, including social security numbers, dates of birth and various bank account numbers.

12. Respondent took real estate classes at the Century 21 Alpha office in Milpitas. Mike Devlin is the broker and Respondent intends to work there.

13. Two witnesses testified on Respondent's behalf.

a. Linda Soloman works as a customer service telemarketer for Card Services International. She has worked with Respondent in the credit service business for about five years in different companies and they talk every day. Soloman talks to customers over the phone and Respondent sees them personally. Soloman stated that the merchants/customers are very appreciative of the service Respondent provides. She has never had any negative feedback or had any complaints. Soloman has never had reason to question Respondent's honesty or to believe that he was under the influence of alcohol or any controlled substance. She was surprised when he told her about his convictions.

b. Arlene Heydon is Respondent's mother. He has been living with her for about five years and contributes financially to the household. Heydon learned of Respondent's convictions about six years ago. She was disappointed and upset, but offered to help him to rebuild his life. Since 2001, she has had no cause to be concerned that he was using methamphetamine. Previously, she was not sure but "had an inkling." Today, she would describe Respondent as having overcome and mastered a lot of problems. He has learned patience and is very determined to succeed.

14. Respondent presented ten letters of reference, all in the form of declarations signed under penalty of perjury.

a. Douglas Moshy is the owner of Cardservice Peninsular, a credit card processing business. It appears that Respondent worked for Moshy for about one year in 2004 and 2005. Moshy noted that the business requires gathering a great deal of important personal information. He reports Respondent's conduct as "exemplary."

b. David LaCroix is the CEO of LaCroix Enterprise Group, Inc., doing business as 1st National Processing. The company supplies credit systems to small businesses. LaCroix hired Respondent as an outside sales agent sometime prior to July 18, 2005. He describes Respondent as very professional, with an excellent attitude and has had no complaints about his behavior.

c. Andrea LaCroix is an officer with 1st National and is also a certified public accountant with her own business. She is supportive of Respondent, describing him as hard working, loyal and dependable.

d. Annie Espinosa has been a real estate agent since 1977. She worked for Coldwell Banker for approximately 20 years and also has worked for Re/Max. Espinosa represented Respondent and his ex-wife in the sale of their residence. She found Respondent to be a gentleman and an outstanding client with a great deal of knowledge about real estate.

e. Michael Devlin has been a vice-president and a broker associate of Century 21 Alpha in Milpitas since 1991. He was the instructor in a real estate course Respondent took in 2003 and 2004. Devlin wrote that Respondent was always professional and courteous.

f. Guy Coulston is the Branch Manager of Century 21 Alpha. He met Respondent in 2004 when Respondent applied for a position as a real estate agent. Coulston observed Respondent during the classes he took at Century 21, and believes him to have "copious amounts of patience, perseverance and determination."

g. Roy J. Scellato has been licensed as a real estate salesperson since May 25, 2005 and he is currently employed at Century 21 Alpha. Scellato attended real estate courses with Respondent and observed him to conduct himself in a professional manner inside and outside of the office.

h. Michael D. Potter has been a Santa Clara County deputy sheriff for twenty years. He went to high school with Respondent and patronized Respondent's automotive machine shop. Potter is somewhat aware of Respondent's criminal and drug history. He wrote that Respondent has "always shown good moral character in my presence."

i. David L. Samulson is an attorney in private practice. He represented Respondent in connection with his dissolution until about 2000. When Samulson came into the case, it had commenced with Respondent representing himself. It was a very contentious situation

and Respondent was under tremendous financial pressure during a period Samulson describes as “probably . . . the darkest period of his life.” Respondent’s ex-wife would at times intentionally provoke Respondent. Nonetheless, Samulson describes Respondent as always having been concerned about his customers, hard working, focused and courteous.

j. Jason L. Pintar has been licensed as an attorney since 2000. He worked as a law clerk for one of Respondent’s attorneys (Frank Taranto, who passed away in 2001) and first met Respondent in 1998. Pintar wrote that Respondent was always honest and forthright. He believes Respondent would be an honest and ethical real estate professional.

