

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

DEC 17 2008

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of

DAVID STEVEN AYERDI,

Respondent..

DRE No. H-10389 SF

OAH No. 2008050110

DECISION AFTER REJECTION

This matter came on for hearing before Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, in Oakland, California, on June 26, 2008.

Angela L. Cash, Counsel, represented the Complainant. The Respondent, David Steven Ayerdi, appeared in person and was represented at the hearing by Edgardo Gonzalez, Esq.

Evidence was received, the record was closed, and the matter was submitted.

On July 18, 2008, the Administrative Law Judge rendered a Proposed Decision (the Proposed Decision) which the Real Estate Commissioner declined to adopt as his Decision herein. Pursuant to Section 11517 of the Government Code of the State of California, Respondent was served with notice of the Real Estate Commissioner's determination not to adopt the Proposed Decision along with a copy of the Proposed Decision. Respondent was notified that the case would be decided by the Real Estate Commissioner upon the record, the transcript

1 of proceedings held on June 26, 2008, and upon written argument offered by Respondent and
2 Complainant.

3 Written argument was timely submitted by Respondent on October 16, 2008.
4 Written argument has been submitted on behalf of Complainant.

5 I have given careful consideration to the record in this case, including the
6 transcript of proceedings of June 26, 2008 and written argument offered by Respondent and
7 Complainant.

8 FINDINGS OF FACT

9 1. On April 21, 2008, Complainant Charles W. Koenig (Complainant), in
10 his official capacity as a Deputy Real Estate Commissioner of the State of California, made
11 the Statement of Issues against Respondent David Steven Ayerdi (Respondent).

12 2. On September 14, 2007, the Department of Real Estate received
13 Respondent's application for a real estate salesperson license. Under penalty of perjury, on
14 September 13, 2007, Respondent had signed the application for licensure. Respondent made
15 the application for licensure with knowledge and understanding that any license issued as a
16 result of the application would be subject to the conditions of Business and Professions
17 Code section 10153.4. The application remains pending as Complainant has refused to issue
18 a license to Respondent due to his past acts or omissions that appear to disqualify him for
19 licensure.

20 3. On May 23, 2001, in case number CR 00-0247MMC, the United States
21 District Court for the Northern District of California, on a plea of guilty, convicted
22 Respondent of criminal offenses as follows:

- 23 • Bribery of a Public Official or Employee in violation of 18 United
24 States Code (USC) section 201(b)(2)(B), a felony;
- 25 • Fraud and Misuse of Visas, Permits and Other Documents in violation
26 of 18 USC section 1546(a) (twelve counts), felonies; and

27 ///

1 • Theft of Public Property in violation of 18 USC section 641,
2 subdivision (a), a felony.

3 4. The crimes for which Respondent was convicted in May 2001 are
4 substantially related to the qualifications, functions and duties of a real estate licensee.

5 5. The crimes for which Respondent was convicted in federal court
6 involve moral turpitude.

7 6. The facts and circumstances of the events that resulted in the May 2001
8 conviction are best described in an indictment, dated May 2, 2000, issued by a grand jury
9 located at the San Francisco venue of the U.S. District Court for Northern California. The
10 indictment, in pertinent part, states:

11 On or about March 27, 2000, through March 29, 2000, in the
12 Northern District of California ... [Respondent], an immigration
13 inspector of the United States Immigration and Naturalization
14 Service (INS), a public official, did corruptly accept and agree
15 to accept personally a thing of value from another in return for
16 being influenced to collude in and allow a fraud ... on the
17 United States by providing INS stamps, ink, and other material
18 to assist in the fraudulent manufacturing and use of false entry
19 and visa documents.... On or about March 29, 2000 ...
20 [Respondent] did knowingly attempt to use ... falsely made
21 visas, alien registration receipt cards, and entry documents
[And, on] or about March 29, 2000 ... [Respondent] did
knowingly and intentionally embezzle, steal, purloin and
convert to his own use and the use of another, property of the
United States of a value greater than \$1,000, namely stamps,
ink, and information, useful to manufacture fraudulent visas and
other entry documents....

22 7. At the hearing of this matter, Respondent acknowledged his criminal
23 conduct began in about February 2000. At that time while on a vacation trip to the
24 Philippines, Respondent met an individual, Ramon Arenas, who offered Respondent
25 \$100,000 to secure for Arenas INS rubber stamps and ink. The ensuing criminal conspiracy
26 involved Respondent's promise to affix official stamps upon passports of two Philippine
27 residents so that those individuals could enter the United States in exchange for the money

1 offered as a bribe to Respondent. Unbeknownst to Respondent in early 2000 after he agreed
2 to engage in the criminal conduct, but before the date for his delivery of the federal
3 government property, someone became an informant so that a "sting operation" was
4 arranged to substantiate Respondent's criminality. The law enforcement surveillance
5 included filming Respondent at the Fairmount Hotel at the time he acted to complete the
6 exchange of the stolen INS stamps and ink for a down payment of \$7,500. On March 29,
7 2000, federal agents arrested Respondent at the time of the exchange of the stolen INS
8 security items for money.

9 8. As a consequence of the May 2001 conviction, the federal trial court
10 sentenced Respondent on May 23, 2001. The United States District Court ordered
11 Respondent committed to the custody of the United States Bureau of Prisons for
12 imprisonment for a term of 12 months and one day "on all counts to run concurrently." But,
13 the court recommended that Respondent be placed in a "community confinement facility" to
14 complete the term of imprisonment beginning on July 25, 2001. The federal court ordered
15 Respondent to a term of 36 months on supervised release (parole) following his release from
16 confinement. Also, the federal court ordered Respondent to pay a special assessment in the
17 amount of \$300.

