



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

FELIX FOREST STUCKEY,

Respondent.

Case No. H-9322 SF

OAH No. N2005080123

**PROPOSED DECISION**

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on September 1, 2005.

Michael Rich, Counsel, represented complainant E. J. Haberer II, Deputy Real Estate Commissioner of the State of California.

Respondent Felix Forest Stuckey represented himself.

The matter was submitted on September 1, 2005.

**FACTUAL FINDINGS**

1. Respondent Felix Forest Stuckey filed with the Department of Real Estate an application dated October 7, 2003 for a real estate broker license.

2. On August 31, 1987, upon his plea of no contest, respondent was convicted of a violation of Penal Code section 243.4 (sexual battery), a felony. Imposition of sentence was suspended on the conditions that respondent complete two years of formal probation, pay fines and restitution of approximately \$200, remain enrolled in school, and have no contact with the victim of the sexual battery. In addition to the criminal prosecution, the victim of the battery brought a civil action against respondent. Respondent stipulated to a judgment against himself in the amount of \$100,000, which he has satisfied. On September 10, 1993, on respondent's petition, his felony offense was reduced to a misdemeanor, and his conviction was expunged under the terms of Penal Code section 1203.4.

3. The facts and circumstances of the 1987 conviction are that on January 1, 1987, following a New Year's Eve party at a friend's house, respondent and three other males committed forcible intercourse on a 17 year-old girl. Respondent was 18 years old at the time. According to respondent, alcohol was a factor in this crime.

4. On or about May 30, 1988, respondent was convicted in the state of Georgia on his plea of guilty of driving under the influence of alcohol. No conviction documents were offered for this offense. On his Conviction Detail Report (RE 515D), and in an interview with a department investigator in February 2004, respondent admitted this conviction.

5. On March 8, 1994, respondent filed with the department an application for a real estate salesperson license. He disclosed his 1987 and 1988 convictions on his license application. On August 29, 1995, following an administrative hearing, respondent was granted a restricted license. He held his license for four years, until it expired in 1999. During the time he held his license, respondent's father was a probate referee. Respondent helped his father value trust and probate assets. There is no evidence of any discipline against respondent's license.

6. On October 6, 2003, respondent was convicted on his plea of no contest of a violation of Vehicle Code section 23152, subdivision (a) (driving under the influence), a misdemeanor. Imposition of sentence was suspended and respondent was placed on conditional sentence for three years. He was ordered to serve two days on a work program, with credit for one day served; to attend a "level I DUI school," a 30-hour class; and to pay a fine of approximately \$1,400. In addition, respondent's driving privilege was restricted for 90 days.

7. The facts and circumstances of this conviction are that, on the morning of August 22, 2003, respondent picked up a friend at the airport. They went to a nightclub in San Francisco that evening to hear a concert, without eating lunch or dinner. Respondent had four drinks (Remy Martin and Coca-Cola) over three hours. His friend was a non-licensed driver, so respondent drove his vehicle and was arrested by the California Highway Patrol.

8. Respondent will complete his conditional sentence in October 2006. He has served his jail sentence, paid his fine, and completed the DUI class.

9. Respondent is 37 years old. He has been married to "his high school sweetheart," Lawana Stuckey, since 1994. They have four children, ages 13, 12 (twins) and 8. Respondent's wife is the director of a group home for young girls who need foster care.

10. From July 1994 to January 2001, respondent worked for Metrocall/AT&T Wireless. He started with the company as a senior account executive, and was promoted twice to positions of greater authority and responsibility. At Metrocall, respondent won numerous awards for his sales performance at the local and regional level, and five awards for achieving the highest level of sales nationally.

11. From January 2001 to July 2002, respondent worked as a corporate sales manager for NTT/Verio.

12. In August 2002, respondent left NTT/Verio and returned to Metrocall as a sales manager.

13. In February 2005, respondent went to work for MCI Corporation as a global account manager. In August 2005, MCI Corporation merged with Verizon Wireless, and respondent was among 10,000 employees who were laid off.

14. While respondent was working at Metrocall, he took classes at night at California State University, Hayward. He graduated in December 1999 with a Bachelor of Science degree in Business Administration, with an emphasis in Real Estate Management. Respondent testified that his degree in real estate management reflects his "passion" for real estate.

15. Respondent is a member of the World Conquerors Church, and he also serves as the church's business manager. He has been active in building "Project Conqueror," a faith-based organization that provides motivational speakers to bring messages of hope and inspiration to middle school and high school students. Respondent is one of the organization's featured speakers.

16. Respondent has a history of problems with alcohol. He started drinking when he was 17 and drank "very frequently" for two years. After his first DUI conviction in 1988, he stopped drinking for several years, and then started again. He then abstained "periodically" until his last DUI arrest in August 2003. Respondent describes himself as a binge drinker, not a maintenance drinker. He would have periods where he would not drink at all, and then he would drink too much. He never drank to the point where he blacked out. Respondent considers himself to be an alcoholic.

