

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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FILED  
DEC 21 2005

DEPARTMENT OF REAL ESTATE

By J. E. [Signature]

In the Matter of the Application of)  
CLOUDELL DOUGLAS, JR., )  
Respondent. )

NO. H-9339 SF

OAH No. N-2005081020

**DECISION**

The Proposed Decision dated November 14, 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 JAN 10 2006

IT IS SO ORDERED

12-21

2005.

JEFF DAVIS  
Real Estate Commissioner

[Signature]

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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DEC 19 2005  
DEPARTMENT OF REAL ESTATE

In the Matter of the Application of:

CLOUDELL DOUGLAS, JR.,

Respondent.

By S. El

Case No. H-9339 SF

OAH No. N2005081020

**PROPOSED DECISION**

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Oakland, California, on November 2, 2005.

Complainant E. J. Haberer II, Deputy Real Estate Commissioner, was represented by Michael B. Rich, Counsel, Department of Real Estate.

Respondent CloudeLL Douglas, Jr., was present and was represented by Scott G. Lyon, Attorney at Law.

The matter was submitted for decision on November 2, 2005.

**FACTUAL FINDINGS**

1. On November 12, 2004, respondent CloudeLL Douglas, Jr., submitted to the Department of Real Estate an application for a real estate salesperson license. Any license issued pursuant to that application would be subject to the provisions of Business and Professions Code section 10153.4. The department denied respondent's application and he appealed.

2. In a span of four years, between May 1993 and May 1997, respondent was convicted of seven crimes.

a. On May 10, 1993, respondent was convicted in San Francisco, on his plea of guilty, of a misdemeanor violation of Penal Code section 32, concealing or aiding a principal in a felony with intent that principal avoid arrest, trial or punishment. This conviction stemmed from respondent's arrest almost a year earlier when, on June 13, 1992, he and several other men ran from police. Respondent was found to be in possession of cocaine. He was charged with that crime. One of the other men was charged with a felony for carrying a concealed weapon. Respondent was permitted to plead to an accessory charge and the cocaine charge was dismissed.

b. On May 10, 1993, in a separate case, respondent was convicted in San Francisco, on his plea of guilty, of a misdemeanor violation of Penal Code section 12031, subdivision (a), carrying a loaded firearm. This conviction stemmed from respondent's arrest on October 13, 1992. He was observed by a police officer making an apparent drug transaction. When stopped, a loaded pistol was found on the seat of his car.

c. On May 10, 1993, in a separate case, respondent was convicted in San Francisco, on his plea of guilty, of a misdemeanor violation of Penal Code section 597, subdivision (a), cruelty to an animal. The circumstances of this conviction were not established, but it appeared to stem from respondent's arrest sometime in June 1992.

All three of the foregoing matters were resolved together. Respondent was placed on three years' probation on conditions that included 90 days in jail, with credit for 90 days already served.

d. On June 1, 1993, respondent was convicted in Contra Costa County, on his plea of nolo contendere, of a misdemeanor violation of Penal Code section 32. The circumstances of this crime were not established, but it stemmed from an incident on October 21, 1992, when respondent and another man were arrested and charged with assault with a deadly weapon. That charge against respondent was dismissed when he entered a nolo plea to an accessory charge. Respondent was sentenced to 90 days in jail, with credit for time served.

e. On June 8, 1993, respondent was convicted in San Francisco, on his plea of guilty, of a felony violation of Penal Code section 32. The circumstances of this crime were not established, but it stemmed from an incident on August 27, 1992, when respondent was arrested and charged with aiding another man he knew had sold or transported cocaine. Respondent was placed on three years' probation on conditions that included 90 days in jail, with credit for 90 days served.

f. On April 18, 1994, respondent was convicted in San Francisco, on his plea of guilty, of a felony violation of Health and Safety Code section 11351.5, possession for sale of cocaine base. This conviction stemmed from an incident on November 19, 1993. Respondent was sentenced to five years in state prison. The sentence was suspended and respondent was placed on probation for three years on conditions including one year in county jail.

g. On May 28, 1997, respondent was convicted in San Francisco, on his plea of guilty, of a felony violation of Penal Code section 245, subdivision (a)(1), assault with a deadly weapon. This conviction stemmed from an incident on July 27, 1996. Respondent was placed on three years' probation on conditions that included one year in jail, with credit for 245 days, and the provision that the sentence could be served in a counseling program determined by the probation department.

3. Except for Penal Code section 597, each of the crimes of which respondent was convicted involves moral turpitude and is substantially related to the qualifications, functions, and duties of a real estate licensee.

4. Respondent is 31 years old. He had a troubled childhood. His parents were both alcoholics. Family members used crack cocaine in the house. Much of the family's income was used to buy drugs. His mother moved around a lot and respondent was "bitter" and "angry." He had a lack of concern for society and other people and did not care about the consequences of his actions. He was hot-headed and acted out. He began selling drugs in the early 90's. He did not use cocaine himself, only marijuana. Many of his crimes related to his drug dealing. Respondent was 18 when he committed his first five crimes, 19 when he committed the sixth, and 22 when he committed the last. Respondent has not been arrested since his last crime in 1996.