18 9. Respondent secured employment with McGuire Real Estate in
19 November 2000 without disclosing the fact that he had been arrested for felony offenses and
20 that federal court criminal charges were pending against him. At the outset of his direct
21 testimony at the hearing of this matter, Respondent noted that at the time of his arrest in
22 March 2000 he was terrified with his criminal acts so that he fully cooperated with the
23 federal investigation and he readily entered a plea of guilty to all counts brought against him.
24 Yet, when he sought employment in late 2000 with one of the most prestigious real estate
25 sales brokers in San Francisco he neglected to disclose the conviction. It may be reasonably
26 inferred that his nondisclosure of the pending criminal charges amounted to a form of hiding
27 his criminal conduct because of his realization that such disclosure would have precluded his

1 employment. Respondent did not disclose to a corporate vice president for the broker the
2 criminal matter until after the date of the conviction in May 2001, which was more than six
3 months after he began work for McGuire.

4 9. Respondent is 35 years old as he has a date of birth of October 24,
5 1972.

6 10. Over the course of his high school and college education, Respondent
7 was an honor student. He graduated from high school in 1990. In 1994, Respondent
8 graduated from the University of California at Berkeley with a bachelor's degree in Spanish
9 Literature.

10 11. After graduating from college, the INS hired Respondent as an
11 immigration inspector. (As a student he had served as an intern with the INS deportation
12 unit beginning in November 1992.) After completing the INS Academy for new inspectors,
13 Respondent was assigned to the San Francisco International Airport. He resigned from the
14 INS in March 2000 following the arrest as described above.

15 12. Respondent is generally remorseful for his criminal conduct. He
16 vividly notes that his convictions are life-long psychic scars that he will never forget.
17 Respondent voices his sense of shame for his grievous criminal acts. Respondent conveys
18 that his criminal acts grievously impacted his family who were hurt through the seemingly
19 wasted educational and career objectives that he had so admirably attained.

20 13. As a term and condition of the federal conviction sentence, Respondent
21 spent about ten months in a half-way house, which was called Cornell Corrections. The
22 federal prison's half-way house was located in the Tenderloin section of San Francisco.
23 Respondent was allowed to pursue gainful employment while in custody at Cornell
24 Corrections. During that time, he secured employment at McGuire Real Estate.

25 14. Because of good behavior, Respondent was released from the half-
26 way house short of the full one-year term of confinement. He was allowed to wear an
27 ankle bracelet for two months for the final phase of his confinement.

1 15. During the first two months of confinement at U.S. Bureau of
2 Prisons' half-way house, Respondent participated in counseling. He credibly offered at the
3 hearing of this matter that he gained great insight from the counseling program.

4 16. Respondent paid the fine of \$300 as associated with the conviction
5 on a date that was very close to the conviction date in 2001.

6 17. Respondent dutifully followed the directions of the parole officer
7 during the course of the supervised release status that he experienced following his
8 completion of the period of incarceration in a federal half-way house. On June 15, 2004,
9 United States District Court Judge Chesney granted Respondent an early release from
10 supervised probation. The District Court's Probation Office noted the completion of
11 supervised probation in a letter, dated September 21, 2004.

12 18. Six years, four months elapsed between the date of Respondent's
13 conviction in federal court and the date of the pending application for licensure. And
14 about seven and one-half years passed between Respondent's arrest and the date he filed
15 his most recent application for licensure in September 2007. (Respondent filed the current
16 application for licensure about nine months before the date of the hearing in this matter.)
17 Ample time has passed for the Department to evaluate Respondent's progress toward
18 attaining rehabilitation from his past misconduct.

19 19. Respondent offered six letters from real estate professionals who
20 have respect and admiration for Respondent's good traits for integrity, honesty,
21 resourcefulness, creativity and attention to detail.¹

22 20. Respondent is employed as a real estate sales assistant in the
23 McGuire Real Estate (McGuire) broker's office that is located on Lombard Street in San
24

25 ¹ A letter, dated June 4, 2008, by Barbara J. Callan, partner in McGuire Real Estate; a letter, dated
26 June 4, 2008, Thomas K. Oxman, Senior Vice President and General Counsel, McGuire Real Estate; a letter, dated
27 June 8, 2008, by Robert R. Callan; a letter, dated June 2, 2008, by Nancy K. McKain, Vice-president, McGuire Real
Estate; and a letter, undated; by Robert Callan, Jr., of McGuire Real Estate.

1 Francisco. In November 2000, McGuire hired Respondent to work as a Comparative
2 Market Analyst. Over the past nearly eight years, Respondent has learned a great deal
3 about real estate sales. Since February 2002 he has been the assistant to Ms. Barbara
4 Callan, the top sales producer among real estate salespersons with McGuire. Over the six
5 years that he has worked directly with Ms. Callan, Respondent has been instrumental in
6 launching her website, "streetsofsanfrancisco.com." Respondent manages Ms. Callan's
7 marketing efforts, which includes writing the agent's brochures, newsletters and other
8 mailings. He aids with all "open house" showings. Respondent participates with the escrow
9 closing arrangements for sales made by Ms. Callan. And he interacts, under Ms. Callan's
10 supervision, with house stagers, construction contractors, building inspectors, moving
11 companies and other persons who have contact with real estate sales by Ms. Callan. Since
12 becoming her assistant in 2002, Respondent notes that Ms. Callan has been the top producing
13 sales agent for McGuire on a company-wide basis. For two years immediately preceding the
14 date of the hearing in this matter, Ms. Callan has been the top "realtor" in San Francisco
15 according to the San Francisco Association of Realtors Ranking Report and the Wall Street
16 Journal "Real Estate Trends" article. Respondent's faithful service has contributed to the
17 success, in part, of Ms. Callan, because he assists the real estate agent in all of her transactions.

18 21. Respondent has the respect and admiration of persons in the community.
19 Respondent offered written testimonials² from persons who have known him for a period of
20 years that he has worked for McGuire.