17. Respondent last drank alcohol on August 22, 2003, the night he was arrested. After that, he chose to stop drinking. Respondent feels that the court-ordered DUI class helped him decide to stop drinking. He addressed his alcohol problem with his wife and his family. He and his wife have come to an understanding that he will not drink. Respondent has also decided to stay away from friends who drink too much, and to avoid parties and clubs where alcohol is present. Respondent does not attend Alcoholics Anonymous meetings. He went to a few AA meetings between 1988 and 1990 and found them to be useful and supportive; he stopped going, however, when he found that he could abstain from alcohol without them. Since 2003, respondent has sought counseling with the pastor of his church. Although his pastor is not a specialist in alcohol recovery, respondent has found their discussions of spiritual and religious matters to be helpful in maintaining his sobriety. Respondent also believes that, through his community work with Project Conqueror, he has overcome the depression that contributed to his drinking.

18. Lawana Stuckey testified in support of her husband. She states that he is a hard worker with a strong work ethic. In her view, respondent's DUI convictions reflect what he was like when he "partied," not what he is like when he is working. Ms. Stuckey does not drink alcohol. She does not agree with respondent using alcohol; she does not approve of it; and she does not like him to drink. Ms. Stuckey testified that respondent's drinking impacted their relationship. She believes that is why respondent has been successful in rehabilitating himself.

19. Daren L. Barron, the founder and senior pastor of World Conquerors Church, submitted a letter on behalf of respondent. He commends respondent particularly for his work with students in Project Conqueror. Pastor Barron states that, through his public speaking, respondent "has taken his life and used it to be transparent to other people; the result has changed lives." He notes that it takes a "big person to not only correct their mistakes but to use their life to help others not to repeat the same mistakes."

20. Respondent's manager and mentor at Metrocall, Tim Holt, submitted a letter in support of respondent. Mr. Holt commends respondent for his exceptional sales performance and "business acumen." In addition, Mr. Holt states that he never received a single complaint about respondent during respondent's tenure at Metrocall. Mr. Holt found respondent's integrity and professionalism to be "of the highest standards."

## LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), provides that a 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 licensed business or profession.

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 involving moral turpitude. Often 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" or as something "contrary to the accepted and customary rule of right and duty between man and man," moral turpitude is "innately a relative concept depending upon both contemporary moral values and the degree of its inimical quality."<sup>1</sup>

3. California Code of Regulations, title 10, section 2910, sets forth the criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. A crime is deemed to be substantially related if it involves "[d]oing any unlawful act . . . with the intent or threat of doing substantial injury to the person or property of another" (subd. (a)(8)), "[c]onduct which demonstrates a pattern of repeated and willful disregard of the law" (subd. (a)(10)), or "[t]wo or more convictions involving the

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<sup>1</sup> *Rice v. Alcoholic Beverage Control Appeals Board* (1979) 89 Cal.App.3d 30, 36.

consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs” (subd. (a)(11)).

4. Respondent’s 1987 sexual battery conviction is a crime of moral turpitude, and it is substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivisions (a)(8) and (a)(10). Respondent’s conviction of this offense constitutes cause to deny respondent’s license application under Business and Professions Code section 480, subdivision (a), and Business and Professions Code section 10177, subdivision (b).

5. Although contemporary moral values condemn drunk driving, no appellate case has yet held that misdemeanor driving under the influence of alcohol is a crime involving moral turpitude within the meaning of the Real Estate Law. And in the context of attorney discipline proceedings, the California Supreme Court has consistently held that a conviction of misdemeanor DUI does not involve moral turpitude per se.<sup>2</sup>

But even if a crime does not involve moral turpitude per se, the circumstances under which it was committed may involve moral turpitude. Here, respondent was convicted of two DUIs, one in 1988 and the other in 2003. After his first DUI, respondent stopped drinking. It is reasonable to infer that he became aware—if he was not already aware—of the dangers of drunk driving. Respondent then had a second drunk driving arrest in 2003. Continuing the same dangerous activity despite the knowledge of the risks:

is indicative of a ‘conscious indifference or “I don’t care attitude” concerning the ultimate consequences’ of the activity [Citation omitted] from which one can certainly infer a ‘depravity in the private and social duties which a man owes to his fellowman, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.’<sup>3</sup>

Respondent’s DUI convictions in 1988 and 2003 are found to constitute crimes involving moral turpitude. Respondent’s DUI convictions are substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, sections 2910, subdivisions (a)(10) and (a)(11). Each of respondent’s DUI convictions constitutes cause to deny respondent’s license application under Business and Professions Code section 480, subdivision (a), and Business and Professions Code section 10177, subdivision (b).

