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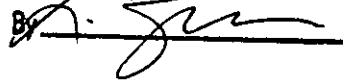
BEFORE THE  
DEPARTMENT OF REAL ESTATE

SEP 17 2008

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

\* \* \*



In the Matter of the Application of )  
OMER AHMED SALEM, ) NO. H-10392 SF  
Respondent. ) OAH NO. N-2008050433  
\_\_\_\_\_  
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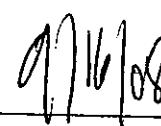
DECISION

The Proposed Decision dated August 15, 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. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon  
on OCT - 8 2008

IT IS SO ORDERED

  
JEFF DAVIS  
Real Estate Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

OMER AHMED SALEM,

Respondent.

Case No. H-10392 SF

OAH No. 2008050433

**PROPOSED DECISION**

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on July 17, 2008.

Real Estate Counsel Angela L. Cash, represented complainant Charles W. Koenig, Deputy Real Estate Commissioner, State of California.

Frank M. Buda, Attorney at Law, represented respondent Omer Ahmed Salem, who was present.

The matter was submitted on July 17, 2008.

**FACTUAL FINDINGS**

1. On October 11, 2007, respondent Omer Ahmed Salem submitted to the Department of Real Estate (department) an application for a salesperson license. Charles W. Koenig, acting in his official capacity as a Deputy Real Estate Commissioner of the State of California, filed a statement of issues which alleges that respondent has been convicted of crimes. Respondent filed a notice of defense. Upon complainant's motions, the statement of issues was amended in two respects at hearing. The allegation that respondent had been convicted of resisting arrest was deleted and the parties stipulated that respondent had been found factually innocent of that charge. Complainant added an allegation that respondent's application is subject to denial because of a prior disciplinary action in which respondent's broker license was revoked.

*Criminal convictions*

2. On March 5, 1980, respondent was convicted on his plea of nolo contendere of a violation of Penal Code sections 484/488 (petty theft), a misdemeanor and a crime of moral turpitude that is substantially related to the qualifications, functions or duties of a real estate

licensee under California Code of Regulations, title 10, section 2910, subdivisions (a)(1), (a)(4), and (a)(8). Imposition of sentence was suspended and respondent was placed on probation for 31 days. He completed his term of probation and the conviction was dismissed on December 2, 2005, pursuant to Penal Code section 1203.4.

3. The facts and circumstances leading to this conviction are that, on January 16, 1980, respondent took merchandise (a bottle opener) from a store without paying for it.

4. On August 20, 1998, respondent was convicted on his plea of nolo contendere of a violation of Penal Code section 415, subdivision (a) (fighting or challenging to fight in public), a misdemeanor. Imposition of sentence was suspended and respondent was placed on court probation for two years on the condition that he pay a fine of \$370; portions of the court's minute order are not readable, but it appears that no jail sentence was imposed. The conviction was dismissed pursuant to Penal Code section 1203.4 on November 29, 2005.

5. The facts and circumstances leading to this conviction are that, on December 12, 1997, respondent called his estranged wife, Enas, on the telephone and thereby violated a court order not to contact her.

#### *Prior disciplinary proceedings*

6. Respondent was previously licensed by the department as a real estate broker. It appears that he was first licensed as a broker in 1986.

7. Case No. H-6188 SF. From about 1987 until at least 1991, respondent was the 95 percent owner and designated broker-officer of Financial Network Associates, Inc. (FNA), a mortgage loan brokerage. On March 25, 1991, following an administrative hearing in which respondent was represented by counsel, the commissioner found that respondent and FNA had committed several violations of the statutes and regulations that govern the handling of trust funds. The commissioner found (among other things) that respondent had failed to keep a full and accurate record of all trust funds received. Although the commissioner found cause to discipline respondent's license, the matter was terminated without imposition of discipline based in part upon respondent's assurances that he had changed his practices and was in full compliance with the laws and regulations that govern the handling of trust funds.