21 22. Respondent called four witnesses to the hearing of this matter to offer
22 evidence regarding Respondent's knowledge, integrity and devotion to the real estate
23 profession.

24

25

26

27

² From the website titled "streetsofsanfrancisco.com." which was created for Ms. Barbara Callan, about 40 e-mail expressions of commendation and testimonials allude to the superb work performed by Respondent in aiding real estate salesperson Ms. Callan in closing transactions in San Francisco.

1 a. Ms. Barbara Callan is a licensed real estate salesperson, who has been so
2 licensed by the Department since about 1986. Ms. Callan has worked for McGuire since 1993,
3 and she is based in the broker's office on Lombard Street in San Francisco.

4 Respondent had worked at McGuire for about "a year-and-a-half" when Ms.
5 Callan learned about Respondent having committed federal crimes. She learned about
6 Respondent's criminal record in about 2002 when he became Ms. Callan's real estate sales
7 assistant. She was shocked in learning about the convictions because she had only seen
8 Respondent as reflecting a character of honesty and good faith.

9 Ms. Callan observes Respondent to be a very honest individual. He has
10 expressed to her feelings of having great distress with the fact that he "broke the law" to such
11 a degree that he has a record of felony convictions. Through the course of her relationship
12 with Respondent, Ms. Callan has received only "positive feed back" regarding Respondent's
13 work as her personal assistant. Ms. Callan pointed to a testimonial written by her client,
14 Gavin Newsom, Mayor of San Francisco, regarding the sale of the home he owned with his
15 former wife and Respondent's provision of services, which was viewed as being "the best
16 [because] his professionalism, diligence and integrity are highly regarded!" Also, Ms. Callan
17 highlighted the testimonial rendered by Warren Buffett and his daughter, Suzy Buffett, who
18 greatly benefited from Respondent's work as a real estate assistant.

19 Ms. Callan points out that her real estate work with Respondent involves
20 activities "seven days per week." She interacts with Respondent by personal conference, e-
21 mail, or telephone more than seven or eight times each day.

22 Ms. Callan advanced that over more than six years that she has worked with
23 Respondent she has come to know him very well. She has no doubt that he is beyond being
24 an exceedingly intelligent individual; Respondent is a good, honest person who she
25 unhesitatingly supports as a real estate professional. Ms. Callan notes that Respondent is
26 extremely knowledgeable in real estate sales.

27 ///

1 Respondent is known by Ms. Callan to devote great efforts in volunteering his
2 skills on behalf of many charitable organizations. He performs both mundane, routine
3 functions as well as management operations that require great efforts for the non-profit
4 organizations.

5 Ms. Callan will become Respondent's immediate supervisor upon his
6 licensure. But Mr. Kipton "Kip" Oxman, the resident broker for McGuire, ultimately will be
7 responsible for Respondent's work as a real estate licensee.

8 b. Ms. Nancy McKain is a McGuire vice-president, who has been a
9 Department licensee since 1987. Ms. McKain manages the broker's office operations for the
10 five offices of McGuire. When the real estate broker employed Respondent in about
11 November 2000, Ms. McKain became Respondent's first supervisor within the McGuire
12 organization. She hired Respondent as a comparative market analyst and administrative
13 assistant for the Lombard Street office of McGuire.

14 Ms. McKain first learned of Respondent's conviction in May 2001 at the time
15 of the actual conviction. Because he had worked so well on behalf of McGuire over a six
16 month period before the date that he disclosed the conviction, Ms. McKain was not unduly
17 concerned and did not consider termination of Respondent's employment. From his initial
18 workday, Respondent was a "quick study" who produced "a ton of work." He showed Ms.
19 McKain that he was more than well qualified to work in the position for which he was hired.
20 Respondent has not relented in providing a superb work product for McGuire.

21 Ms. McKain is impressed with not only Respondent's work for the office but
22 also with his volunteer work for various charities.

23 Ms. McKain has the view that Respondent long ago paid his debt for his past
24 criminal acts for which he was convicted about seven years ago. She attributes Respondent's
25 past criminal acts as resulting from a "momentary lapse in judgment."

26 Ms. McKain, in her capacity as the vice-president of McGuire, advanced that
27 Respondent may have a position in the broker's office as a real estate salesperson, even with

1 a restricted license. Ms. McKain has knowledge that the highest management officials with
2 McGuire are aware of Respondent's conviction record and that those senior managers are
3 willing to employ Respondent as a salesperson.

4 c. Mr. Robert R. Callan, Sr., is a licensed lawyer as well as a real estate
5 broker, although his California lawyer's license is inactive. Mr. Callan is Ms. Barbara
6 Callan's husband. Since Respondent has been the assistant to Barbara Callan, Mr. Callan has
7 interacted with Respondent on countless occasions. He has observed Respondent's
8 professional and ethical performance in the real estate industry. Mr. Callan has the highest
9 respect and admiration for Respondent's good character, integrity, perseverance,
10 competence, commitment, and responsibility.

11 d. Mr. Robert R. Callan, Jr., is a licensed real estate salesperson. He is the
12 son of Ms. Barbara Callan and Mr. Robert Callan, Sr.

13 Mr. Robert R. Callan, Jr. has worked through McGuire since January 2005.
14 However, he has known Respondent since about late 2000. He has high regard for
15 Respondent.

16 When Mr. Robert R. Callan, Jr. learned about Respondent's convictions he did
17 not lose respect for Respondent. He readily supports Respondent's application for licensure.
18 He notes that Respondent has boundless potential and aptitude to serve as an outstanding
19 real estate salesperson.

20 23. Respondent has familial stability through his close family relations.

