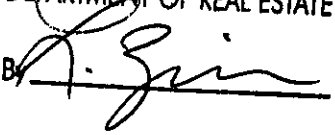


FILED

APR 18 2008

DEPARTMENT OF REAL ESTATE

BY 

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	
MARVIN PATRICK MORRIS,)	NO. H-10236 SF
Respondent.)	OAH NO. N-2007110658
_____)	

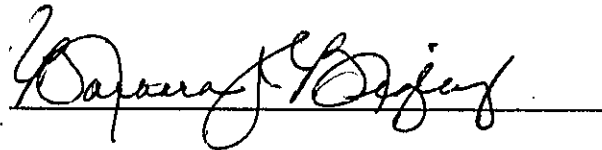
DECISION

The Proposed Decision dated March 19, 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.

This Decision shall become effective immediately.

IT IS SO ORDERED 4-18-08

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of

MARVIN PATRICK MORRIS,

Respondent.

No. H-10236 SF

OAH No. 2007110658

PROPOSED DECISION

On January 7, 2008, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter.

David B. Seals, Counsel, represented Complainant Charles W. Koenig.

Badma Gutchinov, Attorney at Law, P. O. Box 16431, San Francisco, California 94116-0431, represented Respondent Marvin Patrick Morris who appeared at the hearing of this matter.

The record was held open to afford an opportunity to the parties to file written closing arguments.

On February 21, 2008, OAH received from Respondent two documents respectively titled, "Respondent's Marvin Patrick Morris Exhibits" and "Respondent Marvin Patrick [Morris's] Request for Admissibility of Morris Exhibits." Those documents were marked as exhibits "GG-i" and "GG-ii," and were received as argument. On February 29, 2008, OAH received from Respondent a telefaxed copy of a letter by Mr. Gutchinov and a telefaxed copy of a certificate of rehabilitation from the Superior Court in the County of Santa Clara. The letter and certificate were marked as exhibits "HH-i" and "HH-ii." The letter was received as argument, while the certificate of rehabilitation was received into evidence. (Original versions of the telefaxed documents never arrived at the OAH Oakland regional office.) A period of five business days was given to Complainant to file a written reply or comment regarding the documents filed by Respondent. By Friday, March 7, 2008, Complainant filed no reply or comment to the documents filed by Respondent between February 21, 2008, and February 29, 2008.

On March 7, 2008, the parties were deemed to have submitted the matter and the record closed.

FACTUAL FINDINGS

1. On November 6, 2007, Complainant Charles W. Koenig (Complainant), in his official capacity as a Deputy Real Estate Commissioner of the State of California, made the statement of issues against Marvin Patrick Morris (Respondent).

2. On June 4, 2007, the Department of Real Estate received Respondent's application for a real estate salesperson license. Respondent had signed the application for licensure on May 31, 2007.

The application remains pending as the Department has refused to issue a license to Respondent due to his past acts and omissions that appear to disqualify him for licensure.

Record of Criminal Convictions

3. On May 5, 1992, in case number 148288, the California Superior Court for the County of Santa Clara convicted Respondent, on jury trial verdicts, of violation of two counts of violating Penal Code section 470 (Forgery), two counts of violating Penal Code section 470, subdivision (b) (Possession of Forged Driver's License), and two counts of violating Penal Code sections 484/487.2 (Grand Theft), felonies.

4. The crimes of forgery, possession of a forged driver's license and grand theft are substantially related to the qualifications, functions and duties of a real estate licensee.

5. The crimes of forgery, possession of a forged driver's license and grand theft involve moral turpitude.

6. The facts and circumstances of Respondent's unlawful misconduct, which led to the May 1992 convictions, resulted from a criminal scheme to use the identity, including social security number, of a deceased person to make applications for personal loans that inured to Respondent's benefit. Respondent's conduct included creating a counterfeit driver's license, which reflected the deceased person's name, but reflected Respondent's photographic image.

Also, onto the loan applications forms, which were prepared by him in January 1991, Respondent placed telephone numbers for his home and office as well as the address for his home. A reasonable inference may be drawn from Respondent's use of his telephone numbers and home address that he sought to facilitate a criminal scheme so that he could receive and reply to inquiries from prospective lenders. The presentation of fraudulent loan applications to consumer finance companies resulted in loans being processed in Respondent's attempt to procure about \$13,000.

