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FILED

FEB 18 2009

DEPARTMENT OF REAL ESTATE

By S. Frost

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of )  
 ) NO. H-10398 SF  
 )  
KELLY R. CRAWFORD, ) OAH NO. N2008060110  
 )  
Respondent. )

ORDER DENYING RECONSIDERATION

On December 29, 2008, a Decision was rendered in the above-entitled matter.  
The Decision was to become effective at 12 o'clock noon on January 20, 2009.

On January 15, 2009, Respondent requested a thirty-day stay to petition for  
reconsideration of the Decision of December 29, 2008. A stay was granted.

I have given due consideration to Respondent's written argument in support of  
the petition for reconsideration. I find no good cause to reconsider the Decision of  
December 29, 2008, and reconsideration is hereby denied.

IT IS HEREBY ORDERED 2/19/, 2009.

JEFF DAVI  
Real Estate Commissioner

[Signature]

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**

DEC 30 2008

DEPARTMENT OF REAL ESTATE

By L. Frost

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In the Matter of the Accusation of

KELLY R. CRAWFORD,

Respondent.

)  
) NO. H-10398 SF  
)  
)  
) OAH NO. 2008060110  
)  
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)

DECISION

The Proposed Decision dated December 2, 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 Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on JAN 20 2009

IT IS SO ORDERED 12-29-08

JEFF DAVI  
Real Estate Commissioner

Barbara J. Bigby

BY: Barbara J. Bigby  
Chief Deputy Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

KELLY R. CRAWFORD,

Respondent.

Case No. H-10398 SF

OAH No. 2008060110

**PROPOSED DECISION**

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Oakland, California, on November 3, 2008.

Complainant E. J. Haberer II, Deputy Real Estate Commissioner, was represented by Michael B. Rich, Counsel.

Respondent was present and was represented by J. Anne Rawlins, Attorney at Law.

At the hearing, paragraph III of the accusation was amended to correctly reflect the code sections of which respondent was convicted on September 18, 2007. The correct sections are set forth in Finding 4, below.

The matter was submitted for decision on November 3, 2008.

**FACTUAL FINDINGS**

1. Respondent Kelly R. Crawford is licensed and has license rights under the Real Estate Law (Bus. & Prof. Code, § 10000 et seq.) as a real estate salesperson. He has held that license since January 2002.

2. On April 12, 2004, respondent was arrested when he was found in his car under the influence of methamphetamine and in possession of both methamphetamine and drug paraphernalia. On July 27, 2004, respondent was charged with three drug-related misdemeanors. He was charged with violating Health and Safety Code sections 11377, subdivision (a) (possession of a controlled substance), 11550, subdivision (a) (under the

influence of a controlled substance), and 11364 (possession of drug paraphernalia). On November 22, 2004, respondent entered a no contest plea to all three charges and the court placed him on diversion pursuant to Penal Code section 1000.

3. On March 8, 2006, respondent was involved in a hit and run accident. Respondent failed to stop at a stop sign and was broadsided by another vehicle. Respondent drove away from the accident scene. A police officer attempting to stop respondent gave chase but was unable to catch up to him. During the chase the officer observed respondent traveling approximately 50 miles per hour in a 25-mile-per-hour residential zone. He also saw respondent run another stop sign at 50 miles per hour. Respondent was stopped by another officer.

4. Based upon the March 2006 incident, on September 18, 2007, respondent was convicted, on his plea of no contest, of a misdemeanor violation of Vehicle Code section 20002, subdivision (a) (hit and run driving). As a result of this conviction the court discontinued respondent's participation in the diversion program and, based upon his 2004 no contest pleas, convicted respondent of misdemeanor violations of Health and Safety Code sections 11377, subdivision (a), 11550, subdivision (a), and 11364.

5. For the hit and run, imposition of sentence was suspended and respondent was placed on probation for two years on conditions that included 60 days in jail with credit for 60 days already served, and payment of restitution. For the drug charges, imposition of sentence was suspended and respondent was placed on probation for two years on conditions that included 60 days in jail with credit for 60 days already served. The two probations were ordered to run concurrently.