21 Respondent provides financial support to his mother in the form of making her
22 monthly rent payment.

23 Respondent's sister, Ingrid Ayerdi, offered evidence at the hearing regarding
24 the good character as well as the tremendous impact that his conviction brought upon
25 Respondent. Ms. Ayerdi noted that Respondent is dutiful in providing monthly financial
26 assistance to his mother. Ms. Ayerdi observed Respondent's regret for his criminal conduct.

27 ///

1 She is aware of Respondent's mental and emotional burden of having brought shame to
2 himself and his family.

3 24. Respondent is willing to work as a real estate salesperson under a
4 restricted license so as to assure the Department of his fidelity to principles of honest and
5 ethical dealings. Respondent has the assurance that McGuire will hire him as a salesperson
6 with a restricted license. Respondent notes that he would be under the supervision of the
7 office's resident broker Kipton Oxman, who is senior vice-president and in-house counsel
8 for McGuire as well as Ms. Callan.

9 25. Respondent offered competent evidence that since the date of the
10 federal court conviction for conspiracy to defraud the United States, and other felony
11 offenses, he has had significant and conscientious involvement in community, religious or
12 privately sponsored programs designed to provide social benefits or to ameliorate social
13 problems.

14 Over a span of eight years, Respondent has been involved with a fundraiser
15 for breast cancer research and education that is called the "PlumpJack/LINK" Golf Classic.

16 Respondent has volunteered with the "Greening of the Marina House" in San
17 Francisco as well as the Northern California Cancer Prevention Center. Over the past five
18 years he has worked for the Child Abuse Prevention Center through his coordination of the
19 annual "Trunk Show" at the home of Anne and Gordon Getty in San Francisco. And,
20 Respondent has contributed to the AIDS Emergency Fund over a three-year period beginning
21 in 2005. During 2008, Respondent completed a project for the San Francisco Parks Trust,
22 which focuses upon beautification work by high school youth.

23 26. Respondent is a real property owner as he has title to three
24 condominium units.

25 ///

26 ///

27 ///

1 *Prior Administrative Proceedings and Past Application by Respondent Regarding Licensure*
2 *as a Real Estate Salesperson*

3 27. Respondent's pending application for licensure as a real estate
4 salesperson is the third application that he has filed with the Department. Respondent first
5 applied for a real estate salesperson license in December 2001; but, he withdrew the
6 application in early 2002 on advice that his criminal probation would surely result in the
7 Department's denial. In about September 2004, Respondent applied again for licensure, but
8 the administrative adjudication resulted in denial of his application. (The term of probation
9 due to the federal court conviction had ended three months before he had applied for the
10 license.) So effective on February 28, 2006, in case number H-9310 SF, the Commissioner
11 denied Respondent's application for a real estate salesperson license under sections 480,
12 subdivision (a) and 10177, subdivision (b), of the Business and Professions Code.

13 28. A sufficient amount of time has passed since Respondent's criminal
14 convictions so that now the Department has adequate evidence of Respondent's progress
15 towards full rehabilitation from a record of a criminal enterprise or criminal scheme he
16 pursued in early 2000.

17 29. Respondent was unable or unwilling to articulate the reason for his
18 criminal conduct that led to the May 2001 convictions in federal court. He was not
19 persuasive with his current reticence to candidly acknowledge the temptation that a bribe of
20 \$100,000 was the lure for him to breach his oath of fidelity and pledge of honor as a federal
21 government law enforcement officer. His proclamation during cross-examination at the
22 hearing of this matter that his criminal act was only a "bad move on his part" does not
23 support a determination that Respondent has been fully rehabilitated.

24 30. Respondent exhibits disingenuousness through his current inability or
25 unwillingness to acknowledge that his past failure to disclose pending felony charges to a
26 prospective employer was a form of deceit or dishonesty. His excuse that McGuire Real

27 ///

1 Estate's hiring representative never asked about a pending criminal prosecution was vacuous
2 and imponderable.

3 31. The weight of the evidence supports the determination that it would be
4 against the public interest for the Department to issue Respondent a real estate salesperson's
5 license on a restricted basis.

6 CONCLUSIONS OF LAW

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

11 However, under the holding of *Petropoulos v. Department of Real Estate*
12 (2006) 142 Cal.App.4th 554, Business and Professions Code section 480, subdivision (a),
13 does not serve as a distinct basis to determine cause to deny Respondent's application for
14 licensure as a real estate salesperson.

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

18 Cause exists for denial of Respondent's application under Business and
19 Professions Code section 10177, subdivision (b), as it interacts with 480, subdivision (a), by
20 reason of the matters set forth in Factual Findings 3 through 5.

21 3. The matters in mitigation, Respondent's background, matters in
22 rehabilitation, the witnesses in rehabilitation, and matters that negatively reflect upon
23 Respondent's progress towards full rehabilitation as set forth in Findings 10 through 26 were
24 considered in making the following order.

25 4. Respondent acknowledged the seriousness of his criminal conduct that
26 occurred eight years ago. He suffered felony convictions about seven years ago, spent nearly
27 one year in confinement in a half-way house and fulfilled the terms of supervised probation.

1 The term of probation ended about four years ago. Respondent has an extensive record of
2 involvement in charitable works for various organizations. Respondent has strong ties with
3 his family that provides him with some stability. And, he has had a long and solid working
4 history as an assistant in a real estate broker's office. However, Respondent's inability to
5 candidly acknowledge the rationale for his past criminal acts, coupled with his disingenuous
6 testimony at hearing, reflects poorly on his rehabilitation.

7 Thus, Respondent provided insufficient competent evidence to establish that
8 he has overcome the liability of having criminal convictions for the various felonies
9 mentioned above.

10 ORDER

11 The application of respondent David Steven Ayerdi for a real estate
12 salesperson license is denied.

13 This Decision shall become effective at 12 o'clock noon on JAN - 7 2009

14 IT IS SO ORDERED 12/05/08.

15
16 JEFF DAVI
17 Real Estate Commissioner
18
19
20
21
22
23
24
25
26
27

FILED

AUG 22 2008

DEPARTMENT OF REAL ESTATE

By [Signature]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	
	No. H-10389 SF
DAVID STEVEN AYERDI,	OAH No. N-2008050110
Respondent.	