7. As a consequence of the May 1992 convictions, the Superior Court conducted a sentencing hearing on September 12, 1992. At the September 1992 proceeding,

the court suspended the imposition of sentence and placed Respondent on formal probation for a period of three years. Under the terms and conditions of probation, the court ordered Respondent to spend six months in jail. Also, the court required Respondent to pay fines and fees of \$2,000. Further, the court directed Respondent to receive psychiatric counseling. Also, the court commanded that Respondent not co-mingle trust account funds in his name or under his control or the direction by any title company. The court ordered that Respondent not engage in a real estate brokerage business or to "represent himself as a seller, buyer, or broker . . . either directly or indirectly." The Superior Court concluded: "If after [Respondent's] hearing before the Real Estate Board (sic) and his license is not suspended, then he may apply to the Court for a modification."

Respondent's Background and Matters in Mitigation

8. Respondent is 59 years old as he has a date of birth of October 12, 1948.
9. In December 1987 the University of San Francisco issued Respondent a Bachelor of Science degree.
10. Respondent's father, Mr. Samuel Morris, was a real estate broker who operated a real estate sales business in Oakland. Respondent has an uncle, Mr. Vernon Morris, who operated a real estate broker's office in Berkeley.
11. During a substantial portion of his past career as a real estate professional, Respondent was a successful real estate licensee. He was first licensed as a real estate salesperson in 1975. Respondent secured a real estate broker license either in 1977 or 1978. He built a very substantial real estate practice that employed at one time as many as 100 real estate salespersons, who worked from two separate office sites. Respondent held a license as the designated officer for Evergreen Valley Investment, Inc., which engaged in business under fictitious business names of: A-1 Home Loans, Century 21 A1 Realtors East, and Century 21 Country Club Realty. The last main office and mailing address for the real estate broker's office, for which Respondent served as the designated broker, was 3111 McLaughlin Avenue in San Jose, California.

Respondent's license as a real estate licensee had been renewed to an expiration date of May 28, 1996. But, through a decision that resulted from the Accusation in Department Case Number H-7183 SF, the real estate broker license, which had been issued to Respondent, was revoked effective as of May 28, 1996. A petition for reinstatement of the real estate broker license was denied by an order that was effective on March 29, 2007.

12. Respondent has no record of criminal conviction other than the matter mentioned above.
13. Other than the Accusation in Department Case Number H-7183 SF, Respondent does not have a record of disciplinary action against any real estate license

previously issued to him. Respondent compellingly proclaimed that he never violated the trust of any client of his real estate business in any manner of transaction.

14. For several years Respondent has suffered with dangerous high blood pressure. In about October 2007, Respondent was hospitalized for about one week due to adverse affects of the hypertension. During the hospitalization, Respondent learned his kidney was functioning at about 20 percent of normal because the kidney had sustained damage due the excessive high blood pressure. Respondent is on a list for kidney transplant surgery and he is concerned that his life expectancy has been shortened.

Matter in Extenuation

15. In January 1991 when Respondent fraudulently made applications for loans, he was in a state of dire financial straits. He owed substantial taxes and tax liens had been recorded against his personal residence. He was the subject defendant in several civil actions at law. From 1987 he was involved in bankruptcy proceedings. The economic downturn had adversely impacted his real estate business so that he could not pay debts. Because of his poor credit record, Respondent could not secure loans by using his name

At the hearing of this matter, Respondent compellingly asserted that he had every intention to repay all money that he sought to "borrow" from the finance companies.

Matters in Rehabilitation and Witnesses in Rehabilitation

16. Respondent was convicted of the felony offenses, described above, on May 5, 1992, which was more than 15 years before the date of the application that he filed with the Department. And, 17 years have passed since Respondent committed the actual crimes that underpinned the convictions.

17. Respondent successfully completed the terms and conditions of probation that resulted from the 1992 conviction. He paid all fines and fees associated with the conviction. Respondent made restitution of court fines and fees of \$2,000 to the County of Santa Clara.

18. No finance company suffered a loss because of his criminal acts because shortly after his arrest Respondent promptly repaid money that he sought to procure through the bogus loan applications. Hence, by the time of his first court appearance he had repaid all money to the finance companies.

19. On April 25, 1996, the Superior Court issued an order under Penal Code section 1203.4 to expunge the record of Respondent's convictions. He obtained the expungement order less than four years after the date of the convictions.

The expungement order was issued 12 years ago.

20. On February 29, 2008, the Superior Court for Santa Clara County issued to Respondent a Certificate of Rehabilitation regarding the conviction that had occurred in May 1992. On its minute order, the Superior Court noted "pardon granted."

21. Respondent offered persuasive evidence at the hearing of this matter.

Respondent is exceedingly remorseful for his poor choice in the unlawful scheme of using another person's identification in an attempt to secure money through false loan application documents.