## 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. Department regulations (Cal. Code Regs., tit. 10, § 2910) contain criteria that define “substantially related” in connection to the real estate profession. Respondent’s convictions are substantially related pursuant to the criteria.

Respondent’s conviction for spousal battery involved an act done “with the intent or threat of doing substantial injury to the person.” (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) By driving when his license was suspended, Respondent was engaging in conduct for which a license was required when he was not licensed. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(7).) Respondent was also twice convicted of violating a court order. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(9).) And, taken together, Respondent’s multiple criminal convictions (including the trespass) demonstrate a pattern of willful disregard for the law. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10).) Hence, cause exists to deny Respondent’s application.

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 felony or a crime of moral turpitude. All of Respondent’s convictions are misdemeanors. In order to provide cause for denial pursuant to this section, then, the convictions must be crimes of moral turpitude.

Moral turpitude is a concept difficult to define. It has been described as “an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general” and as “innately a relative concept depending upon both contemporary moral values and the degree of its inimical quality.” (*Rice v. Alcoholic Beverage Control Appeals Board* (1979) 89 Cal.App.3d, 30, 306.) Case law (*People v. Rodriguez* (1992) 5 Cal.App.4th 1398, 1402.) holds that spousal battery involves moral turpitude. Hence, cause for denial exists pursuant to this section based upon Respondent’s 1993 conviction for that offense.

3. Crimes that do not involve moral turpitude per se may be so defined by reason of the circumstances surrounding their commission. None of Respondent's remaining convictions resulted from conduct sufficiently egregious to support the conclusion that they involved moral turpitude as committed.

4. As legal cause for denial exists, the next question to be addressed is whether Respondent has demonstrated sufficient rehabilitation. Department regulations (Cal. Code Regs., tit. 10, § 2911) also contain criteria to assist in the difficult assessment of rehabilitation and consequent risk to the public safety presented by an applicant who has been convicted of a crime. Measured against the criteria and other relevant considerations, evidence of rehabilitation is sufficient in this matter to justify issuance of a restricted license.

5. Respondent's first conviction, for trespass, was 22 years ago. The conviction presenting the most concern, spousal battery with injury, occurred 13 years ago. The remaining convictions, all misdemeanors not involving dishonesty at their core, are connected to an unusual period in time when Respondent was undergoing a very contentious divorce. His last conviction, in 2004, was also connected to the divorce. Respondent is on probation for that offense and the convictions, taken together, appear to reflect a problem with respect for authority. Since his divorce concluded, however, Respondent has by all accounts conducted himself in a responsible and law-abiding manner. When he learned of the issues that led to the 2004 conviction he took immediate action to put the matter behind him. Respondent presented persuasive evidence that he conducts himself in a hard-working, honest and conscientious manner in his professional and personal life. It is therefore determined that the public interest will be sufficiently protected by the issuance of a restricted license.

#### ORDER

The application of Douglas Earl Heydon 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 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

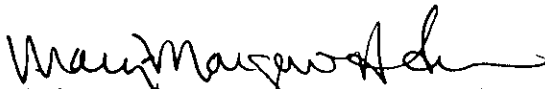


- b. The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or 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 a course in real estate practices and one 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: June 2, 2006

  
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MARY-MARGARET ANDERSON  
Administrative Law Judge  
Office of Administrative Hearings

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DEPARTMENT OF REAL ESTATE

By *K. Contreras*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Application of )	
	) NO. H-9190 SF
DOUGLAS EARL HEYDON, )	
	) N-2005050023
Respondent. )	
)	

NOTICE OF REJECTION AND ORDER REMANDING CASE TO  
ADMINISTRATIVE LAW JUDGE TO TAKE ADDITIONAL EVIDENCE  
(Section 11517 of the Government Code)

TO: DOUGLAS EARL HEYDON, Respondent,  
and J. ANNE RAWLINS, ESQ., his Counsel.