NOTICE

TO: DAVID STEVEN AYERDI, Respondent, and EDGARDO GONZALEZ, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated July 18, 2008, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated July 18, 2008, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on June 26,

///

1 2008, and any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of June 26, 2008, at the Sacramento office of
6 the Department of Real Estate unless an extension of the time is
7 granted for good cause shown.

8 Written argument of Complainant to be considered by me
9 must be submitted within 15 days after receipt of the argument of
10 Respondent at the Sacramento office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: _____

8/21/08

14
15 JEFF DAVI
Real Estate Commissioner

16
17 

18 BY: Barbara J. Bigby
19 Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of

DAVID STEVEN AYERDI,

Respondent.

No. H-10389 SF

OAH No. 2008050110

PROPOSED DECISION

On June 26, 2008, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Angela L. Cash, Counsel, represented Complainant Charles W. Koenig.

Edgardo Gonzalez, Attorney at Law, 1300 Clay Street, Suite 600, Oakland, California 94612, represented Respondent David Steven Ayerdi, who attended the proceeding.

On June 26, 2008, the parties submitted the matter and the record closed.

FACTUAL FINDINGS

1. On April 21, 2008, 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 Respondent David Steven Ayerdi (Respondent).
2. On September 14, 2007, the Department of Real Estate received Respondent's application for a real estate salesperson license. Under penalty of perjury, on September 13, 2007, Respondent had signed the application for licensure. Respondent made the application for licensure with 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. The application remains pending as Complainant has refused to issue a license to Respondent due to his past acts or omissions that appear to disqualify him for licensure.

Record of Criminal Convictions

3. On May 23, 2001, in case number CR 00-0247MMC, the United States District Court for the Northern District of California, on a plea of guilty, convicted Respondent of criminal offenses as follows:

- Bribery of a Public Official or Employee in violation of 18 United States Code (USC) section 201(b)(2)(B), a felony;
- Fraud and Misuse of Visas, Permits and Other Documents in violation of 18 USC section 1546(a) (twelve counts), felonies; and
- Theft of Public Property in violation of 18 USC section 641, subdivision (a), a felony.

4. The crimes for which Respondent was convicted in May 2001 are substantially related to the qualifications, functions and duties of a real estate licensee.

5. The crimes for which Respondent was convicted in federal court involve moral turpitude.

6. The facts and circumstances of the events that resulted in the May 2001 are best described in an indictment, dated May 2, 2000, issued by a grand jury located at the San Francisco venue of the U.S. District Court for Northern California. The indictment, in pertinent part, states:

On or about March 27, 2000, through March 29, 2000, in the Northern District of California . . . [Respondent], an immigration inspector of the United States Immigration and Naturalization Service (INS), a public official, did corruptly accept and agree to accept personally a thing of value from another in return for being influenced to collude in and allow a fraud . . . on the United States by providing INS stamps, ink, and other material to assist in the fraudulent manufacturing and use of false entry and visa documents. . . . On or about March 29, 2000 . . . [Respondent] did knowingly attempt to use . . . falsely made visas, alien registration receipt cards, and entry documents [And, on] or about March 29, 2000 . . . [Respondent] did knowingly and intentionally embezzle, steal, purloin and convert to his own use and the use of another, property of the United States of a value greater than \$1,000, namely stamps, ink, and information, useful to manufacture fraudulent visas and other entry documents. . . .

At the hearing of this matter, Respondent candidly and forthrightly acknowledged his criminal conduct began in about February 2000. At that time while on a vacation trip to the Philippines, Respondent met an individual, Ramon Arenas, who offered Respondent \$100,000 to secure for Arenas INS rubber stamps and ink. The ensuing criminal conspiracy involved Respondent's promise to affix official stamps upon passports of two Philippine residents so that those individuals could enter the United States in exchange for the money offered as a bribe to Respondent. Unbeknownst to Respondent in early 2000 after he agreed to engage in the criminal conduct, but before the date for his delivery of the federal government property, someone became an informant so that a "sting operation" was arranged to substantiate Respondent's criminality. The law enforcement surveillance included filming Respondent at the Fairmount Hotel at the time he acted to complete the exchange of the stolen INS stamps and ink for a down payment of \$7,500. On March 29, 2000, Federal agents arrested Respondent at the time of the exchange of the stolen INS security items for money.

7. As a consequence of the May 2001 conviction, the federal trial court sentenced Respondent on May 23, 2001. The United States District Court ordered Respondent committed to the custody of the United States Bureau of Prisons for imprisonment for a term of 12 months and one day "on all counts to run concurrently." But, the court recommended that Respondent be placed in a "community confinement facility" to complete the term of imprisonment beginning on July 25, 2001. The federal court ordered Respondent to a term of 36 months on supervised release (parole) following his released from confinement. Also, the federal court ordered Respondent to pay a special assessment in the amount of \$300.

Matters that Negatively Impact Upon Respondent's Progress Towards Rehabilitation

8. Respondent was unable or unwilling to articulate the reason for his criminal conduct that led to the May 2001 convictions in federal court. He was not persuasive with his current reticence to candidly acknowledge the temptation that a bribe of \$100,000 was the lure for him to breach his oath of fidelity and pledge of honor as a federal government law enforcement officer. His proclamation during cross-examination at the hearing of this matter that his criminal act was only a "bad move on his part" does not support a determination that Respondent has been fully rehabilitated.