6. Respondent's most recent conviction, on March 3, 2008, was based upon incidents the Concord Police Department began investigating in 2004. More than a year after the investigation began, respondent was arrested in July 2005 and charged with 10 crimes alleged to have been committed between 1998 and 2004. Generally, it was alleged that during this time frame respondent committed various sexual acts with two young men, both of whom were minors. Respondent was also alleged to have furnished the two young men with methamphetamine. In December 2005, the charging information was amended to reduce the number of crimes charged to six. The following crimes were alleged as felonies: Count One – Penal Code section 288a, subdivision (b)(1) (oral copulation of a minor under age 18); Count Two – Penal Code section 286, subdivision (b)(1) (sodomy of a person under 18); Count Three – Penal Code section 288, subdivision (c)(1) (lewd act upon a child age 14-15); Counts Four and Five – Health and Safety Code section 11380, subdivision (a) (furnishing controlled substance to minor); and Count Six – Penal Code section 288.2, subdivision (a) (distributing/exhibiting lewd matter to minor).

7. On March 3, 2008, respondent, who was represented by counsel, signed a plea agreement in which he entered a no contest plea to a felony violation of Penal Code section 136.1, a misdemeanor violation of Penal Code section 288.2, and two misdemeanor

violations of Penal Code section 261.5. In a minute order of the same date, the court accepted respondent's plea and found him guilty of "Ct. #[s] 6, 7, 8, 9." The court noted that Count Six was reduced to a misdemeanor. The court also noted, "People to amend complaint, CT-7 – PC 261.5 – MISD; CT-8 – PC 261.5 – MISD, CT-9 – PC 136.1(b) – Felony."

8. On March 24, 2008, the court signed a Felony Order of Probation on which it was recited that respondent had been convicted of: "Ct.6) PC 286(b)(1), Ct.7) 261.5(c), Ct.8) 261.5(c), Ct.9) 136.1(b)." Imposition of sentence was suspended and respondent was placed on four years of formal probation on conditions that included 180 days in jail with credit for 93 days already served and the balance to be served through electronic home detention, payment of various fines and fees, and participation in counseling as directed by the Probation Officer. Respondent was not required to register as a sex offender. On April 2, 2008, the court dismissed the remaining counts against respondent.

9. Based upon respondent's plea agreement and the court's minute order of March 3, 2008, it appears that the court's indication on the March 24, 2008 Felony Probation Order that respondent had been convicted of a violation of Penal Code section 286, subdivision (b)(1), was in error. A violation of this section was alleged in Count Six of the original information. But this alleged violation became Count Two of the information as amended in December 2005, and Count Six became a violation of Penal Code section 288.2, subdivision (a). It was to this amended Count Six that respondent pled no contest.

10. Therefore, despite the court's statement on the Felony Order of Probation it is found that the crimes of which respondent was convicted on March 3, 2008, were the following: a misdemeanor violation of Penal Code section 288.2, subdivision (a) (distributing/exhibiting lewd matter to minor), two misdemeanor violations of Penal Code section 261.5, subdivision (c) (unlawful sexual intercourse with a minor more than three years younger than the perpetrator), and a felony violation of Penal Code section 136.1, subdivision (b) (preventing/dissuading victim/witness).

11. As set forth above, the violations of Penal Code sections 261.5 and 136.1 to which respondent pled no contest were not included in the charging information. As to this latter charge, complainant asserts this was based upon the statement of a young man who reportedly told a police officer that respondent furnished him with drugs and said to him, "If you tell anyone about this, I'll kill you"; "If you tell anyone, I'll track you down." However, nothing in the court record supports complainant's assertion and respondent cannot recall what the charge was based upon.

When he was arrested, respondent admitted to the arresting officer that he had used methamphetamine heavily and had had sex with a number of men. But he denied having sex with minors, stating that he was not attracted to them and would not knowingly approach someone under 18.

At hearing, respondent did not testify about the circumstances of his 2008 convictions other than to deny he ever had sex with minors and to state that he could not recall what the conviction for dissuading a witness was based upon.

12. Respondent is 49 years old. Before becoming a real estate salesperson, respondent owned and operated a commercial printing company for 17 years. The company failed in 2001. After receiving his real estate license, respondent began working for Alain Pinel Realtors, first in Orinda, then in Blackhawk. In December 2005, respondent began working in the Orinda office of Coldwell Banker.

13. Respondent began using methamphetamine in 2003, during a difficult period in his life when both his father and stepfather were terminally ill. Both men died during that year, one of them a suicide. Respondent became addicted to methamphetamine and used the drug heavily.