8. Case No. H-7387 SF. From about 1993 to 1997, respondent was the designated broker-officer of First Financial Network (FFN), a mortgage loan brokerage. The department conducted an audit of FFN's trust accounts for the period November 30, 1992, to November 30, 1995. On June 4, 1997, following a two-day administrative hearing in which respondent was again represented by counsel, the commissioner found that respondent had failed, in numerous respects, to maintain trust fund records in accordance with department

regulations.<sup>1</sup> Specifically, the commissioner found that although respondent claimed that he maintained certain required information on a computer system as permitted by sections 2831, subdivision (c), and 2831.1, subdivision (c), of the department's regulations, the evidence failed to establish that he did so; that respondent did not maintain adequate columnar records of all trust funds received and disbursed, as required by section 2831 of the department's regulations; did not maintain adequate separate records for each beneficiary or transaction accounting for trust funds received, deposited and disbursed, as required by section 2831.1 of the department's regulations; and did not maintain and perform an adequate reconciliation with the records of all trust funds received and disbursed at least once yearly as required by sections 2831.1 and 2831.2 of the department's regulations. Respondent's broker license was revoked effective June 27, 1997. Respondent requested a stay and submitted a petition for reconsideration, which was denied on July 28, 1997.<sup>2</sup>

During the audit, respondent was unable to provide the auditor with many of the trust funds records that he was required to maintain, including 13 months of bank statements for one of his trust accounts, most of the cancelled checks for that trust account, and the record of all trust funds received and paid out from that trust account. At hearing in Case No. H-7387 SF, respondent claimed that the missing trust fund records were stolen from his storage facility by former employees. The commissioner found, however, that the evidence failed to establish that the records sought by the department were, in fact, missing or that the records had been maintained by respondent. The commissioner also found that the records respondent did maintain were incomplete and unreliable.

9. On November 16, 2004, respondent petitioned for reinstatement of his broker license. The commissioner denied respondent's petition on January 3, 2006.

#### *Other matters*

10. Respondent is 48 years old. He and Enas have divorced and respondent has remarried. Respondent has six children, three with Enas and three with his new wife, Rana. Respondent and Rana live in Palo Alto with all six children. With the exception of the five years between 1999 and 2004, when he lived in Egypt, respondent has lived in Palo Alto since 1986.

11. From 1999 to 2004 respondent lived in Cairo, where he performed real estate appraisals under the company name "First Real Estate." Respondent successfully performed assignments for American Express Bank, ExxonMobil, and Egypt American Bank, among other clients.

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<sup>1</sup> All references to the department's regulations are to title 10 of the California Code of Regulations.

<sup>2</sup> Respondent testified that his license was revoked on February 13, 1998. The reason for the discrepancy in the effective date of the revocation was not developed at hearing.

12. Since 2004, respondent has been the manager of Salem Advisory, LLC, a real estate investment company. The company buys, improves, and sells properties.

13. Respondent expressed remorse over his criminal convictions. With respect to the theft offense, respondent noted that it occurred over 28 years ago, when he was only 19 years old, and that it was his friend who actually took the bottle opener and put it in respondent's backpack. Nevertheless, respondent accepts responsibility for the offense and regrets it. He has never committed a similar offense and will not do so. With respect to his violation of Penal Code section 415, respondent stated that he had just received the court order that day and he did not realize that the order prohibited him from calling Enas on the telephone. He regrets doing so. Respondent and Enas now have an amicable relationship. Enas lives in Egypt and has consented to respondent's custody of their three children. Respondent stated that he pays Enas twice the spousal support that he is obligated to pay her.

14. Respondent testified that the 1997 disciplinary action against his broker license was "unfortunate." While he understands that, as the broker, he was ultimately responsible for maintaining the trust fund records, he still maintains that the records were stolen by employees who "betrayed my trust." Respondent stated that, when he could not produce the records for the auditor, it "looked like I was hiding information." He testified that he "did not put up a big fight" in the 1997 disciplinary proceeding because he knew that he would soon be moving overseas; the implication seems to be that if he had mounted a vigorous defense, the matter would have been resolved in his favor. Respondent emphasizes that, between 1986 and 1998, his company did over 3,000 transactions and none of his clients lost money.

Since 2005, respondent has taken several real estate classes, including classes in ethics and trust fund handling. He states that he is a totally different person now. Respondent's current business requires careful recordkeeping and he has not had any problems with his records.

15. Respondent's testimony that his missing trust fund records were stolen by former employees is not believable. In Case No. H-7387 SF, the commissioner found that respondent failed to establish that the records were missing or that he had ever maintained them. The commissioner also found that the records respondent was able to produce were incomplete and unreliable.