9. Respondent secured employment with McGuire Real Estate in November 2000 without disclosing the fact that he had been arrested for felony offenses and that federal court criminal charges were pending against him. At the outset of his direct testimony at the hearing of this matter, Respondent noted that at the time of his arrest in March 2000 he was terrified with his criminal acts so that he fully cooperated with the federal investigation and he readily entered a plea of guilty to all counts brought against him. Yet, when he sought employment in late 2000 with one of the most prestigious real estate sales brokers in San Francisco he neglected to disclose the conviction. It may be reasonably inferred that his nondisclosure of the pending criminal charges amounted to

a form of hiding his criminal conduct because of his realization that such disclosure would have precluded his employment. Respondent did not disclose to a corporate vice president for the broker the criminal matter until after the date of the conviction in May 2001, which was more six months after he began work for McGuire.

Respondent exhibits disingenuousness through his current inability or unwillingness to acknowledge that his past failure to disclose pending felony charges to a prospective employer was a form of deceit or dishonesty. His excuse that McGuire Real Estate's hiring representative never asked about a pending criminal prosecution was vacuous and imponderable.

Matters in Mitigation and Respondent's Background

10. Respondent is 35 years old as he has a date of birth of October 24, 1972.

11. Over the course of his high school and college education, Respondent was an honor student. He graduated from high school in 1990. In 1994, Respondent graduated from the University of California at Berkeley with a bachelor's degree in Spanish Literature.

12. After graduating from college, the INS hired Respondent as an immigration inspector. (As a student he had served as an intern with the INS deportation unit beginning in November 1992.) After completing the INS Academy for new inspectors, Respondent was assigned to the San Francisco International Airport. He resigned from the INS in March 2000 following the arrest as described above.

Matters in Rehabilitation

13. Despite the reservation set out in Factual Finding 8, Respondent is generally remorseful for his criminal conduct. His expressions of contrition are sincere and poignantly expounded. He vividly notes that his convictions are life-long psychic scars that he will never forget. Respondent voices his sense of shame for his grievous criminal acts. Respondent conveys that his criminal acts grievously impacted his family who were hurt through the seemingly wasted educational and career objectives that he had so admirably attained.

14. As a term and condition of the federal conviction sentence, Respondent spent about ten months in a half-way house, which was called Cornell Corrections. The federal prison's half-way house was located in the Tenderloin section of San Francisco. Respondent was allowed to pursue gainful employment while in custody at Cornell Corrections. During that time he secured employment at McGuire Real Estate.

Because of good behavior, Respondent was released from the half-way house short of the full one-year term of confinement. He was allowed to wear an ankle bracelet for two months for the final phase of his confinement.

15. During the first two months of confinement at U.S. Bureau of Prisons' half-way house, Respondent participated in counseling. He credibly offered at the hearing of this matter that he gained great insight from the counseling program.

16. Respondent paid the fine of \$300 as associated with the conviction on a date that was very close to the conviction date in 2001.

17. Respondent dutifully followed the directions of the parole officer during the course of the supervised release status that he experienced following his completion of the period of incarceration in a federal half-way house. On June 15, 2004, United States District Court Judge Chesney granted Respondent an early release from supervised probation. The District Court's Probation Office noted the completion of supervised probation in a letter, dated September 21, 2004.

18. Six years, four months elapsed between the date of Respondent's conviction in federal court and the date of the pending application for licensure. And about seven and one-half years passed between Respondent's arrest and the date he filed his most recent application for licensure in September 2007. (Applicant filed the current application for licensure about nine months before the date of the hearing in this matter.) Ample time has passed for the Department to evaluate Respondent's progress toward attaining rehabilitation from his past misconduct.

19. Respondent offered six letters¹ from real estate professionals who have respect and admiration for Respondent's good traits for integrity, honesty, resourcefulness, creativity and attention to detail.

20. Respondent is employed as a real estate sales assistant in the McGuire Real Estate (McGuire) broker's office that is located on Lombard Street in San Francisco. In November 2000, McGuire hired Respondent to work as a Comparative Market Analyst. Over the past nearly eight years, Respondent has learned a great deal about real estate sales. Since February 2002 he has been the assistant to Ms. Barbara Callan, the top sales producer among real estate salespersons with McGuire. Over the six years that he has worked directly with Ms. Callan, Respondent has been instrumental in launching her website, "streetsofsanfrancisco.com." Respondent manages Ms. Callan's marketing

¹ A letter, dated June 4, 2008, by Barbara J. Callan, partner in McGuire Real Estate; a letter, dated June 4, 2008, Thomas K. Oxman, Senior Vice President and General Counsel, McGuire Real Estate; a letter, dated June 8, 2008, by Robert R. Callan; a letter, dated June 2, 2008, by Nancy K. McKain, Vice-president, McGuire Real Estate; and a letter, undated, by Robert Callan, Jr., of McGuire Real Estate.

efforts, which includes writing the agent's brochures, newsletters and other mailings. He aids with all "open house" showings. Respondent participates with the escrow closing arrangements for sales made by Ms. Callan. And he interacts, under Ms. Callan's supervision, with house stagers, construction contractors, building inspectors, moving companies and other persons who have contact with real estate sales by Ms. Callan. Since becoming her assistant in 2002, Respondent notes that Ms. Callan has been the top producing sales agent for McGuire on a company-wide basis. For two years immediately preceding the date of the hearing in this matter, Ms. Callan has been the top "realtor" in San Francisco according to the San Francisco Association of Realtors Ranking Report and the Wall Street Journal "Real Estate Trends" article. Respondent's faithful service has contributed to the success, in part, of Ms. Callan, because he assists the real estate agent in all of her transactions.

21. Respondent has the respect and admiration of persons in the community. Respondent offered written testimonials² from persons who have known him for a period of years that he has worked for McGuire.

22. Respondent called four witnesses to the hearing of this matter to offer evidence regarding Respondent's knowledge, integrity and devotion to the real estate profession.

a. Ms. Barbara Callan is a licensed real estate salesperson, who has been so licensed by the Department since about 1986. Ms. Callan has worked for McGuire since 1993, and she is based in the broker's office on Lombard Street in San Francisco.