5. Respondent stopped using marijuana after his last conviction in 1997. He attended AA and NA meetings while in jail but has not attended any since then. He has nevertheless remained drug-free.

6. Respondent has been off probation since May 1999. In March 2005, all six of his San Francisco convictions were dismissed pursuant to Penal Code section 1203.4.

7. Respondent has been married for six years. He and his wife have two children, ages four and nine. They are also raising respondent's 11-year-old brother. Respondent and his wife own their home and a rental property.

8. Respondent has been employed as an ironworker since 1995. He completed the apprenticeship program in 1999. He is an active member of the ironworkers union. He recently ran for executive officer of the union.

9. Although he had been working full-time as an ironworker until he went on disability with a recent injury, around four years ago respondent also began working part-time at ATM Real Estate in Richmond. Respondent first became acquainted with Bob Robinson, ATM's broker, when he was a client. Robinson suggested to respondent that he get involved in the real estate field. Respondent revealed his criminal background to Robinson. At ATM respondent processes loans, organizes files, sets up "for sale" and "open house" signs, and develops and passes out fact sheets. He has recently been given responsibility for making sure agents adhere to office rules and protocols relating to such things as conduct and dress. Robinson testified that he has found respondent to be dependable, forthright, and of good character. He would be willing to supervise respondent if he is granted a restricted license.

10. Stephen Fitzpatrick is a San Francisco probation officer. He was respondent's probation officer from 1993 until respondent's successful completion in 1999. Respondent has remained in touch with him since then, sometimes calling Fitzpatrick for advice. Fitzpatrick testified that respondent has "absolutely" changed since 1993. At first,

respondent was an angry young man. But Fitzpatrick also saw in him someone who was intelligent and inquisitive. Respondent asked many questions about his probation. He listened to the answers and learned from them. Respondent has grown greatly over the last 10 or 12 years. Fitzpatrick is not surprised to see the way in which respondent has turned his life around.

11. Mary Ann Beverly has known respondent since he was young. Her son and respondent grew up together. Beverly has seen how respondent has changed over the years. He has matured quite a bit and now adheres to society's norms. He has a reputation as an honest person and provides good advice to young people. Respondent's older sister, Tracy McDowell, has seen similar changes in her brother. In her words, she has seen him grow from a boy to a man, from an angry youth to a responsible adult. McDowell has three sons, two of whom are teenagers, and she works as an aide at a high school. She uses her brother's success story as a role model for her sons and students.

12. Respondent testified that he was hardened by the environment in which he was raised. But he has learned the compassion he lacked as a youth from his wife, whom he describes as one of the major influences on his life. He also credits as important influences his sisters, Fitzpatrick, and Doris Machen, a community advocate in Richmond. He attended a drug program at the center Machen runs, and it was through her contacts and counsel that he first became involved in ironworking. Respondent would like to get into residential real estate because he wants to show others the benefits of home ownership, and to ensure that they are well represented in the transaction.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), provides that a professional 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 for which application is made. 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. Although the latter statute does not contain the "substantially related" language, the law is clear that a conviction is not actionable under this section unless it is for a crime that is substantially related to the qualifications, functions or duties of a real estate licensee.<sup>1</sup>

2. As set forth in Finding 3, respondent has been convicted of multiple crimes (a number of which were felonies) that involve moral turpitude and are substantially related to the qualifications, functions, and duties of a real estate licensee. Cause for denial of respondent's application therefore exists under Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b).

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<sup>1</sup> *Brandt v. Fox* (1979) 90 Cal.App.3d 737.

3. Although for a period of his life respondent was involved in drug dealing and other criminal behavior, respondent has shown that he has made a substantial change in his behavior, and his life, over the past eight years. It has been more than eight years since his last conviction, and more than nine since the act that led to that conviction. He has been off probation for more than five years. All but one of his convictions have been expunged. Respondent has established a stable family life and has maintained steady gainful employment. He has not used illegal drugs for eight years. Most importantly, respondent has demonstrated, through his own testimony and that of others, a significant change in attitude from that which existed in his youth. All of these facts show that respondent has rehabilitated himself in conformity with the department's Criteria of Rehabilitation.<sup>2</sup> It would not be against the public interest to permit respondent to hold a real estate salesperson license upon a restricted basis.

### ORDER

The application of respondent Cloudell Douglas, Jr., for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of 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 that 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 (2) years have elapsed from the date of issuance of the restricted license to respondent.

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<sup>2</sup> California Code of Regulations, title 10, section 2911.