Respondent's claim that he did not present a vigorous defense in the 1997 disciplinary proceeding does not appear to be true. The commissioner's decision followed a two-day administrative hearing (and post-hearing motions) in which respondent was represented by counsel. But, even more significant than the truth of respondent's testimony, is his continued insistence that he was right. Respondent's testimony reveals that, since 1997, there has been no meaningful change in his attitude toward the trust fund violations that resulted in the revocation of his broker license.

16. Respondent is or has been active in a number of civic and religious groups. Respondent has been a member of the Tablighi group, which he describes as an organization that promotes ethical and moral character. In 1998 and 1999, respondent made several trips to India, for four months at a time, to teach English and Arabic and to help build places of worship. Respondent is a member of the Belmont Mosque. He and his family attend "family night" at the mosque one or two times per month. In 2005, respondent was a member of the Friends of the Palo Alto Library. He volunteered to help the library when it was threatened with budget cuts that would have reduced its hours.

17. John Kennedy testified on respondent's behalf. Kennedy is a business consultant and family counselor who has known respondent for six years. He tutors respondent's children and provides business advice to respondent. Kennedy stated that respondent has expressed remorse over his conviction and regret over the fact that he was not "attentive" to his employees; this appears to be a reference to the employees at FFN who, respondent asserts, stole his trust fund records.

18. Neil Salem, respondent's brother, testified on respondent's behalf. Salem is respondent's junior by 19 years; Salem states that, since their father died, respondent is "more my guardian [and] advisor." Salem is a licensed California real estate broker. At the present time, he works for University Investments as a salesperson and a broker. However, he intends to open his own firm and, when he does, he will be respondent's broker and will closely supervise him. Salem has had several transactions with his brother and all of them were "transparent and smooth." Salem describes his brother's honesty and truthfulness as "unparalleled." Respondent has expressed remorse to Salem over his criminal convictions and embarrassment over the revocation of his license.

19. Respondent submitted 18 character reference letters, all of which were admitted as hearsay pursuant to Government Code section 11513, subdivision (d).

Most of the letters date from 2004 or 2005 and were written in support of respondent's petition for reinstatement of his broker license. All of the letters state, in essence, that respondent is honest and trustworthy in his business practices. None of the letters mentions respondent's criminal conviction and, with one exception, none of the letters demonstrates any knowledge of the circumstances that led to the revocation of respondent's license; the one exception, a letter written by Dick Goodell, states that respondent was a successful mortgage broker until "a partner ran the business into the ground." The letter written by Earl Dworkin is virtually identical to the letter written by Cordell P. Olive, the letter written by Kevin Salem is virtually identical to the letter written by Akran Ghazad, and the letter written by Ashraf El-Kady is virtually identical to the letter written by Amir Arafat, suggesting that someone provided the text of the letters to the signators.

Several letters were written in 2008 (several others are not dated). Sam Hoffman and David Meir-Levy state that they know respondent professionally and personally. Hoffman writes that respondent has "personally expressed to me his deep remorse and embarrassment [sic] for his convictions, and for the actions which led to his previous real

estate license discipline. I believe him to be sincerely repentant." Meir-Levy writes that respondent has "personally expressed to me his deep remorse and embarrassment for his convictions and his actions which led to his real estate license revocation, and I believe him to be truly sorry for his actions in the past." It appears again that the text of these letters was provided to the signators.

## LEGAL CONCLUSIONS

1. Prior to January 1, 2008, Business and Professions Code section 10177, subdivision (b), provided that a license may be denied if the applicant has been convicted of "a felony or a crime involving moral turpitude." (In addition, Business and Professions Code section 480 required that the crime must be substantially related to the qualifications, functions or duties of a licensee.) Under section 10177, subdivision (b), as it was interpreted by the court in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, the department could not deny an application for a real estate license on the basis of a misdemeanor conviction unless the offense involved moral turpitude.

Effective January 1, 2008, section 10177, subdivision (b), was amended to delete the moral turpitude requirement, reversing by legislation the court's holding in *Petropoulos*. In light of the amendment to section 10177, subdivision (b), complainant argues that he need not demonstrate that respondent's convictions involved moral turpitude, only that they are substantially related to the qualifications, functions or duties of a real estate licensee.