Respondent had worked at McGuire for about "a year-and-a-half" when Ms. Callan learned about Respondent having committed federal crimes. She learned about Respondent's criminal record in about 2002 when he became Ms. Callan's real estate sales assistant. She was shocked in learning about the convictions because she had only seen Respondent as reflecting a character of honesty and good faith.

Ms. Callan observes Respondent to be a very honest individual. He has expressed to her feelings of having great distress with the fact that he "broke the law" to such a degree that he has a record of felony convictions. Through the course of her relationship with Respondent, Ms. Callan has received only "positive feed back" regarding Respondent's work as her personal assistant. Ms. Callan pointed to a testimonial written by her client, Gavin Newsom, Mayor of San Francisco, regarding the sale of the home he owned with his former wife and Respondent's provision of services, which was viewed as being "the best [because] his professionalism, diligence and integrity are highly regarded!" Also, Ms. Callan highlighted the testimonial

² From the website titled "streetsofsanfrancisco.com," which was created for Ms. Barbara Callan, about 40 e-mail expressions of commendation and testimonials allude to the superb work performed by Respondent in aiding real estate salesperson Ms. Callan in closing transactions in San Francisco.

rendered by Warren Buffett and his daughter, Suzy Buffett, who greatly benefited from Respondent's work as a real estate assistant.

Ms. Callan points out that her real estate work with Respondent involves activities "seven days per week." She interacts with Respondent by personal conference, e-mail, or telephone more than seven or eight times each day.

Ms. Callan credibly advanced that over more than six years that she has worked with Respondent she has come to know him very well. She has no doubt that he is beyond being an exceedingly intelligent individual; Respondent is a good, honest person who she unhesitantly supports as a real estate professional. Ms. Callan notes that Respondent is extremely knowledgeable in real estate sales.

Respondent is known by Ms. Callan to devote great efforts in volunteering his skills on behalf of many charitable organizations. He performs both mundane, routine functions as well as management operations that require great efforts for the non-profit organizations.

Ms. Callan will become Respondent's immediate supervisor upon his licensure. But Mr. Kipton "Kip" Oxman, the resident broker for McGuire, ultimately will be responsible for Respondent's work as a real estate licensee.

b. Ms. Nancy McKain is a McGuire vice-president, who has been a Department licensee since 1987. Ms. McKain manages the broker's office operations for the five offices of McGuire. When the real estate broker employed Respondent in about November 2000, Ms. McKain became Respondent's first supervisor within the McGuire organization. She hired Respondent as a comparative market analyst and administrative assistant for the Lombard Street office of McGuire.

Ms. McKain first learned of Respondent's conviction in May 2001 at the time of the actual conviction. Because he had worked so well on behalf of McGuire over a six month period before the date that he disclosed the conviction, Ms. McKain was not unduly concerned and did not consider termination of Respondent's employment. From his initial workday, Respondent was a "quick study" who produced "a ton of work." He showed Ms. McKain that he was more than well qualified to work in the position for which he was hired. Respondent has not relented in providing a superb work product for McGuire.

Ms. McKain is impressed with not only Respondent's work for the office but also with his volunteer work for various charities.

Ms. McKain has the view that Respondent long ago paid his debt for his past criminal acts for which he was convicted about seven years ago. She attributes Respondent's past criminal acts as resulting from a "momentary lapse in judgment."

Ms. McKain, in her capacity as the vice-president of McGuire, advanced that Respondent may have a position in the broker's office as a real estate salesperson, even with a restricted license. Ms. McKain has knowledge that the highest management officials with McGuire are aware of Respondent's conviction record and that those senior managers are willing to employ Respondent as a salesperson.

c. Mr. Robert R. Callan, Sr., is a licensed lawyer as well as a real estate broker, although his California lawyer's license is inactive. Mr. Callan is Ms. Barbara Callan's husband. Since Respondent has been the assistant to Barbara Callan, Mr. Callan has interacted with Respondent on countless occasions. He has observed Respondent's professional and ethical performance in the real estate industry. Mr. Callan has the highest respect and admiration for Respondent's good character, integrity, perseverance, competence, commitment, and responsibility.

d. Mr. Robert R. Callan, Jr., is a licensed real estate salesperson. He is the son of Ms. Barbara Callan and Mr. Robert Callan, Sr.

Mr. Robert R. Callan, Jr., has worked through McGuire since January 2005. However, he has known Respondent since about late 2000. He has high regard for Respondent.

When Mr. Robert R. Callan, Jr., learned about Respondent's convictions he did not lose respect for Respondent. He readily supports Respondent's application for licensure. He notes that Respondent has boundless potential and aptitude to serve as an outstanding real estate salesperson.

23. Respondent has familial stability through his close family relations.

Respondent provides financial support to his mother in the form of making her monthly rent payment.

Respondent's sister, Ingrid Ayerdi, offered poignant evidence at the hearing regarding the good character as well as the tremendous impact that his conviction brought upon Respondent. Ms. Ayerdi compellingly noted that Respondent is dutiful in providing monthly financial assistance to his mother. Ms. Ayerdi compellingly observed Respondent's regret for his criminal conduct. She is aware of Respondent's mental and emotional burden of having brought shame to himself and his family.

24. Respondent is impressive in his enthusiasm for the real estate industry. He is willing to work as a real estate salesperson under a restricted license so as to assure the Department of his fidelity to principles of honest and ethical dealings. Respondent has the assurance that McGuire will hire him as a salesperson with a restricted license. Respondent notes that he would be under the supervision of the office's resident broker

Kipton Oxman, who is senior vice-president and in-house counsel for McGuire as well as Ms. Callan.