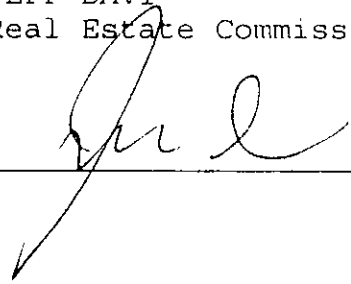
On December 7, 2005, the Real Estate Commissioner entered an order herein pursuant to the provisions of Section 11517(c) of the Government Code of the State of California rejecting the Proposed Decision herein dated September 4, 2005, of the Administrative Law Judge and proposing to decide the case upon the record including the transcript of the record of the proceedings held July 21, 2005. On January 9, 2006, Melissa G. Crowell, Presiding Administrative Law Judge, Office of

1 Administrative Hearings, notified the Department of Real Estate  
2 that the Office of Administrative Hearings is unable to provide  
3 a transcript of the proceedings held July 21, 2005. Between  
4 January 9, 2006, and March 17, 2006, the parties sought but  
5 failed to attain an agreed statement of the facts.

6 GOOD CAUSE APPEARING, IT IS HEREBY ORDERED in  
7 accordance with Section 11517(c) of the Government Code that  
8 this case be referred to Stewart A. Judson, Administrative Law  
9 Judge of the Office of Administrative Hearings, to take  
10 additional evidence in this matter.

11 DATED: 4-4, 2006.

13 JEFF DAVI  
14 Real Estate Commissioner

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DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Application of )	
DOUGLAS EARL HEYDON, )	No. H-9190 SF
)	
)	N-2005050023
Respondent. )	
)	

NOTICE

TO: DOUGLAS EARL HEYDON, Respondent, and J. ANNE RAWLINS, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated September 4, 2005, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated September 4, 2005, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held July 21, 2005,

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1 and any written argument hereafter submitted on behalf of  
2 Respondent and Complainant.

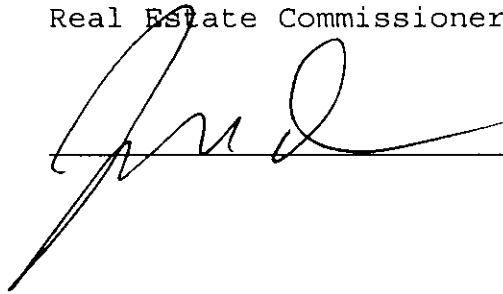
3           Written argument of Respondent to be considered by me  
4 must be submitted within 15 days after receipt of the transcript  
5 of the proceedings of July 21, 2005, at the Sacramento office of  
6 the Department of Real Estate unless an extension of the time is  
7 granted for good cause shown.

8           Written argument of Complainant to be considered by me  
9 must be submitted within 15 days after receipt of the argument of  
10 Respondent at the Sacramento office of the Department of Real  
11 Estate unless an extension of the time is granted for good cause  
12 shown.

13           DATED: \_\_\_\_\_

12.7.05

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15           JEFF DAVI  
16           Real Estate Commissioner

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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

DOUGLAS EARL HEYDON,  
  
Respondent.

Case No. H-9190 SF

OAH No. N2005050023

**PROPOSED DECISION**

Administrative Law Judge Stewart A. Judson, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on July 21, 2005.

Deidre L. Johnson, Counsel, represented complainant E. J. Haberer II, a Deputy Real Estate Commissioner of the State of California.

J. Anne Rawlins, Esq., represented respondent Douglas Earl Heydon.

Submission of the matter was deferred pending receipt of an amended Statement of Issues. By letter dated July 27, 2005, complainant's counsel withdrew the motion to amend. The matter was submitted upon the filing of written closing argument from respondent, which was accomplished on August 12, 2005. The matter is deemed submitted as of said date.

**FACTUAL FINDINGS**

1. The Department of Real Estate (the Department) received an application on July 16, 2004, from Douglas Earl Heydon (respondent) for issuance of a real estate salesperson license. Issuance of the license is subject to Business and Professions Code section 10153.4.<sup>1</sup>

2. E. J. Haberer II, a Deputy Real Estate Commissioner of the State of California, made the Statement of Issues in his official capacity and not otherwise.

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<sup>1</sup> All statutory references are to said Code unless otherwise noted.

3. On October 25, 1984, in the Municipal Court of California, County of Santa Clara, respondent was convicted on his plea of Guilty of violating Penal Code section 415 (Disturbing the Peace), a misdemeanor.