Complainant's argument is not persuasive. Respondent applied for a salesperson license on October 10, 2007, before the amendment to section 10177, subdivision (b), took effect. An amendment to a statute is not given retroactive effect unless the legislature clearly expresses its intent that it should be given retroactive effect. (*Aetna Cas. & Surety Co. v. Ind. Acc. Com.* (1947) 30 Cal.2d 388, 393-394; *Wilke & Holzheiser, Inc. v. Dept. of Alcoholic Bev. Control* (1966) 65 Cal.2d 349, 371-372.) No such intent is apparent in the amendment to section 10177, subdivision (b). To constitute cause to deny his application, respondent's convictions must involve crimes of moral turpitude.

2. Theft is a crime of moral turpitude as a matter of law and an offense that is substantially related to the qualifications, functions or duties of a real estate licensee. (Finding 2.) Nevertheless, because it is so remote, respondent's 1980 petty theft conviction would not ordinarily constitute cause to deny his application. Respondent committed the offense when he was 19 years old and it involved an item of merchandise that could not have cost more than \$5. The department licensed respondent as a broker in 1986, notwithstanding the conviction. Without more, the conviction would say little about respondent's honesty now. In this proceeding, however, respondent offered unpersuasive testimony that raises fresh concerns about his honesty. (Finding 15.) Under these circumstances, respondent's 1980 conviction is relevant to an assessment of his honesty and constitutes cause to deny his application under Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b).

3. Respondent's violation of Penal Code section 415, subdivision (a), is not a crime of moral turpitude as a matter of law and it was not a crime of moral turpitude as committed. Respondent's conviction of this offense does not constitute cause to deny his application under Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b).

4. At hearing, the statement of issues was amended to allege that "[r]espondent's prior disciplinary action" in Case No. H-7387 SF constitutes cause for denial under sections "480 and 10177(d)" of the Business and Professions Code.

Neither respondent's prior disciplinary action nor the underlying facts of that action constitutes cause to deny his application under Business and Professions Code section 480.

Under Business and Professions Code section 10177, subdivision (d), an application for a real estate license may be denied if the applicant has "[w]illfully disregarded or violated the Real Estate Law [citation omitted] . . . or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law . . ." Section 10177, subdivision (d), does not authorize the denial of an application based only upon the fact of prior license discipline.<sup>3</sup> However, although the department's allegation refers to respondent's "prior disciplinary action," it was clear at hearing that the allegation is based upon the underlying facts established in Case No. H-7387 SF. There is no question but that respondent willfully disregarded or violated the Real Estate Law or the regulations of the commissioner: in Case No. H-7387 SF the commissioner found that he did and the commissioner's decision is long since final. Cause exists to deny respondent's application for a salesperson license under section 10177, subdivision (d), by reason of the matters set forth in Finding 8.

5. It is respondent's burden to demonstrate that he is sufficiently rehabilitated from his conviction and his license discipline so that it would not be contrary to the public interest to grant his application. It is a heavy burden because respondent has been licensed before by the department and had his broker license revoked for failing to comply with the regulations that govern trust accounts. Maintaining accurate and complete trust fund records is a fundamental obligation of a real estate broker. Respondent's violations were particularly serious because he had committed similar violations six years earlier. At that time, respondent avoided license discipline by assuring the commissioner that he had changed his practice and was in full compliance with department regulations.

The department has established criteria of rehabilitation that apply to persons who have been convicted of a crime. (Cal. Code Regs., tit. 10, § 2911.) Many of the criteria are

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<sup>3</sup> Indeed, no provision of section 10177 authorizes the denial of an application based upon prior license discipline by the Department of Real Estate. Subdivision (f) of section 10177 states that a license can be denied if the applicant has "had a license issued by another agency of this state, another state, or the federal government revoked or suspended . . ."

relevant to an assessment of the rehabilitation of a person who has suffered license discipline.

Respondent has satisfied some of the criteria. It has been over 28 years since his criminal conviction. He has long since satisfied the terms and conditions of his sentence and the conviction has been dismissed. Respondent leads a stable family life in which he fulfills his familial obligations. He has been involved in community and religious programs intended to provide social benefits. It has been over 10 years since his broker license was revoked. Since then, respondent has attended several classes and training programs on real estate matters, including trust fund handling.

