

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FEB 21 2008

DEPARTMENT OF REAL ESTATE

By K. Mar

In the Matter of the Application of )  
 )  
OLANDO GRAVES, )  
 )  
Respondent. )

NO. H-10204 SF

OAH NO. 2007100552

### DECISION

The Proposed Decision dated January 14, 2008, 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 MAR 13 2008.

IT IS SO ORDERED

2/20/07

JEFF DAVIS  
Real Estate Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

OLANDO GRAVES,

Respondent.

Case No. H-10204 SF

OAH No. 2007100552

**PROPOSED DECISION**

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on December 20, 2007.

Complainant Charles W. Koenig, Deputy Real Estate Commissioner, was represented by Jeanine K. Clasen, Counsel, Department of Real Estate.

Respondent was present and was represented by Alastair R. McCloskey, Attorney at Law.

The matter was submitted on December 20, 2007.

**FACTUAL FINDINGS**

1. On May 1, 2007, respondent Olando Graves filed an application with the Department for a real estate salesperson license. Any license issued to respondent as a result of his application would be subject to the provisions of Business and Professions Code section 10153.4. The Department denied respondent's application for licensure, and he appealed.

2. Question number 25 on the application read: "Have you ever been convicted of any violation of law? You may omit minor traffic citations which do not constitute a misdemeanor or felony offense." Respondent answered "no" to this question. His answer was incorrect and misleading in that he failed to disclose his felony conviction set forth in Factual Finding 3.

3. On September 5, 1990, in the Superior Court of the State of California, County of Alameda, respondent was convicted, upon his plea of nolo contendere, of violating Health and Safety Code section 11351 (possession for sale of a controlled substance), a felony and a crime that involves moral turpitude and that is substantially related to the qualifications, functions and duties of a real estate licensee. The court suspended imposition of sentence and placed respondent on formal probation for three years.

Respondent satisfied the terms and conditions of his probation. On September 22, 2006, respondent's conviction was expunged pursuant to Penal Code section 1203.4.

4. The facts and circumstances surrounding respondent's conviction are that in December 1988 the police executed a search warrant at respondent's residence, which he shared with his father, stepmother and brother. The police confiscated, among other items, large amounts of cash and firearms. Other than a plastic baggie containing marijuana, no illegal drugs were found at the residence.

5. While respondent acknowledged at the hearing that the evidence confiscated from his residence might have created the impression that drugs were being sold, he denied that he, or anyone with whom he lived, was involved in selling illegal drugs. Respondent testified that most of the cash found on the premises was his and represented his life savings. At the time of the offense he was 22 years old and did not have a bank account. Respondent denied owning the firearms and stated that some of them belonged to his father. Respondent stated that he believed that the police assumed that he was selling illegal drugs because he was seen, briefly, associating with a suspected drug dealer. Respondent also explained that he did not contest the charges because he had just gotten engaged and had a newborn son, and he did not want to jeopardize his freedom.

6. Respondent's conviction in 1990 was his first and only conviction. He stated that he never used or sold illegal drugs. Respondent is married to the woman that he was engaged to at the time of his arrest. His wife works for Sprint, and their son currently attends college. Respondent attends church regularly.

7. Respondent has worked steadily for the past 20 years. Respondent began working at United Parcel Service in 1987. In 1988, following a job-related injury, he attended school and obtained a certificate as an electronics technician. From 1990 to the present he has been employed, in various capacities, as an electronics technician. Recently, respondent became disabled after he injured himself while lifting equipment. Although he received medical clearance to return to work, his job is no longer available.

8. While on disability, respondent took a real estate course and later passed his real estate exam. Respondent also completed a training program for prospective real estate agents at Bridgeway Realty in El Cerrito. He has a job offer from Bridgeway Realty should he receive his real estate salesperson license.

9. Respondent stated that he omitted his criminal conviction from his real estate application because his attorney, Alastair R. McCloskey, advised him that he only had to disclose his conviction if he was running for public office. Respondent explained that he never intended to deceive the Department. He realizes now that the advice he received from McCloskey was incorrect.

10. While McCloskey did not testify at respondent's hearing, McCloskey confirmed that he did advise respondent that after respondent's conviction was expunged, he did not need to disclose it unless he was running for public office or applying for a job in law enforcement. McCloskey, a criminal law practitioner, acknowledged that he was misinformed about the law at the time he gave respondent this incorrect advice.

