

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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**FILED**

APR 09 2008

DEPARTMENT OF REAL ESTATE

By L. Frost

In the Matter of the Application of. )

REFFIE FOY,

Respondent. )

) NO. H-10254 SF

) OAH NO. 2008010151

DECISION

The Proposed Decision dated March 7, 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 APR 29 2008.

IT IS SO ORDERED

4-8-08

JEFF DAVI  
Real Estate Commissioner

[Signature]

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

REFFIE FOY,

Respondent.

Case No. H-10254 SF

OAH No. 2008010151

**PROPOSED DECISION**

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on March 5, 2008.

Michael B. Rich, Counsel, represented complainant.

Respondent Reffie Foy was present and represented himself.

The matter was submitted on March 5, 2008.

**FACTUAL FINDINGS**

1. Charles W. Koenig (complainant) made the statement of issues in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Reffie Foy (respondent) made application to the Department of Real Estate (Department) for a real estate salesperson license on June 11, 2007, with the knowledge and understanding that any license issued as a result of the application would be subject to the conditions of Business and Professions Code section 10153.4.

3. On October 3, 1997, in the Superior Court of Santa Clara, State of California, respondent was convicted of violating Vehicle Code section 10851, subdivision (a) (drive a vehicle without owner's consent), a felony, and section 23104, subdivision (a) (reckless driving causing bodily injury), a misdemeanor. Both are crimes involving moral turpitude by their facts and circumstances, which is substantially related to the qualifications, duties and function of a real estate licensee.

Respondent was placed on three years formal probation on the condition that he serve 11 months in jail (most of it was served on work furlough) and pay \$32,000 in restitution to the injured victims. Respondent's probation was extended an additional five years to allow

him time to pay off the restitution, which he did. Respondent met all the terms and conditions of this probation.

4. On December 12, 1996, respondent drove a stolen car, knowing that it was stolen, in a reckless manner. He was street racing. He hit another car and the occupants of that car were seriously injured. Respondent also suffered a broken neck and spent 12 days in the hospital.

5. Respondent used marijuana for about one year. He believes that marijuana was a contributing factor to his behavior and the accident. He has not used marijuana since the accident. He recognizes that he got in with the wrong crowd, and he no longer associates with those people.

6. Respondent was employed by Walgreens from 1997 to 2007. He rose to an executive management position. He presented two letters from his past supervisors at Walgreens. Both letters attest to respondent's honesty and reliability. The letters reflect genuine support for respondent even though the authors know about respondent's conviction.

7. Respondent's wife testified on his behalf. She has known him for four years and has been married to him for about one year. She testified to respondent's good character and to his unselfish aid to her and her two children. She emphasized that respondent has overcome great adversity in his life and deserves a chance to prove himself.

8. Respondent presented a letter from Louis C. Castro, Attorney at Law. Mr. Castro represented respondent through a guardian ad litem when he was born. He also attests to respondent overcoming great adversity. He comments that respondent has learned from his experience and is focused on succeeding in life.

9. Respondent has a pharmacy technician license that was required for his management position at Walgreens. He took the classes necessary to get that license. He also took communication courses and management courses through his work.

10. Respondent has a broker who will hire him if he gets a license. He told that person about his convictions.

11. Respondent takes responsibility for his past misconduct but is trying to put it behind him. He is now 30 years old. He was 18 years old at the time of the offense. It has been over ten years since his conviction. Respondent was honest and forthright in his testimony, answering all questions directly.

12. Respondent attends church regularly with his wife. She introduced respondent to spirituality and he embraced it with enthusiasm.

13. Respondent has demonstrated sufficient rehabilitation to justify a restricted license. It would not be against the public interest to grant respondent a conditional restricted license.

### LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 3 and 4, cause for denial exists pursuant to Business and Professions Code section 10177, subdivision (b)<sup>1</sup> (conviction of substantially related crimes under California Code of Regulations, title 10, section 2910).

2. The matters set forth in Findings 5 through 13 have been considered in making the following order. Respondent has demonstrated sufficient rehabilitation to justify the granting of a restricted conditional license.

### ORDER

Respondent Reffie Foy's application for a real estate salesperson license is denied; provided, however, a conditional restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 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 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 nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to respondent.

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<sup>1</sup> Business and Professions Code section 480, subdivision (a), cannot be used as an independent cause for denial pursuant to *Petropoulos v. DRE* (2006) 142 Cal.App. 4th 554.

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 Business and Professions Code section 10153.4, 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 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 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 its 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 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: \_\_\_\_\_

March 7, 2008

Ruth S. Astle

RUTH S. ASTLE  
Administrative Law Judge  
Office of Administrative Hearings

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FILED

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DEPARTMENT OF REAL ESTATE

By K. 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 )  
13 REFFIE FOY, )  
14 )  
15 Respondent. )

H-10254 SF

STATEMENT OF ISSUES

16 The Complainant, CHARLES W. KOENIG, a Deputy Real  
17 Estate Commissioner of the State of California, for Statement of  
18 Issues against REFFIE FOY (hereinafter "Respondent"), is informed  
19 and alleges as follows:

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21 Respondent made application to the Department of Real  
22 Estate of the State of California for a real estate salesperson  
23 license on or about June 11, 2007, with the knowledge and  
24 understanding that any license issued as a result of said  
25 application would be subject to the conditions of Section  
26 10153.4 of the Business and Professions Code.

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II

Complainant, CHARLES W. KOENIG, 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 October 3, 1997, in the Superior Court, County of Santa Clara, State of California, in case number 198637, Respondent was convicted of violating Section 10851(a) of the California Vehicle Code (Take or drive a vehicle without owner's consent with intent to deprive owner of title or possession), a felony, and Section 23104(a) of the California Vehicle Code (Reckless driving causing bodily injury), a misdemeanor, each 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 alleged above, constitutes 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 charge contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate salesperson license to Respondent, and for such other and further relief as may be proper under other provisions of law.

  
CHARLES W. KOENIG  
Deputy Real Estate Commissioner

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