6. Respondent demonstrated substantial rehabilitation between his 1988 DUI conviction and his most recent conviction in 2003. He satisfied the terms and conditions of his 1987 and 1988 criminal convictions, paid his civil judgment, and had his 1987 sexual

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<sup>2</sup> *In re Kelley* (1990) 52 Cal.3d 487, 494; *In re Carr* (1988) 46 Cal.3d 1089.

<sup>3</sup> *People v. Forster* (1994) 29 Cal.App.4th 1746, 1757.

battery reduced to a misdemeanor and expunged. He married and became the father of four children. He worked continuously in the wireless communications industry, where he promoted to progressively more responsible positions, received awards for his productivity, and earned a reputation for integrity and professionalism. He took college classes at night and graduated with a bachelor's degree in business. He was found to be sufficiently rehabilitated to be granted a restricted salesperson's license, which he held for four years with no discipline against his license.

Respondent's 2003 DUI conviction is a matter of concern. On the date he was arrested in August 2003, respondent had not put his alcohol problem behind him, and he will not complete his probation for that offense for another year. To respondent's credit, however, he has made the decision to stop drinking, and he has not had a drink since he was arrested two years ago. It is true that respondent also quit drinking after his 1988 DUI, only to commit another such offense in 2003. But respondent's circumstances are different now than they were in 1988. The most important difference is that respondent has a wife and four children, and he has made a commitment to his wife that he will not drink. He seems determined to keep that commitment. There is no evidence that respondent has been dishonest or untrustworthy in his work in the wireless communications industry, or as a real estate licensee. For these reasons, it would not be contrary to the public interest to grant respondent a restricted broker's license.

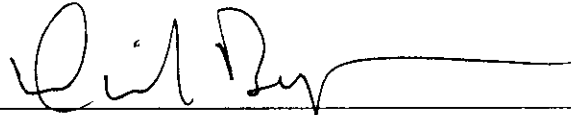
#### ORDER

The application of Felix Forest Stuckey for a real estate broker license is denied; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Business and Professions Code section 10156.5. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 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.

DATED: September 26, 2005



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DAVID L. BENJAMIN  
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

FILED  
JUL 19 2005

DEPARTMENT OF REAL ESTATE

By Juan Aramb

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

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12 In the Matter of the Application of )  
13 FELIX FOREST STUCKEY, ) NO. H- 9322 SF  
14 Respondent. ) STATEMENT OF ISSUES  
15 )

16 The Complainant, E. J. HABERER II, a Deputy Real Estate  
17 Commissioner of the State of California, for causes of Statement  
18 of Issues against FELIX FOREST STUCKEY, alleges as follows:

19 I

20 FELIX FOREST STUCKEY (hereafter Respondent) made  
21 application to the Department of Real Estate of the State of  
22 California for a real estate broker license on or about  
23 October 9, 2003.

24 II

25 The Complainant, E. J. HABERER II, a Deputy Real Estate  
26 Commissioner of the State of California, makes this Statement of  
27 Issues in his official capacity and not otherwise.

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III

On or about October 6, 2003, in the Superior Court of California, County of Alameda, Respondent was convicted of violation of Vehicle Code Section 23152(a) (DRIVING UNDER THE INFLUENCE OF ALCOHOL), 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 May 31, 1988, in the Municipal Court of the State of Georgia, Respondent was convicted of violation of DRIVING UNDER THE INFLUENCE OF ALCOHOL, 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 August 31, 1987, in the Superior Court of California, County of Alameda, Respondent was convicted of violation of Penal Code Section 243.4 (SEXUAL BATTERY), a felony, 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.

VI

The crimes of which Respondent was convicted as alleged in Paragraphs III, IV, and V above constitute cause, jointly


1 and/or severally, for denial of Respondent's application for a  
2 real estate broker license under Sections 480(a) and/or 10177(b)  
3 of the California Business and Professions Code.

4 PRIOR PROCEEDINGS

5 VII

6 Effective on or about August 29, 1995, in Case No.  
7 H-7103 SF, OAH Case No. N-9408061, before the State of California  
8 Department of Real Estate, the 1994 real estate salesperson  
9 license application of Respondent was denied pursuant to Sections  
10 480(a) and 10177(b) of the Code, subject to the right to issuance  
11 of a restricted real estate salesperson license.

12 WHEREFORE, the Complainant prays that the above-  
13 entitled matter be set for hearing and, upon proof of the charges  
14 contained herein, that the Commissioner refuse to authorize the  
15 issuance of, and deny the issuance of, a real estate  
16 salesperson license to Respondent, and for such other and further  
17 relief as may be proper in the premises.

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22 E. J. HABERER II  
23 Deputy Real Estate Commissioner

24 Dated at Oakland, California  
25 this 15 day of July, 2005  
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