

FILED

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

NOV 20 2007

DEPARTMENT OF REAL ESTATE

\* \* \*

In the Matter of the Application of )  
EMMANUEL U. UDENYI, )  
Respondent. )

By

*H. Mar*

NO. H-10051 SF

OAH NO. 2007070982

DECISION

The Proposed Decision dated October 31, 2007, 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.

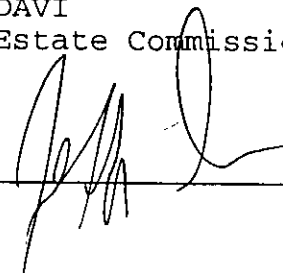
If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon  
on DEC 11 2007.

IT IS SO ORDERED

*11-19-07*

JEFF DAVI  
Real Estate Commissioner



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

EMMANUEL U. UDENYI,

Respondent.

Case No. H- 10051 SF

OAH No. 2007070982

**PROPOSED DECISION**

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter on October 1, 2007, in Oakland, California.

Jeanine K. Clasen, Counsel, represented complainant Charles W. Koenig.

Austin Castro Ginigeme, Attorney at Law, 554 Grand Avenue, Oakland, California 94610, represented respondent Emmanuel U. Udenyi.

The matter was submitted on October 1, 2007.

**FACTUAL FINDINGS**

1. Official notice is taken that complainant Charles W. Koenig made the Statement of Issues in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. On November 28, 2006, the Department of Real Estate (Department) received an application for a real estate salesperson license from Emmanuel U. Udenyi, also known as Emmanuel Uziogwe Udenyi, Emanuel Uzoigwe Udeny, Uzoigwe Emanuel Udenyi, Emmanuel Y. Udenyi and Uche Sam Dury (respondent). The application was dated November 22, 2006, and signed under penalty of perjury. On his application respondent disclosed that he had been convicted of two criminal offenses.

3. The Department seeks to deny respondent's application for a real estate salesperson license on the basis of his criminal convictions.

4. On February 25, 2000, in the Superior Court of the State of California for the County of Alameda, respondent was convicted, upon a plea of no contest, of violating

Insurance Code section 1871.1, subdivision (a)(3) (knowingly causing a vehicular accident to present a fraudulent claim for recovery), and Insurance Code section 1871.1, subdivision (a)(1) (knowingly presenting a fraudulent claim for insurance benefits), both felonies.

Imposition of sentence was suspended and respondent was placed on six years of probation on terms and conditions that included serving 120 days in jail, which respondent was permitted to serve through the electronic surveillance program, payment of restitution in the amount of \$5,000 and payment of a \$10,000 restitution fine.<sup>1</sup> On November 12, 2004, respondent's petition to have his felony convictions reduced to misdemeanors was granted. On September 29, 2006, respondent's petition for expungement of his convictions pursuant to Penal Code section 1203.4 was granted.

Counts 5 and 6 of the complaint in the underlying criminal action allege, respectively, that on September 9, 1992, respondent knowingly caused or participated in vehicular accidents for the purpose of presenting false or fraudulent claims, and presented or caused to be presented false or fraudulent claims for payment of a loss under a contract of insurance. Respondent pled no contest to counts 5 and 6 of the criminal complaint.

5. Respondent acknowledges that he participated in vehicle accidents and presented fraudulent insurance claims on multiple (at least six) occasions in the early 1990s.<sup>2</sup> He admits that on at least one occasion he filed an insurance claim twice for the same accident and same property damage. He also admits that he filed claims for injuries and property damage that he had not actually sustained, all for the purpose of obtaining money. Respondent acknowledges what he did was wrong and expresses remorse for his conduct. However, respondent asserts that he began to change in 1993 after he got married. He testified that he last participated in a staged accident in 1993 or 1994. The birth of his two sons (now 12 and eight years of age) strengthened respondent's resolve not to engage in criminal activity because he wanted to remain free and able to support his sons, not locked up in prison. Respondent represents that he has complied with all terms of the criminal probation, including payment of restitution, and has not been arrested in California or any other state since 2000. He asks that he be given a "second chance" and granted a real estate salesperson license.