14. As indicated in Finding 2, after his first drug arrest respondent was granted diversion after pleading no contest. While he was in diversion respondent attended some mandated Narcotics Anonymous and Alcoholics Anonymous meetings and on January 12, 2005, enrolled in a mandated 21-hour Level I drug program. It is unclear when respondent actually began his participation in the program. Despite being enrolled in the program and attending NA/AA meetings, respondent continued using methamphetamine until his arrest in July 2005. Respondent sees that arrest as "a turning point" in his life; it was a realization he had finally "hit bottom." He has been clean and sober since that arrest.

15. Respondent spent three months in jail following his July 2005 arrest. After his release he successfully completed the Level 1 drug program in December 2005 and he became actively involved in NA/AA. He began regularly attending NA/AA meetings and working the 12 Steps. Respondent remains actively involved in NA/AA. He is secretary of one meeting and has a coffee commitment at another. He attends NA/AA meetings almost daily and sometimes goes to two meetings a day. Respondent has a sponsor and he sponsors one member himself. He also brings others to NA/AA meetings in an effort to get them involved. In his desire to assist others in recovery from addiction, respondent has recently enrolled in a 42-week on-line course to become a "life coach" with an emphasis in recovery.

16. Respondent's sponsor, Christopher Vanelli, has been involved in 12 Step programs for 18 years. He met respondent at a meeting about two years ago and invited respondent to join a Step Study group. At respondent's request, Vanelli began sponsoring respondent about nine months ago. Vanelli testified that his experience has shown him that about one-third of NA/AA participants "get it." Respondent is one of those; he actively participates in the program and is emotionally involved in it, works the 12 Steps in earnest, attends lots of meetings, and makes himself available to help others. Vanelli has found respondent to be "a responsible, honest, competent guy."

17. Beverly Arnold has been a real estate broker for 15 years and has worked at Coldwell Banker, Orinda for 11 years. She met respondent there about a year and one half ago. She and respondent work together on all their transactions; neither has separate transactions. She has come to know respondent as a co-worker and a friend. Arnold's 22-year-old daughter has a drug addiction. Arnold was speaking to respondent of her daughter when he revealed his own addiction and criminal problems. This occurred before respondent's drug conviction in September 2007. Respondent was subsequently instrumental in getting Arnold's daughter to attend NA and change her life. Respondent was the first person to "get to her" in this way, for which Arnold is grateful. Arnold has no concern that respondent is still involved in drug use.

18. Respondent submitted numerous character letters from friends, business associates and fellow members of NA/AA. These letters echo the sentiments of Vanelli and Arnold. Respondent is described as one who is committed to transforming himself through NA/AA, who regularly works with others to assist in their recoveries, who is honest, generous and giving, who demonstrates honesty and integrity in his personal and business dealings, and who has been forthcoming about his criminal past. Two of the letter writers stated that respondent has been present at their family events and that they would trust him to watch their children. However, neither of these letter writers indicated they were aware that respondent's convictions included exhibiting lewd materials to minors and having unlawful sexual intercourse with minors. Both refer in their letters only to respondent's past drug use.

19. Valerie Cook-Watkins is managing broker of Coldwell Banker, Orinda. She supervises 75 agents working from the office. She hired respondent in December 2005. Respondent did not tell her at that time of the criminal charges he was facing (he had not yet been convicted of anything) and Cook-Watkins did not learn of respondent's convictions until earlier this year, when a company attorney advised her of them. She spoke to respondent about the convictions. He answered all her questions and was "very forthcoming and clear." Cook-Watkins admits she "wrestled with" the question of whether respondent should have voluntarily revealed his convictions to her, and she feels he should have done so. Nevertheless, she has no personal concerns about respondent's fitness as a real estate salesperson and has "no qualms about his being a member of [her] sales team."

20. Following his March 2008 conviction, respondent was ordered to attend counseling at the Impulse Treatment Center. Respondent has been in weekly counseling there with Don L. Mathews, a licensed Marriage and Family Therapist and the founder and director of the center. In a letter dated October 28, 2008, Mathews wrote that respondent had attended more than 25 sessions. Mathews stated, "[Respondent] has explored his underlying issues and has developed various coping strategies. He thoroughly understands the nature of his drug addiction and related sexual behaviors and is committed to sobriety (with the help of his 12 step program)." Mathews finds respondent to be honest, sincere, and motivated, and believes he does not pose a risk to any of his real estate clients.