4. On December 15, 1993, in the Municipal Court of California, Santa Clara County Judicial District, respondent was convicted on his plea of nolo contendere of violating Penal Code section 273.5, subdivision (a) (Inflicting Corporal Injury Upon Spouse), a misdemeanor. Imposition of sentence was suspended for the term of probation. Respondent was admitted to formal probation for two years on conditions, inter alia, that he serve four days in jail with credit for time served, participate in a domestic violence program and use no violence against his wife.

5. On June 26, 1996, in the Municipal Court of California, Santa Clara County Judicial District, respondent was convicted on his plea of Guilty of violating Penal Code 273.6, subdivision (a) (Violation of a Protective Order), a misdemeanor. The protective order, as defined in Family Code section 6218, was issued pursuant to Civil Code of Procedure sections 527.6 and 527.8 and is entitled "SHALL NOT THREATEN ROBYN HEYDON." Imposition of sentence was suspended for the term of probation. Respondent was admitted to three years formal probation on condition he pay a fine of \$100, possess no weapons, not strike, annoy or harass the victim or have any contact with her save as permitted, and serve three days in jail with credit for time served.

6. On July 24, 2001, in the Superior Court of California, County of Santa Clara, respondent was convicted on his plea of nolo contendere of violating Vehicle Code section 14601.1, subdivision (a) (Driving When License Suspended or Revoked), a misdemeanor. Imposition of sentence was suspended for the term of probation. Respondent was admitted to two years' Court probation on condition that he pay a fine, not operate a vehicle without a license and insurance and serve ten days in jail with said jail time deemed served.

7. On June 21, 2004, in the Superior Court of California, County of Santa Clara, respondent was convicted of violating Code of Civil Procedure section 1209.5 (Contempt of Court). Respondent's probation was revoked, and he was sentenced to serve ten days in the County Jail with credit for two days time served. Respondent's probation was extended to August 27, 2006. His driver license and all other licenses were reinstated upon payment of \$550. Permission to serve his jail time overnight on weekends was granted.

8. Respondent is 47 years old. Upon graduating from high school, respondent started working in an automotive machine shop, which he built into his own business. He operated this business for 22 years. It closed in 2001 as a result of his divorce. He began working for National Processing Company helping merchants establish credit and check guarantee systems. He is now employed by Card Service International as a senior account executive performing the same duties.



9. Respondent explains his convictions as follows:

a) Disturbing the Peace: Respondent avers he had just cleaned the parking area in front of his business when a car pulled in and a large ashtray was dumped from the vehicle. Respondent asked the occupants to pick up their trash. In turn, he was called trash. Three passengers then leaped at him. His employees joined the fray. The police were called, and respondent was charged with resisting arrest. The charge was later reduced. Respondent alleges that his attackers were smoking dope. He was fined \$260 and spent no time in jail. He cannot recall if he was placed on probation.

b) Corporal Injury on Spouse: In July 1993, while respondent and his wife were in divorce proceedings, she arrived at his place of business and demanded money. She became very emotional in front of respondent's employees and customers. Respondent asked her to accompany him upstairs. His wife began hitting him and kicked a hole in the wall, where her foot got stuck. Respondent pulled her foot out of the wall. She threw a glass of water at him and tried to jump out of the window. Respondent asserts he tried to stop her from driving given her state of mind. Three months later, he was arrested.

c) Violation of Protective Order: Respondent drove to his girlfriend's daughter's school to pick her up. Coincidentally, it was the same school his daughter attended. He was aware he was under a restraining order to remain away from the school if his daughter was there. The two girls were standing together at a bus stop outside the school. There were no adult school personnel present. Respondent knew that his daughter was waiting for her grandmother, who resided around the corner. Respondent realized he could have entered the school to obtain supervision for his daughter, but she became hysterical. He agreed to take her to her grandmother's. On arrival there, no one appeared home. Respondent then contacted the police to explain what had happened. When he drove his daughter to where his wife was living, he was subjected to a citizen's arrest. The police were called, and his car was impounded.

d) Suspended License: Respondent avows he had received no communication from the Department of Motor Vehicles that his driver license had been suspended. He was stopped by police after backing his van onto the corner of a sidewalk.

e) Contempt of Court: Respondent avows that, when he obtained a copy of his conviction record in connection with his application for a real estate salesperson license, he discovered this conviction. He asserts he had missed a court date of which he was unaware. He avows there apparently were two separate hearings at which he was to appear but were scheduled for the same day. Documents submitted by complainant show that the conviction was related to failure to maintain child support payments.