6. Respondent is 44 years old. He is now divorced and shares 50-50 joint-custody of his two sons with his ex-wife. Respondent immigrated to the United States in 1988 and has resident alien status. He has had a number of occupations since arriving in the

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<sup>1</sup> Respondent testified that he was not required to pay the \$10,000 restitution fine.

<sup>2</sup> The complaint in the underlying action alleged that between December 1990 and October 1994 respondent, on multiple occasions, knowingly caused or participated in vehicular accidents for the purpose of presenting false or fraudulent claims, presented or caused to be presented false or fraudulent claims for payment of a loss under a contract of insurance, and/or knowingly prepared, made and subscribed a writing with intent to present and use it in support of a fraudulent claim.

United States, including security guard and courier/driver for Bank of America. He currently works as a vehicle salesperson at Hayward Ford, a position he has held for the last nine years. Respondent obtained his vehicle salesperson license in 1996. When respondent renewed his license in 2002, the Department of Motor Vehicles placed his license on probation for five years because of his criminal convictions. The probation ended in January 2007. Respondent also has an Associate of Arts degree in Political Science. Respondent is seeking a real estate license as a means of increasing his income. He believes he can be very successful in real estate sales.

7. Respondent has not completed all of the courses required under Business and Professions Code section 10153.4.

### LEGAL CONCLUSIONS

1. Business and Professions Code sections 10177, subdivision (b), and 480, subdivision (a), when read in conjunction, provide that a license application may be denied if the applicant has been convicted of a felony or a crime involving moral turpitude, and the offense is substantially related to the qualifications, functions or duties of the business or profession for which application is made. (See *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554 [Department must prove both that the misdemeanor crime involves moral turpitude and that it is substantially related to the duties of a real estate licensee].)<sup>3</sup>

It is undisputed that respondent was convicted of two felonies, both of which involved moral turpitude.<sup>4</sup> However, respondent contends that the crimes of which he was convicted are not substantially related to the qualifications, functions or duties of a real estate salesperson.

Title 12, California Code of Regulations, section 2910, lists crimes that are deemed to be substantially related to the qualifications, functions or duties of a real estate licensee. Subdivision (a)(1) of section 2910 provides a crime is deemed to be substantially related if it involves the fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another. Subdivision (a)(2) provides a crime is deemed to be substantially related if it involves the uttering of a false statement. Subdivision (a)(4) provides a crime is

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<sup>3</sup> Case law similarly makes clear that there must be a nexus or logical relationship between the criminal conduct and an individual's fitness to practice a particular profession. (See *In re Stuart K. Lesansky* (2001) 25 Cal.4th 11; *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 227.)

<sup>4</sup> Criminal conduct reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of a profession (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or it involves a serious breach of a duty owed to another or society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the conduct would likely undermine the public confidence in and respect for the profession. (*In re Stuart K. Lesansky*, *supra*, 25 Cal.4th at p. 16.)

deemed to be substantially related if it involves the employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end. Subdivision (a)(8) provides a crime is deemed to be substantially related if it involves the doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator. Subdivision (a)(10) provides a crime is deemed to be substantially related if it involves conduct which demonstrates a pattern of repeated and willful disregard of the law.

2. Respondent's convictions are substantially related to the qualifications, functions or duties of a real estate licensee. His convictions involved participation in a criminal scheme to fraudulently obtain insurance benefits. To obtain those benefits respondent had to make false statements and employ deceit, fraud and misrepresentation. Respondent engaged in the fraudulent scheme to obtain a financial benefit for himself. And by his own admission he engaged in such conduct on multiple occasions, thereby evidencing a pattern of disregard of the law. Respondent's convictions are therefore substantially related to the qualifications, functions or duties of a real estate licensee pursuant to California Code of Regulations, title 12, section 2910, subdivisions (a)(1), (2), (4), (8) and (10).

Since respondent's convictions are substantially related to the duties of a real estate salesperson, they are a proper basis for denial of his application for a real estate salesperson license.

3. Cause to deny respondent's license application exists pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), in that respondent has been convicted of two felony offenses which bear a substantial relationship to the qualifications, functions or duties of a real estate sales person, as set forth in Factual Finding 4 and Legal Conclusion 2.