11. Respondent's testimony was forthright and credible in all respects.

### LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 10177, subdivision (a), an application for a real estate license may be denied if the applicant makes any material misstatement of fact in an application for licensure. Similar provisions are contained in Business and Professions Code section 480, subdivision (c). Cause exists for denial of respondent's license application under these sections based upon respondent's failure to include his criminal conviction in his application for licensure, as set forth in Factual Finding 2.

2. Pursuant to Business and Professions Code section 480, subdivision (a), and section 10177, subdivision (b), an application for a real estate license may be denied if the applicant has been convicted of a felony or a crime involving moral turpitude that is substantially related to the qualifications, functions or duties of a real estate salesperson. Cause exists for denial of respondent's license application under these sections based upon his criminal conviction, as set forth in Factual Finding 3.

3. Based upon the matters set forth in Factual Findings 5 through 11, it is determined that it would not be against the public interest to allow respondent to hold a restricted real estate salesperson license. The factors considered in making this determination are as follows: Respondent's criminal offense occurred 20 years ago. He complied with all of the terms of his probation, and his conviction has been expunged. In the 20 years following his offense, he has proven himself to be a productive and hard-working individual who has continually tried to improve himself. Given that his criminal offense appears to be an isolated and remote incident in an otherwise law-abiding life, it is highly unlikely that respondent will engage in criminal activity in the future. Respondent clearly erred in failing to include his conviction in his application for licensure. His omission, however, appears to have stemmed from incorrect advice he received from his attorney, rather than from an intent to deceive the Department. Under these circumstances, it is determined that it would not be contrary to the public interest to grant respondent a restricted real estate salesperson license.

### ORDER

The application of respondent Olando Graves 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.
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, to wit: Respondent shall, within eighteen months of 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 fails to present satisfactory evidence of successful completion of the two required courses, the restricted license

shall be automatically suspended effective eighteen months after the date of its issuance. This 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.

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: January 14, 2008



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DIANE SCHNEIDER  
Administrative Law Judge  
Office of Administrative Hearings

1 JEANINE K. CLASEN, Counsel (SBN 164404)  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007

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**FILED**

OCT 10 2007

DEPARTMENT OF REAL ESTATE

By H. Mar

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9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Application of )  
13 OLANDO GRAVES, )  
14 Respondent. )

No. H-10204 SF

STATEMENT OF ISSUES

15  
16 The Complainant, CHARLES W. KOENIG, a Deputy Real  
17 Estate Commissioner of the State of California, for Statement  
18 of Issues against OLANDO GRAVES, also known as "Orlando Eric  
19 Graves" and "Olanda Eric Graves" (herein "Respondent"), alleges  
20 as follows:

21 I

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

25 II

26 On or about May 1, 2007, Respondent made application  
27 to the Department of Real Estate of the State of California

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

7 III

8 In response to Question 25 of Respondent's  
9 application, to wit: "Have you ever been convicted of any  
10 violation of law? Convictions expunged under Penal Code  
11 Section 1203.4 must be disclosed. However, you may omit minor  
12 traffic citations which do not constitute a misdemeanor or  
13 felony offense", Respondent concealed and failed to disclose  
14 the conviction described in Paragraph IV, below.

15 IV

16 On or about October 22, 1990, in the Superior Court  
17 of the State of California, County of Alameda (Case Number  
18 102630), Respondent was convicted of the crime of Possession  
19 With Intent To Sell in violation of Health and Safety Code  
20 Section 11351, a felony and a crime involving moral turpitude  
21 which bears a relationship, under Section 2910, Title 10,  
22 California Code of Regulations to the qualifications, functions  
23 or duties of a real estate licensee.

24 V

25 Respondent's failure to disclose the conviction  
26 described in Paragraph III, above, constitutes the attempted  
27 procurement or procurement of a real estate license by fraud,



1 misrepresentation or deceit and/or by making a material  
2 misstatement of fact in said application, which is cause for  
3 denial of Respondent's application for a real estate license  
4 under Sections 480(c) and 10177(a) of the Code.

5 VI

6 Respondent's criminal conviction described in  
7 Paragraph IV, above, constitutes cause for denial of his  
8 application for a real estate license under Sections 480(a) and  
9 10177(b) of the Business and Professions Code.

10 WHEREFORE, Complainant prays that the above-entitled  
11 matter be set for hearing and, upon proof of the charges  
12 contained herein, that the Commissioner refuse to authorize the  
13 license to Respondent, and for such other and further relief as  
14 may be proper in the premises.

15   
16 CHARLES W. KOENIG  
17 Deputy Real Estate Commissioner

18 Dated at Sacramento, California,  
19 this 5<sup>th</sup> day of October, 2007.