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DEPARTMENT OF REAL ESTATE

By *L. Frost*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of)
HATIM MAZEN ELMASHNI,) NO. H-9397 SF
Respondent.)

ORDER DENYING RECONSIDERATION

On April 21, 2009, an Order Denying Removal of Restrictions on License was rendered in the above-entitled matter. The Order was to become effective at 12 o'clock noon on June 5, 2009.

On June 1, 2009, Respondent requested a thirty-day stay to petition for reconsideration of the Order Denying Removal of Restrictions on License of April 21, 2009. An Order Staying Effective Date was issued June 1, 2009, staying the effective date of the Order Denying Removal of Restrictions on License for a period of 30 days, until 12 o'clock noon on July 6, 2009.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Order Denying Removal of Restrictions on License of April 21, 2009, and reconsideration is hereby denied.

IT IS HEREBY ORDERED *6-25-09*

JEFF DAVI
Real Estate Commissioner

Barbara J. Bigby

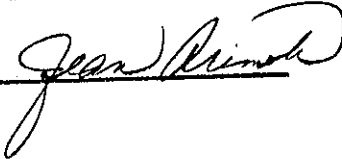
BY: Barbara J. Bigby
Chief Deputy Commissioner

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MAY 15 2009

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of
HATIM MAZEN ELMASHNI,
Respondent.

No. H-9397 SF

ORDER DENYING REMOVAL OF RESTRICTIONS ON LICENSE

On November 28, 2005, a Decision was rendered herein denying Respondent's application for a real estate broker license but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on December 20, 2005 and Respondent has been licensed as such since that time.

On January 21, 2008, Respondent petitioned for removal of the restrictions on said real estate broker license.

The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and integrity than an applicant for first time licensure. The proof must be sufficient to overcome the prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has

1 undergone sufficient rehabilitation to warrant the removal of the restrictions on Respondent's real
2 estate broker license at this time.

3 The Department has developed criteria in Section 2911 of Title 10, California
4 Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for
5 issuance or reinstatement of a license. Among the criteria relevant in this proceeding are:

6 Regulation 2911(k) Correction of business practices resulting in injury to others or
7 with the potential to cause such injury.

8 On February 18, 2009, the Deputy Commissioner assigned to review
9 Respondent's petition performed a compliance audit of Respondent's brokerage practices to
10 determine whether Respondent conducts his real estate resale brokerage activities in compliance
11 with the Real Estate Law and Commissioner's Regulations within Chapter 6 of Title 10,
12 California Code of Regulations. The examination disclosed that Respondent was in violation of
13 Regulation 2753 in that Respondent did not have in his possession the real estate salesperson
14 license of Troy Bilodeau, a real estate salesperson registered with the Department in
15 Respondent's employ. In violation of Regulation 2726, Respondent failed to have in effect a
16 written salesperson-broker relationship agreement with Troy Bilodeau. In violation of Regulation
17 2831, Respondent failed to maintain a log of trust fund checks received but not deposited into a
18 trust fund bank account. In violation of Section 10176(a) of the Business & Professions Code,
19 Respondent represented in sales agreements that Respondent had possession of earnest money
20 deposit checks, when in fact he did not.

21 In view of Respondent's failure to demonstrate compliance with Regulation
22 2911(k) of the Criteria of Rehabilitation, I am not satisfied that Respondent's rehabilitation
23 adequately supports issuance of an unrestricted license to Respondent.

24 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal of
25 restrictions on Respondent's real estate broker license is denied.

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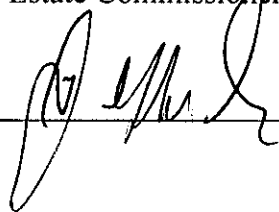
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This Order shall become effective at 12 o'clock noon JUN 05 2009

DATED: 4-21, 2009.

JEFF DAVI
Real Estate Commissioner



1 Department of Real Estate
2 P.O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0781

FILED
DEC -1 2005

DEPARTMENT OF REAL ESTATE

[Signature]

7 BEFORE THE DEPARTMENT OF REAL ESTATE
8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Application of) No. H-9397 SF
11 HATIM MAZEN ELMASHNI,)
12 Respondent.) STIPULATION AND WAIVER

13
14 I, HATIM MAZEN ELMASHNI, respondent herein, do hereby
15 affirm that I have applied to the Department of Real Estate for
16 a real estate broker license and that to the best of my
17 knowledge I have satisfied all of the statutory requirements
18 for the issuance of the license, including the payment of the
19 fee therefor.