4. Notwithstanding respondent's convictions, it is determined that it would not be against the public interest to grant him a real estate salesperson license upon appropriate terms and conditions. Respondent's convictions arose from conduct that occurred at least 13 years ago and respondent has not engaged in any known criminal conduct since that time. He acknowledges that what he did was wrong and has accepted responsibility for his actions. He has successfully completed the terms of his probation, including payment of restitution, and has had his felony convictions reduced to misdemeanors and expunged. In addition, he has been continuously employed despite his convictions. He also seems motivated to lead a law-abiding life so that he can remain available to father his sons. It thus appears unlikely that respondent will engage in criminal conduct in the future.

#### ORDER

Respondent's application 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

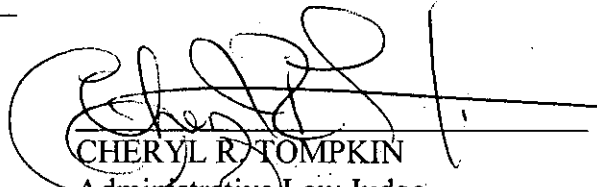
Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of said Code:

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 by 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 (2) 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 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 salesperson license is issued subject to the requirements of section 10153.4 of the Business and Professions Code, to wit: respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two courses listed in section 10153.2, other than real estate principles, 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 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 restriction.

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: 10/31/07

  
CHERYL R. TOMPKIN  
Administrative Law Judge  
Office of Administrative Hearings

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2 Department of Real Estate  
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4 Sacramento, CA 95818-7007

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FILED  
JUN 26 2007

DEPARTMENT OF REAL ESTATE

By R. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Application of )  
12 EMMANUEL U. UDENYI, ) No. H-10051 SF  
13 Respondent. ) STATEMENT OF ISSUES  
14 )

15 The Complainant, CHARLES W. KOENIG, a Deputy Real  
16 Estate Commissioner of the State of California, for Statement of  
17 Issues against EMMANUEL U. UDENYI, also known as "Emmanuel  
18 Uziogwe Udenyi", "Emanuel Uzoigwe Udenyi", "Uzoigwe Emanuel  
19 Udenyi", "Emmanuel Y. Udenyi" and "Uche Sam Dury" (herein  
20 "Respondent") alleges as follows:

21 I

22 Complainant, CHARLES W. KOENIG, a Deputy Real Estate  
23 Commissioner of the State of California, makes this Statement of  
24 Issues in his official capacity.

25 II

26 On or about November 28, 2006, Respondent made  
27 application to the Department of Real Estate of the State of



1 California (herein "the Department") for a real estate  
2 salesperson license with the knowledge and understanding that,  
3 pursuant to the provisions of Section 10153.3 of the Business  
4 and Professions Code, any license issued as a result of said  
5 application would be subject to the conditions of Section  
6 10153.4 of the California Business and Professions Code (herein  
7 "the Code").

### 8 III

9 On or about February 25, 2000, in the Superior Court  
10 of the State of California, County of Alameda (Case Number  
11 136253A), Respondent was convicted of the crime of Knowingly  
12 Causing A Vehicular Accident To Present A Fraudulent Claim For  
13 Recovery in violation of Insurance Code Section 1871.1(a)Z(3),  
14 and the crime of Knowingly Presenting A Fraudulent Claim For  
15 Insurance Benefits in violation of Insurance Code Section  
16 1871.1(a)(1), each a felony and a crime involving moral  
17 turpitude which bears a substantial relationship, under Section  
18 2910, Title 10, California Code of Regulations, (herein "the  
19 Regulations"), to the qualifications, functions or duties of a  
20 real estate licensee.

### 21 IV

22 Respondent's criminal conviction described above  
23 constitutes cause for denial of Respondent's application for a  
24 real estate license under Sections 480(a) and 10177(b) of the  
25 Code.

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

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8   
9 CHARLES W. KOENIG  
Deputy Real Estate Commissioner

10 Dated at Sacramento, California,  
11 this 22<sup>nd</sup> day of June, 2007.