The nature of respondent's misconduct, however, requires him to demonstrate that he can be trusted to comply with the department's regulations. As to this issue, respondent has not made a convincing showing of rehabilitation. On the contrary: respondent continues to insist, unpersuasively, that former employees stole his trust fund records, and he now appears to believe that if had contested the 1997 proceedings more vigorously he would have been vindicated. In addition to raising fresh concerns about his honesty, respondent's testimony reveals that he does not accept responsibility in any meaningful way for the violations that led to the revocation of his broker license. Respondent's attitude toward his misconduct as a broker has not changed since 1997. Under these circumstances, respondent's expressions of remorse provide little assurance that he can be trusted to comply with the department's regulations.

Even strong character references would be weakened by respondent's own testimony. Most of respondent's references, however, are unaware of his criminal conviction or the true circumstances of his license revocation, and therefore can shed little light on his rehabilitation from that misconduct. Those who state they are aware of respondent's misconduct emphasize his expressions of remorse and repentance. As noted above, however, respondent's expressions of remorse are not a sound basis on which to assess his rehabilitation.

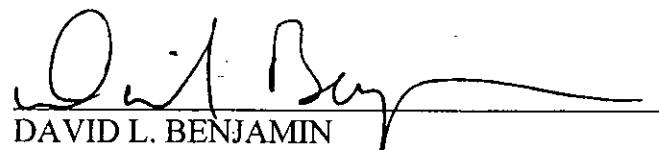
Respondent's brother, Neil Salem, is a licensed broker and he is willing to supervise respondent's activities if he is granted a license. Salem, however, is almost 19 years younger than respondent and considers respondent to be his guardian and his mentor. Despite Salem's best intentions, it would be unreasonable to expect him to provide the close supervision that would be necessary if respondent were issued a restricted license.

It would be contrary to the public interest to grant respondent's application for a salesperson license, even on a restricted basis.

ORDER

The application of respondent Omer Ahmed Salem for a real estate salesperson application is denied.

DATED: August 15, 2008



DAVID L. BENJAMIN  
Administrative Law Judge  
Office of Administrative Hearings

FILED

MAY - 2 2008

DEPARTMENT OF REAL ESTATE

By J. Mar

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9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

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12 In the Matter of the Application of )  
13 OMER AHMED SALEM, ) No. H-10392 SF  
14 Respondent. ) STATEMENT OF ISSUES  
15 )

16 The Complainant, CHARLES W. KOENIG, a Deputy Real  
17 Estate Commissioner of the State of California, for Statement of  
18 Issues against OMER AHMED SALEM, also known as "Ashraf Ahmed  
19 Abbas Mohamed Salem" and "Ashraf Abbas Mohamed" (herein  
20 "Respondent"), alleges as follows:

21 I

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

25 II

26 On or about October 11, 2007, Respondent made  
27 application to the Department of Real Estate of the State of

1 California (herein "the Department") for a real estate  
2 salesperson license.

III

4 On or about March 5, 1980, in the Municipal Court of  
5 the State of California, County of Santa Clara (Case Number  
6 C8010686), Respondent was convicted of the crime of Petty Theft  
7 in violation of Penal Code Section 484/488, a misdemeanor and a  
8 crime involving moral turpitude which bears a substantial  
9 relationship, under Section 2910, Title 10, California Code of  
10 Regulations (herein "the Regulations"), to the qualifications,  
11 functions or duties of a real estate licensee.

IV

13 On or about August 30, 1993, in the Municipal Court of  
14 the State of California, County of Fresno (Case Number  
15 M93025490-4), Respondent was convicted of the crime of Giving  
16 False Information To A Police Officer in violation of Penal Code  
17 Section 148.9(a), a misdemeanor and a crime involving moral  
18 turpitude which bears a substantial relationship under Section  
19 2910 of the Regulations to the qualifications, functions or  
20 duties of a real estate licensee.

V

22 On or about August 20, 1998, in the Superior Court of  
23 the State of California, County of Santa Clara (Case Number  
24 B9737607), Respondent was convicted of the crime of Disturbing  
25 The Peace in violation of Penal Code Section 415, a misdemeanor  
26 which bears a substantial relationship under Section 2910 of the

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<sup>1</sup> Regulations to the qualifications, functions or duties of a real  
<sup>2</sup> estate licensee.

## PRIOR ADMINISTRATIVE ACTIONS

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VIII

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

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8 CHARLES W. KOENIG  
9 Deputy Real Estate Commissioner

10 Dated at Oakland, California,  
11 this 30 day of April, 2008.

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