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

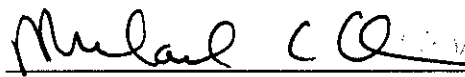
(a) That the employing broker has read the decision which is the basis for the issuance of the restricted license; and

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

4. Respondent's restricted real estate license is issued subject to the provisions of section 10153.4 of the Business and Professions Code, and the restricted real estate salesperson license issued to respondent shall be similarly limited, to wit: Respondent shall, within eighteen months of the issuance of respondent's original real estate salesperson license under the provisions of section 10153.4 of the Business and Professions Code, 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 fails to present satisfactory evidence of successful completion of said courses, the restricted license shall be automatically suspended effective eighteen months after issuance of respondent's original real estate salesperson license. This suspension shall not be lifted until respondent has submitted the required evidence of course completion and the commissioner has given written notice to respondent of lifting of the suspension.

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

DATED: November 14, 2005

  
MICHAEL C. COHN  
Administrative Law Judge  
Office of Administrative Hearings

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  
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FILED  
AUG 09 2005

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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11 In the Matter of the Application of )  
12 ) H-9339 SF  
13 CLOUDELL DOUGLAS, Jr., )  
14 ) STATEMENT OF ISSUES  
15 Respondent. )

16 The Complainant, E.J. HABERER II, a Deputy Real Estate  
17 Commissioner of the State of California, for Statement of Issues  
18 against CLOUDELL DOUGLAS, Jr. (hereinafter "Respondent"), is  
19 informed and alleges as follows:

I

20 Respondent made application to the Department of Real  
21 Estate of the State of California for a real estate salesperson  
22 license on or about November 12, 2004, with the knowledge and  
23 understanding that any license issued as a result of said  
24 application would be subject to the conditions of Section 10153.4  
25 of the Business and Professions Code.

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II

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 May 10, 1993, in the Municipal Court, County of San Francisco, State of California, in case number 1381237, Respondent was convicted of a violation of Section 32 of the California Penal Code (After felony committed, knowingly conceals or aids a principal in a felony with intent principal may avoid arrest, trial or punishment), 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 10, 1993, in the Municipal Court, County of San Francisco, State of California, in case number 1404944, Respondent was convicted of violating Section 12031 of the California Penal Code (Unlawfully carry loaded firearm in a vehicle in a public place or on a public street), 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 May 10, 1993, in the Municipal Court,  
3 County of San Francisco, State of California, in case number  
4 1381471, Respondent was convicted of a violation of Section  
5 597(a) of the California Penal Code (Neglect or cruel treatment  
6 of an animal), a crime involving moral turpitude and/or a crime  
7 which bears a substantial relationship under Section 2910, Title  
8 10, California Code of Regulations, to the qualifications,  
9 functions, or duties of a real estate licensee.

10 VI

11 On or about June 1, 1993, in the Superior Court, County  
12 of Contra Costa, State of California, in case number 930201-9,  
13 Respondent was convicted of a violation of Section 32 of the  
14 California Penal Code (After felony committed, knowingly conceals  
15 or aids a principal in a felony with intent principal may avoid  
16 arrest, trial or punishment), a crime involving moral turpitude  
17 and/or a crime which bears a substantial relationship under  
18 Section 2910, Title 10, California Code of Regulations, to the  
19 qualifications, functions, or duties of a real estate licensee.

20 VII

21 On or about June 8, 1993, in the Superior Court, County  
22 of San Francisco, State of California, in case number 1396115,  
23 Respondent was convicted of a violation of Section 32 of the  
24 California Penal Code (After felony committed, knowingly conceals  
25 or aids a principal in a felony with intent principal may avoid  
26 arrest, trial or punishment), a felony and a crime involving  
27 moral turpitude and/or a crime which bears a substantial

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

4 VIII

5 On or about April 18, 1994, in the Superior Court,  
6 County of San Francisco, State of California, in case number  
7 1480464, Respondent was convicted of a violation of Section  
8 11351.5 of the California Health and Safety Code (Unlawful  
9 possession of cocaine base for sale), a felony and a crime  
10 involving moral turpitude and/or a crime which bears a  
11 substantial relationship under Section 2910, Title 10, California  
12 Code of Regulations, to the qualifications, functions, or duties  
13 of a real estate licensee.

14 IX

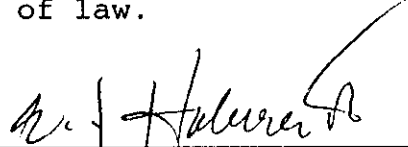
15 On or about May 28, 1997, in the Superior Court, County  
16 of San Francisco, State of California, in case number 165338,  
17 Respondent was convicted of a violation of Section 245(a)(1) of  
18 the California Penal Code (Assault upon the person with a deadly  
19 weapon other than a firearm), a felony and a crime involving  
20 moral turpitude and/or a crime which bears a substantial  
21 relationship under Section 2910, Title 10, California Code of  
22 Regulations, to the qualifications, functions, or duties of a  
23 real estate licensee.

24 X

25 The crimes of which Respondent was convicted, as  
26 alleged in Paragraphs III, IV, V, VI, VIII, VIII and IX, above,  
27 individually and/or collectively, constitute cause for denial of

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

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

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12 E.J. HABERER II  
Deputy Real Estate Commissioner

13 Dated at Oakland, California,  
14 this 19th day of July, 2005.  
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