10. Respondent concedes that he became addicted to using methamphetamine prior to his divorce. He married in the early 1980's. He and his wife partied together and used said drug socially. Respondent asserts that between 1980 and 1992, when his marriage began "to go downhill," he did not use other drugs or alcohol. He resorted to methamphetamine use to compensate for his long hours spent operating his business. His sources were friends who patronized his shop. He attests that he used the drug to help him work up to 20 hours daily. He estimates he was working seven days weekly 20 hours per day then. His drug use cost him \$100 to \$200 weekly.

11. Respondent concedes that he may have been under the influence of controlled substances during his wife's visit to his shop in 1993. He avers he attended a drug program for several months in 1993 or 1994. Though he attempted to stop his drug use, he was unable to do so due to his long working hours. He also attended a battered treatment (anger awareness) program as part of his sentence. Respondent also concedes he may have been under the influence of controlled substances when he arrived at his girlfriend's daughter's school in 1996. Respondent was still using methamphetamine in April 2001, when he was stopped by the police in a traffic incident. Based upon his physical appearance, his vehicle was searched and a small amount of methamphetamine was discovered in a little vial as well as a pipe that he used to smoke the drug. He concedes he was under the influence when driving the vehicle but does not believe he was a danger to the public.

12. Although not pleaded in this Statement of Issues, respondent concedes he pleaded guilty of using a controlled substance with respect to his convictions in 1993 and 2001. Documents produced by complainant show that he successfully completed diversion with regard to his 1993 matter and completed the ESO steps to satisfy Department of Justice requirements regarding his 2001 matter. As a result of the latter, no sentence was rendered on the drug counts. He avers that his last use of a controlled substance occurred in 2001. He has had no further counseling and has not participated in group meetings regarding drug use since then.

13. Respondent is now aware that his driver license was suspended for failing to make child support payments. He currently is making regular support payments of \$900 monthly. He last saw his daughter one year ago. He is not now in litigation. His divorce is final.

## LEGAL CONCLUSIONS

### MORAL TURPITUDE

1. Complainant alleges that each of respondent's convictions involves moral turpitude.

2. *In re Craig* (1938) 12 Cal.2d 93, 97 defined moral turpitude as: "an act of baseness, vileness or depravity in the private and social duties which man owes to his

fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between men.”

3. Respondent’s conviction of Disturbing the Peace does not, per se, meet or fall within the definition of moral turpitude. Complainant did not establish that the circumstances surrounding this conviction fall within the definition.

4. Respondent’s conviction in 1993 of violating Penal Code section 273.5, subdivision (a), to wit: willfully inflicting upon his spouse corporal injury resulting in a traumatic condition, is an act of baseness in the private and social duties that man owes to his fellow man or to society in general and is contrary to the accepted and customary rule of right and duty between human beings. This is a conviction of a crime involving moral turpitude.

5. Respondent’s conviction in 1996 of Penal Code section 273.6, subdivision (a), for violating Family Code section 6218, to wit, an order issued pursuant to Civil Code of Procedure sections 527.6 and 527.8, does not, per se, meet or fall within the definition of moral turpitude. Complainant did not establish that the circumstances surrounding this conviction constitute moral turpitude.

6. Respondent’s conviction in 2001 of violating Vehicle Code section 14601.1, subdivision (a), does not, per se, meet or fall within the definition of moral turpitude. The circumstances surrounding this conviction, however, show that respondent was driving under the influence of a controlled substance. This conduct is an act of baseness in the private and social duties that man owes to his fellow man, or to society in general and is contrary to the accepted and customary rule of right and duty between human beings. The facts surrounding this conviction involve moral turpitude.