25. Respondent offered competent evidence that since the date of the federal court conviction for conspiracy to defraud the United States, and other felony offenses, he has had significant and conscientious involvement in community, religious or privately sponsored programs designed to provide social benefits or to ameliorate social problems.

Over a span of eight years, Respondent has been involved with a fundraiser for breast cancer research and education that is called the "PlumpJack/LINK" Golf Classic.

Respondent has volunteered with the "Greening of the Marina House" in San Francisco as well as the Northern California Cancer Prevention Center. Over the past five years he has worked for the Child Abuse Prevention Center through his coordination of the annual "Trunk Show" at the home of Anne and Gordon Getty in San Francisco. And, Respondent has contributed to the AIDS Emergency Fund over a three-year period beginning in 2005. During 2008, Respondent completed a project for the San Francisco Parks Trust, which focuses upon beautification work by high school youth.

26. Respondent is a real property owner as he has title to three condominium units.

Prior Administrative Proceedings and Past Application by Respondent Regarding Licensure as a Real Estate Salesperson

27. Respondent's pending application for licensure as a real estate salesperson is the third application that he has filed with the Department. Respondent first applied for a real estate salesperson license in December 2001; but, he withdrew the application in early 2002 on advice that his criminal probation would surely result in the Department's denial. In about September 2004, Respondent applied again for licensure, but the administrative adjudication resulted in denial of his application. (The term of probation due to the federal court conviction had ended three months before he had applied for the license.) So effective on February 28, 2006, in case number H-9310 SF, the Commissioner denied Respondent's application for a real estate salesperson license under sections 480, subdivision (a) and 10177, subdivision (b), of the Business and Professions Code.

Ultimate Factual Findings

28. A sufficient amount of time has passed since Respondent's criminal convictions so that now the Department has adequate evidence of Respondent's progress towards full rehabilitation from a record of a criminal enterprise or criminal scheme he pursued in early 2000.

29. The weight of the evidence supports the determination that it would not be against the public interest for the Department to issue Respondent a real estate salesperson's license on a restricted basis.

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 salesperson.

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."

Cause exists for denial of Respondent's application under Business and Professions Code section 10177, subdivision (b), as it interacts with 480, subdivision (a), by reason of the matters set forth in Factual Findings 3 through 5.

3. The matters in mitigation, Respondent's background, matters in rehabilitation, the witnesses in rehabilitation, and matters that negatively reflect upon Respondent's progress towards full rehabilitation as set forth in Findings 10 through 26 were considered in making the following order.

4. Respondent acknowledged the seriousness of his criminal conduct that occurred eight years ago. He suffered felony convictions about seven years ago, spent nearly one year in confinement in a half-way house and fulfilled the terms of supervised probation. The term of probation ended about four years ago. Respondent has an extensive record of involvement in charitable works for various organizations. Respondent has strong ties with his family that provides him with great stability. And, he has had a long and solid working history as an assistant in a real estate broker's office. Only Respondent's inability to candidly acknowledge the rationale for his past criminal acts reflects poorly on his rehabilitation.

Over the eight years since the convictions for acts, which arose out of personal greed and self-interest, Respondent has altered his disposition so that now he frequently puts first the interests of others. His emotional growth and commitment to good works in both a professional realm and charitable endeavors show Respondent to have nearly attained full rehabilitation.

Respondent provided sufficient competent evidence to establish that he has overcome the liability of having criminal convictions for the various felonies mentioned above. He substantially meets the Criteria of Rehabilitation as set out in the Commissioner's Regulations as prescribed in California Code of Regulations, title 10, section 2911. And enough time has passed for the Department to ascertain Respondent's progression towards full rehabilitation for criminal acts that involved dishonesty, deceit and fraud against the federal government.

ORDER

The application for a real estate salesperson license of Respondent David Steven Ayerdi 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 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.
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

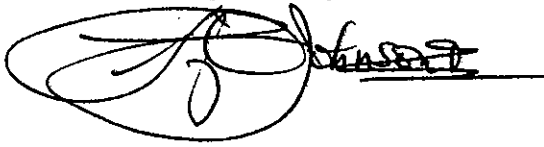
Not
adopted

Not adopted

(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 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 two years after the date of the issuance of the preceding restricted license.

DATED: July 18, 2008



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)
7

FILED

APR 29 2008

DEPARTMENT OF REAL ESTATE

By K. Max

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 DAVID STEVEN AYERDI,) No. H-10389 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 DAVID STEVEN AYERDI (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 September 14, 2007, Respondent made
25 application to the Department of Real Estate of the State of
26 California (herein "the Department") for a real estate
27 salesperson license with the knowledge and understanding that,

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

6 III

7 On or about May 24, 2001, in the United States
8 District Court, Northern District of California, Respondent was
9 convicted of the crime of Bribery of a Public Official in
10 violation of 18 U.S.C. 201, of the crime of Fraud and Misuse of
11 Visas in violation of 18 U.S.C. 1546(a), and of the crime of
12 Theft of Public Property in violation of 18 U.S.C. 641, each a
13 felony and a crime involving moral turpitude which bears a
14 substantial relationship under Section 2910, Title 10,
15 California Code of Regulations (herein "the Regulations"), to
16 the qualifications, functions or duties of a real estate
17 licensee.

18 IV

19 PRIOR ADMINISTRATIVE PROCEEDINGS

20 Effective February 28, 2006, in Case Number "H-9310
21 SF" before the Department, the Real Estate Commissioner denied
22 Respondent's application for a real estate salesperson license
23 pursuant to Sections 480(a) and 10177(b) of the Code.

24 ///

25 ///

26 ///


27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

V

Respondent's criminal convictions, as described in Paragraph III above, constitute cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the Code.

WHEREFORE, 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 salesperson license to Respondent, and for such other and further relief as may be proper in the premises.


CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 21st day of April, 2008.