Since the conviction in 1992, Respondent has taken corrective actions regarding his financial conditions. He resolved his grave level of indebtedness by completing requirements under a Chapter 13 bankruptcy plan. The United States Bankruptcy Court in San Jose issued an order on July 18, 2002, to discharge Respondent from debts under the provisions of Title 11, United States Code section 1322.

He has satisfied all the civil claims brought by aggrieved consumers and liens by initiated by government agencies that had been leveled against him around the time of the criminal convictions.

22. Respondent has had significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

In about 2001, Respondent began to donate time to the Kujiweza Healing Arts Institute (KHAI), which is a nonprofit public benefit corporation that provides services to the elderly who are situated in independent living communities, hospitals, and senior centers. He actively participates in the classes offered by the organization, which has an objective of promoting positive health objectives. And, Respondent serves on the board of directors of KHAI. Respondent's current role as a board member for KHAI shows that he is capable in fulfilling duties and responsibilities of a person in a fiduciary role.

Since 2006 Respondent has been a volunteer of the East Valley Family YMCA. Respondent carries out fiduciary duties as a member of the Board of Directors for the subject YMCA branch.

23. After his conviction, Respondent turned to the soothing spiritual support of his Christian faith. Respondent is a member of the Maranatha Christian Center in San Jose. Before the conviction, Respondent did not attend church. But in recent years he has committed himself to the church to which his wife has been a faithful member.

24. Respondent has received psychological counseling from Roz Wright, Psy. D. Dr. Wright issued a report, dated June 22, 2007, which was received under Government Code section 11513, subdivision (d), to supplement and explain Respondent's testimony.

Dr. Wright's report concludes that Respondent does not exhibit antisocial traits and that he has accepted responsibility for the crimes he committed. Respondent has experienced a level of guilt and remorse that is warranted by his past conduct. And the psychologist observes in the report that Respondent has a personality that does not lend itself to projecting emotional distress and that he is a reserved individual.

25. Respondent has secured certificates of completion from the Lumbleau Real Estate School, Inc., of Dallas, Texas, as follows:

<i>Course Name</i>	<i>Credit Hours/College Equivalency</i>	<i>Date Certificate Issued</i>
Escrow	45/ Three	March 18, 2007
Loan Brokering	45/ Three	April 6, 2007
Real Estate Practice	45/ Three	May 15, 2007
Real Estate Appraisal	45/ Three	April 17, 2007
Survey of Ethics, Agency, Fair Housing and Trust Fund Handling	Six	February 26, 2007
Creation of a Successful Real Estate Salesperson	21	February 26, 2007
Counseling-The Art of Professional Client Representation	18	February 26, 2007

Respondent compellingly proclaims that he calculates during his recent study of real estate courses that he has completed 18 hours in consumer protections classes, 21 hours in consumer services instructions, six hours in course on subjects such as ethics, fair housing, and trust fund handling.

Also Respondent completed five courses of instruction with the Mike Ferry Organization on topics of self-improvement as well as real estate. Those courses were titled: "The Management Retreat - Irvine," "Getting Your Listings Sold-San Jose," "The Superstar Retreat-Las Vegas," "Productivity School-Los Angeles," and "Action Workshop-San Bernardino."

26. Respondent has completed other training programs since the 1996 disciplinary action against the real estate broker license he possessed in the past.

On October 24, 2000, the Decorating Den System, Inc., issued a Certificate of Achievement to Respondent for his completion of a course titled "Executive Franchise Class."

On November 21, 2001, Window Fashions issued Respondent a certificate for his completion of a course titled, "The Window Fashions Shoppe Seminar."

On December 14, 2001, Hunter Douglas Palm Beach Shutter issued a training certificate to Respondent that acknowledged completion of a training course to become a certified dealer/installer of the company's products. On January 26, 2002, the same company issued another certificate to Respondent for the Heritage Wood Shutter product.

27. Respondent works as an interior decorator. He is a member of the International Furnishings and Design Association.

And at the time of the hearing of this matter, he performed clerical functions at the real estate broker's office that is operated by his wife.

28. In addition to the contrition for his past criminal act of using a dead man's identification to seek loan money, Respondent is especially remorseful that his family and friends underwent grief and distress because of his criminal conduct.

29. Respondent resides with his wife at a house in San Jose. Respondent has three adult children and three grandchildren. Respondent's personal stability is reinforced by the strong support of his family members and friends.

30. On August 1, 1995, Respondent was accepted into the Blackhawk Country Club. He frequently engages in the wholesome outlet of playing golf. His membership in the golf club has enabled him to develop new and different social and business relationship since 1991 when he engaged in criminal conduct.