7. Respondent’s conviction in 2004 of violating Civil Code of Procedure section 1209.5, to wit: Contempt of Court, does not, per se, meet or fall within the definition of moral turpitude. Complainant did not establish that the circumstances surrounding this conviction constitute moral turpitude.

#### SUBSTANTIAL RELATIONSHIP

8. Complainant alleges that each of respondent’s convictions is related substantially to the qualifications, functions or duties of a licensee of the Department.

9. Title 10, California Code of Regulations section 2910, subdivisions (a), (b) and (c), defines those crimes and acts that are so related.

10. Respondent’s conviction of Disturbing the Peace, considering the circumstances involved, does not fall within the provisions of subdivision (a)(9) and is not related substantially to the qualifications, functions or duties of a licensee of the Department.

11. Respondent's conviction of willfully inflicting upon his spouse corporal injury resulting in a traumatic injury falls within subdivision (a)(8) and is related substantially to the qualifications, functions or duties of a licensee of the Department.

12. Respondent's conviction of violating a protective order does not, considering the circumstances, fall within the meaning of section 2910 and is not substantially related to the qualifications, functions or duties of a licensee of the Department.

13. Respondent's conviction of driving with a suspended driver license does not fall within the meaning of subdivision (a)(7) in that the evidence does not establish willfulness on respondent's part. He was unaware that his license was suspended.

14. Respondent's conviction under Civil Code of Procedure section 1209.5 (Contempt of Court) is related substantially to the qualifications, functions or duties of a licensee of the Department under subdivision (a)(9).

15. Complainant urges that respondent's conviction record demonstrates a pattern of repeated and willful disregard of the law and therefore is related substantially to the qualifications, functions and duties of a licensee under subdivision (a)(10). The evidence shows that respondent suffered five convictions from October 1984 to June 2004. With the exception of two (1984 and 2001), the remainder are related to the deterioration of his marital relationship. Given the length of time involved, it is concluded that respondent's conduct does not reflect a pattern of repeated and willful disregard of the law.

#### REHABILITATION

16. The evidence shows that respondent has been gainfully employed since he lost his business in 2001. He has established abstention from illegal drug use since his conviction in 2001. It is apparent that his legal difficulties stemmed primarily from the breakup of his marriage. His last conviction, in 2004, relates to his failure to appear in court as ordered on August 15, 2002, and involves an issue of child support. He has established that he is current in his child support responsibility as of the date of this hearing. While it is true that respondent's probation will not expire until August 27, 2006, the court has ordered, as a condition of probation, reinstatement of his driver license and all other licenses provided he continues to satisfy required child support payments.

#### DISPOSITION

17. Cause for denial exists under Finding 4 and Conclusions 4 and 11 pursuant to sections 480, subdivision (a)(1) and 10177, subdivision (b) in conjunction with title 10, California Code of Regulations section 2910, subdivision (a)(8).

18. Cause for denial exists under Finding 7 and Conclusion 14 under section 480, subdivision (a)(1) in conjunction with title 10, California Code of Regulations section 2910, subdivision (a)(9).

19. Consideration has been given to respondent's commendable efforts to complete his vocational course in real estate and his continuous employment since 2001, when he lost his business. However, evidence of his rehabilitation was weakened by the fact that he is still on probation and his recent conviction for contempt of court for failing to make an appearance in 2002. Noted is his current status regarding his child support mandate and his abstinence from the use of controlled substances since 2001. Sufficient rehabilitation for issuance of a restricted license was established.

#### ORDER

The application of Douglas Earl Heydon for a real estate salesperson license is denied under Conclusions 17 and 18, separately and jointly; provided, however, a restricted real estate salesperson shall be issued to respondent pursuant to section 10156.5. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6:

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 that is related substantially 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 license.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or the removal of any of the conditions, limitations or restrictions attaching to the restricted license until three (3) 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 by the prospective employing broker on a form RE 552 (Rev. 4/88)

NOT ADOPTED

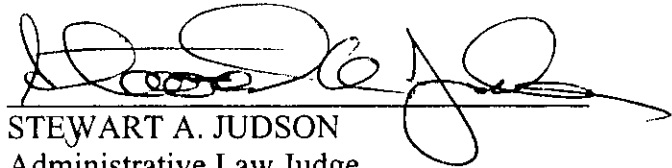
NOT ADOPTED

approved by the Department of Real Estate that shall certify as follows:

- (a) That the employing broker has read the Decision that is 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, 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 a course in real estate practices and one 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 timely fails to present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be suspended automatically 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 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 that is subject to section 10153.4 until four (4) years after the date of the issuance of the preceding restricted license.