20 I acknowledge that I have received and read the
21 Statement of Issues and the Statement to Respondent filed by the
22 Department of Real Estate on October 6, 2005, in connection with
23 my application for a real estate broker license. I understand
24 that the Real Estate Commissioner may hold a hearing on this
25 Statement of Issues for the purpose of requiring further proof of
26 Respondent's honesty and truthfulness and to prove other
27

1 allegations therein, or that he may in his discretion waive the
2 hearing and grant me a restricted real estate broker license
3 based upon this Stipulation and Waiver. I also understand that
4 by filing the Statement of Issues in this matter the Real Estate
5 Commissioner is shifting the burden to me to make a satisfactory
6 showing that Respondent meets all the requirements for issuance
7 of a real estate broker license. I further understand that by
8 entering into this stipulation and waiver I will be stipulating
9 that the Real Estate Commissioner has found that I have failed to
10 make such a showing, thereby justifying the denial of the
11 issuance to me of an unrestricted real estate broker license.

12 I hereby admit that the allegations of the Statement of
13 Issues filed against me are true and correct and requests that
14 the Real Estate Commissioner in his discretion issue a restricted
15 real estate broker license to me under the authority of Section
16 10156.5 of the Business and Professions Code.

17 I am aware that by signing this Stipulation and Waiver,
18 I am waiving my right to a hearing and the opportunity to present
19 evidence at the hearing to establish my rehabilitation in order
20 to obtain an unrestricted real estate broker license if this
21 Stipulation and Waiver is accepted by the Real Estate
22 Commissioner. However, I am not waiving my right to a hearing
23 and to further proceedings to obtain a restricted or unrestricted
24 license if this Stipulation and Waiver is not accepted by the
25 Commissioner.

26
27

1 I further understand that the following conditions,
2 limitations, and restrictions will attach to a restricted license
3 issued by the Department of Real Estate pursuant hereto:

4 1. The license shall not confer any property right in the
5 privileges to be exercised including the right of renewal,
6 and the Real Estate Commissioner may by appropriate order
7 suspend the right to exercise any privileges under this
8 restricted license in the event of:

9 a. The conviction of Respondent (including a plea of nolo
10 contendere) to a crime which bears a substantial
11 relationship to Respondent's fitness or capacity as a
12 real estate licensee; or

13 b. The receipt of evidence that Respondent has violated
14 provisions of the California Real Estate Law, the
15 Subdivided Lands Law, Regulations of the Real Estate
16 Commissioner or conditions attaching to this restricted
17 license.

18 2. I shall not be eligible to apply for the issuance of an
19 unrestricted real estate license nor the removal of any of
20 the conditions, limitations or restrictions attaching to
21 the restricted license, until two (2) years have elapsed
22 from the date of issuance of the restricted license to
23 Respondent.

24 3. I shall regularly attend an alcohol abuse treatment or
25 recovery program, such as Alcoholics Anonymous or other
26 formal program, at least twice a month during the term(s)
27 of the restricted license.

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11/2/2005

DATED



HATIM MAZEN ELMASHNI
Respondent

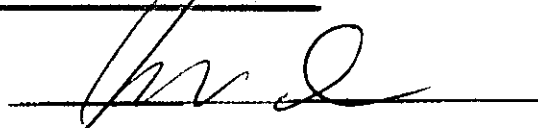
I have read the Statement of Issues filed herein and the foregoing Stipulation and Waiver signed by the Respondent. I am satisfied that the hearing for the purpose of requiring further proof as to the honesty and truthfulness of Respondent need not be called and that it will not be inimical to the public interest to issue a restricted real estate broker license to Respondent.

Therefore, IT IS HEREBY ORDERED that a restricted real estate broker license be issued to Respondent, if Respondent has otherwise fulfilled all of the statutory requirement for licensure. The restricted license shall be limited, conditioned, and restricted as specified in the foregoing Stipulation and Waiver.

This Order is effective immediately.

IT IS SO ORDERED

11.28.05.



JEFF DAVI
Real Estate Commissioner

1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007
6 Telephone: (916) 227-0781

FILED
OCT 06 2005

DEPARTMENT OF REAL ESTATE

By

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 HATIM MAZEN ELMASHNI,) No. H- 9397 SF
13 Respondent.) STATEMENT OF ISSUES

14
15 The Complainant, E. J. HABERER II, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against HATIM MAZEN ELMASHNI (hereinafter "Respondent"), is
18 informed and alleges as follows:

19 I

20 Respondent made application to the Department of Real
21 Estate of the State of California for a real estate broker
22 license on or about March 7, 2005.

23 II

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

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III

On or about November 1, 2002, in the Superior Court, County of San Diego, Respondent was convicted of a violation of Section 23103 of the California Vehicle Code (Wet Reckless Driving), a crime involving moral turpitude 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 7, 2003, in the Superior Court, County of San Diego, Respondent was convicted of a violation of Section 23152(B) of the California Vehicle Code (Driving With a 0.08 or Higher Blood Alcohol Level), a crime involving moral turpitude 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

The crimes of which Respondent was convicted, as above, constitute cause for denial of Respondent's application for a real estate license under Sections 480(a) and 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 broker license to Respondent, and for such other and further relief as may be proper under other provisions of law.



E. J. HABERER II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 29th day of September ²⁰⁰⁵ 2004. *ejt*