Through golf, Respondent has volunteered in the "First Tee" youth development program which has allowed him to aid disadvantaged young people. In 2006, Respondent helped sponsor a First Tee Golf Tournament.

31. Respondent called five witnesses to the hearing of this matter.

a. Mr. Manuel Franco offered evidence to support Respondent's application for licensure.

Mr. Franco has known Respondent since 1976 or 1977 when each man was licensed as a real estate salesperson. Since then, Respondent and Mr. Franco have become good friends.

In 1995 or 1996 Mr. Franco loaned money to Respondent. Mr. Franco was impressed that Respondent promptly repaid the money.

Mr. Franco is grateful for the kindness shown by Respondent in providing Mr. Franco's grandson with his first job. The young man told Mr. Franco about Respondent's great skills in operating an ethical business operation.

Mr. Franco has a keen appreciation that the public interest will not be jeopardized by Respondent conducting business as a real estate licensee.

b. Ms. Wynona Denise Morris (Ms. Morris) offered credible and compelling evidence at the hearing of this matter.

Since September 16, 1989, Ms. Morris has been married to Respondent.

Ms. Morris has been a licensed real estate professional for about two decades. She is a real estate broker and acts as the designated broker for Windermere Town and Country Properties, which is located in San Jose.

Ms. Morris marvels at Respondent's efforts in making a success of the couple's "blended family," which now consists of three daughters, with ages of 37 years, 33 years and 31 years, and a son, who is 27 years old. The daughters each hold real estate salesperson licenses. Also, Ms. Morris and Respondent have three grandsons, with ages of 11 years, eight years and two years.

c. Mr. Gary Athanacio came to the hearing to support Respondent's application for licensure as a real estate salesperson. Mr. Athanacio now resides in the State of Nevada.

Mr. Athanacio is licensed in both the State of California and the State of Nevada as a real estate broker. The Department has licensed Mr. Athanacio as a real estate broker since 1990.

In the early 1990s Mr. Athanacio managed the real estate broker's office that Respondent had founded. Mr. Athanacio noted that Respondent conducted his real estate office in an effective manner.

Beginning in 1993, Respondent employed Mr. Athanacio in the Milpitas office that Respondent once operated. Mr. Athanacio began working in Respondent's office as a salesperson, but in time he became the broker's sales manager and then office manager.

In about 1994 Respondent told Mr. Athanacio about the criminal convictions. Mr. Athanacio found the information to be nearly unfathomable because of the good character and integrity that he had perceived Respondent to have possessed.

d. Mr. William Paul Morris offered evidence in this matter.

Mr. Morris is Respondent's younger brother by 11 years. He is a licensed therapist who is a Marriage Family Therapist, who is employed by the Santa Barbara County Alcohol, Drug and Mental Health Department. He currently works at the Juvenile Hall.

Mr. Morris notes that Respondent has had a change of attitude since the criminal conviction in 1992. Mr. Morris perceives that Respondent has become a more open and communicative individual since overcoming the stress and trauma of his past difficult financial condition and the criminal conviction that occurred more than a decade and one-half ago.

Mr. Morris has read and studied Dr. Wright's report regarding the psychological evaluation of Respondent.

e. Ms. Melanie Marcia Fessell is the daughter of Respondent.

Ms. Fessell's mother, who was Respondent's first wife, died because of an automobile collision in 1975. Respondent acted as a single parent for a few years before he married his current wife. Ms. Fessell's compellingly proclaims that Respondent was a very responsible father who committed his energy and resources to her well being.

In about 1992 or 1993, when she was a college student, Ms. Fessell learned about Respondent's convictions. Respondent expressed regret for his misconduct. Ms. Fessell has known Respondent to have made great changes in his attitude and interaction with other persons since the time of the convictions.

Ms. Fessell has been a licensed real estate broker since 2006. Ms. Fessell contemplates participating in real estate transactions in the future with Respondent when he is licensed.

32. Respondent has the respect and admiration of many people with whom he has had dealings over more than a decade and one-half since he sustained criminal convictions. He offered ten letters and declarations¹, which show Respondent as a person with high moral standards and solid ethical bearings.