DATED: September 11, 2000

  
 STEWART A. JUDSON  
 Administrative Law Judge  
 Office of Administrative Hearings

1 DEIDRE L. JOHNSON, Counsel  
SBN 66322  
2 Department of Real Estate  
P. O. Box 187007  
3 Sacramento, CA 95818-7007  
4 Telephone: (916) 227-0789  
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FILED  
APR 13 2005

DEPARTMENT OF REAL ESTATE

By K. Contreras

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

12 \* \* \*

13 In the Matter of the Application of )  
14 DOUGLAS EARL HEYDON, ) NO. H-9190 SF  
15 Respondent. ) STATEMENT OF ISSUES

16 The Complainant, E. J. HABERER II, a Deputy Real Estate  
17 Commissioner of the State of California, for cause of Statement  
18 of Issues against DOUGLAS EARL HEYDON, alleges as follows:

19 I

20 DOUGLAS EARL HEYDON (hereafter Respondent), pursuant to  
21 the provisions of Section 10153.3 of the Business and Professions  
22 Code, made application to the Department of Real Estate of the  
23 State of California for a real estate salesperson license on or  
24 about July 16, 2004, with the knowledge and understanding that  
25 any license issued as a result of said application would be  
26 subject to the conditions of Section 10153.4 of the Business and  
27 Professions Code.

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II

The Complainant, E. J. HABERER II, 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 October 25, 1984, in the Municipal Court of the State of California, County of Santa Clara, in Case No. C84-50610, Respondent was convicted of violation of Penal Code Section 415 (DISTURBING THE PEACE), 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 December 15, 1993, in the Municipal Court of the State of California, County of Santa Clara, in Case No. C93-51745, Respondent was convicted of violation of Penal Code Section 273.5 (INFLICT CORPORAL INJURY ON SPOUSE), 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.

V

On or about June 26, 1996, in the Municipal Court of the State of California, County of Santa Clara, in Case No. C95-69316, Respondent was convicted of violation of Penal Code Section 273.5 (INFLICT CORPORAL INJURY ON SPOUSE), a crime involving moral turpitude, and/or a crime which bears a



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

4 VI

5 On or about July 24, 2001, in the Superior Court of the  
6 State of California, County of Santa Clara, in Case No. CC108725,  
7 Respondent was convicted of violation of Vehicle Code Section  
8 14601.1(a) (DRIVING WITH SUSPENDED LICENSE), a crime involving  
9 moral turpitude, and/or a crime which bears a substantial  
10 relationship under Section 2910, Title 10, California Code of  
11 Regulations, to the qualifications, functions, or duties of a  
12 real estate licensee.

13 VII

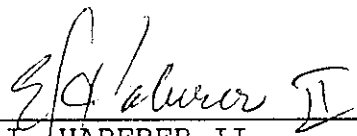
14 On or about June 21, 2004, in the Superior Court of  
15 the State of California, County of Santa Clara, in Case No.  
16 1-98-DA-063857, Respondent was convicted of violation of Code  
17 of Civil Procedure Section 1209.5 (CONTEMPT OF COURT), a crime  
18 involving moral turpitude, and/or a crime which bears a  
19 substantial relationship under Section 2910, Title 10, California  
20 Code of Regulations, to the qualifications, functions, or duties  
21 of a real estate licensee.

22 VIII

23 The crimes of which Respondent was convicted as  
24 alleged in Paragraphs III, IV, V, VI, and VII above, jointly  
25 and severally, constitute cause for denial of Respondent's  
26 application for a real estate license under Sections 480(a)  
27 and/or 10177(b) of the California Business and Professions Code.

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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 in the premises.

  
\_\_\_\_\_  
E. J. HABERER II  
Deputy Real Estate Commissioner

Dated at Oakland, California  
this 6 day of April, 2005.