¹ Letter, dated February 21, 2007, by Jane Kerr, Secretary/Treasurer, Kujeweza Healing Arts Institute; letter, dated February 22, 2007, by Mario H. Vargas, Executive Director, East Valley Family YMCA; letter, dated August 12, 2007, by Julie R. Hudson, a licensed real estate salesperson; letter, dated August 13, 2007, by Maurice Miller, Respondent's father-in-law; declaration, dated December 17, 2007, by Michael Morris; declaration, dated December 14, 2007, by Julie Hudson; declaration, dated December 23, 2007, by Mwezo Kudumu; declaration, dated December 4, 2007, by Mario Vargas; declaration, dated December 29, 2007, by Melanie Fussell; declaration, dated December 14, 2007, by Manuel Franco; declaration, dated December 2007, by Garry Anthanacio.

Other Matter

33. By a preponderance of evidence, Respondent showed that he has qualities of good character and traits for integrity and honesty so that the public interest will not be harmed by the Commissioner's issuance of an unrestricted real estate license to Respondent.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), provides that the Department may deny a license on the ground that the applicant has "been convicted of a crime. . . (that). . . is substantially related to the qualifications, functions or duties of the business . . . for which (an) application is made."

However, under the holding of *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, Business and Professions Code section 480, subdivision (a), does not serve as a distinct basis to determine cause to deny Respondent's application for licensure as a real estate.

2. Business and Professions Code section 10177, subdivision (b), establishes that the Department may deny the issuance of a license to an applicant who has "been convicted of a felony, or a crime involving moral turpitude."

3. Cause to deny Respondent's application for licensure as a real estate salesperson exists under Business and Professions Code section 10177, subdivision (b), together with Code section 480, subdivision (a), by reason of the matters set forth in Factual Findings 3 through 5.

4. Matters in mitigation and matters in extenuation as set forth in Findings 8 through 15 have been considered in making the following order.

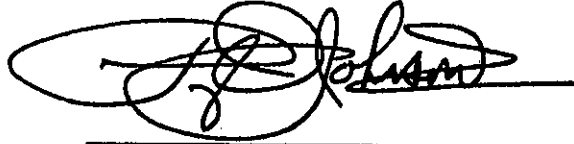
5. As set out in California Code of Regulations, title 10, section 2911, Respondent has successfully met important criteria for rehabilitation from the criminal convictions, by reason of matters set out in Factual Findings 16 through 32. Respondent is correct that with the passage of time and an unblemished exemplary record since past criminal acts that resulted in criminal convictions sufficient evidence demonstrates rehabilitation. (*Martin B. v. Committee of Bar Examiners* (1983) 33 Cal.3d 717, 726.)

6. Because Respondent has no impediment that impugns his current level of integrity, good citizenship, community service commitments, and business practices, the weight of the evidence indicates that the public interest will not be adversely affected by Respondent holding a real estate salesperson license without any manner of restriction.

ORDER

The application for a real estate salesperson license by Respondent Marvin Patrick Morris is granted.

DATED: March 19, 2008

A handwritten signature in black ink, appearing to read "Perry O. Johnson", written over a horizontal line.

PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

1 ANGELA L. CASH, Counsel (SBN 230882)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0805 (Direct)

FILED

NOV - 6 2007

DEPARTMENT OF REAL ESTATE

By H. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 MARVIN PATRICK MORRIS,)
13 Respondent.)

No. H-10236 SF

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 MARVIN PATRICK MORRIS (herein "Respondent"),
18 alleges as follows:

19 I

20 Complainant, Charles W. Koenig, a Deputy Real Estate
21 Commissioner of the State of California, makes this Statement of
22 Issues in his official capacity.

23 II

24 On or about June 4, 2007, Respondent made application
25 to the Department of Real Estate of the State of California
26 (herein "the Department") for a real estate salesperson license
27 with the knowledge and understanding that, pursuant to the

1 provisions of Section 10153.3 of the Business and Professions
2 Code, any license issued as a result of said application would
3 be subject to the conditions of Section 10153.4 of the
4 California Business and Professions Code (herein "the Code").

5 III

6 At all times mentioned herein to and until May 28,
7 1996, Respondent was licensed by the Department of Real Estate
8 as a real estate broker.

9 IV

10 On or about May 5, 1992, Superior Court of California,
11 County of Santa Clara (Case Number 148288) Respondent was
12 convicted of two counts of the crime of Forgery in violation of
13 Penal Code Section 470, two counts of the crime of Possession of
14 Forged Driver's License in violation of Penal Code Section
15 470(b), and two counts of the crime of Grand Theft in violation
16 of Penal Code Section 484-487.2, each a felony and a crime
17 involving moral turpitude which bears a substantial relationship
18 under Section 2910, Title 10, California Code of Regulations, to
19 the qualifications, functions or duties of a real estate
20 licensee. Said convictions were affirmed on appeal on or about
21 January 18, 1994.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