21. Respondent also attends biweekly psychotherapy sessions with Lori E. Katzburg, a Licensed Clinical Social Worker. Respondent began voluntarily seeing Katzburg in December 2003. Katzburg wrote in a letter dated October 30, 2008, that in her more than 20 years of practice she has developed a specialty of working with people with addictions. Considering her other addictive patients, "[Respondent] stands out as an anomaly in that he continued to come for therapy and was honest about his use during this difficult time." Respondent sought out Katzburg's services while he was in jail following his July 2005 arrest. Regarding that experience, Katzburg wrote,

[Respondent] was driven to work and change his behavior even during the first anxiety-producing days of incarceration. [Respondent] took advantage of this clean and sober time to reevaluate his life. He matured and evolved. Jail humbled him. I was vividly aware of [respondent's] desire for release in order to prove he could live life based on his newly attained concepts and tools. He walked out a very changed man.

....

I have the utmost respect for [respondent's] strong sense of integrity. I can say, without hesitation, that I have absolutely no concern about him displaying inappropriate behavior or using poor judgment in his interactions with children or adults. In fact, if I had young children, I would derive pleasure by their chance to spend time with him. [Respondent] is a man who has dug deep in order to learn from his mistakes. He is rich with wisdom, psychologically grounded, and conscientious and kind.

22. Respondent did not testify about the details of his counseling with Mathews or his therapy with Katzburg.

23. No testimony concerning the circumstances of respondent's hit and run was presented. There is no indication that drugs or alcohol were involved in that incident, but respondent's behavior remains unexplained. Respondent paid full restitution of \$2,300 in January 2007, long before he was ordered to pay restitution as a condition of probation.

24. Respondent is currently on formal, supervised probation for his 2008 conviction. That probation is scheduled to run until March 2012.

#### LEGAL CONCLUSIONS

1. Prior to January 1, 2008, Business and Professions Code sections 490 and 10177, subdivision (b), together provided that a real estate license could be suspended or

revoked if the licensee had been convicted of either a felony or a crime involving moral turpitude, provided the crime was substantially related to the qualifications, functions and duties of a real estate licensee. Section 10177, subdivision (b), was amended effective January 1, 2008, to eliminate the moral turpitude requirement. Thus, for convictions occurring after that date, moral turpitude need not be proven in order to establish a cause for discipline.

2. In September 2007, respondent was convicted of three drug-related misdemeanors and hit and run driving. None of the three drug crimes – under the influence of a controlled substance, possession of a controlled substance, and possession of drug paraphernalia – is necessarily a crime involving moral turpitude. Complainant argues that they should be considered crimes of moral turpitude because the circumstances underlying them included propositioning minors by providing them with drugs. However, the evidence failed to establish that respondent's September 2007 drug convictions had anything to do with supplying minors with drugs, and nothing in the circumstances as established at hearing demonstrate moral turpitude. This is not true of respondent's hit and run conviction. The circumstances of that crime do involve moral turpitude. After being involved in an accident respondent fled the scene, traveling through a residential area at a high rate of speed and running a stop sign at 50 miles per hour. His actions endangered motorists and other pedestrians and demonstrated a callous disregard for the rights of others. The crime is substantially related to the qualifications, functions and duties of a real estate licensee under title 10, California Code of Regulations, section 2910, subdivision (a)(8) (doing an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another).

Therefore, cause for disciplinary action against respondent exists pursuant to Business and Professions Code sections 490 and 10177, subdivision (b) by reason of his conviction for hit and run driving, but not for his conviction of being under the influence of a controlled substance, possessing a controlled substance, or possessing drug paraphernalia.

3. Respondent's 2008 convictions are all substantially related to the qualifications, functions and duties of a real estate licensee. Exhibiting lewd matter to a minor and unlawful sexual intercourse with a minor are substantially related under title 10, California Code of Regulations, section 2910, subdivisions (a)(8) and (a)(10). Respondent's actions with the minors subjected them to the threat of substantial injury to their persons and demonstrated a pattern of repeated and willful disregard of the law. Dissuading a witness from testifying is at its core a crime involving falsehood and dishonesty. It is therefore substantially related under title 10, California Code of Regulations, section 2910, subdivision (a)(4) (employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end).

Therefore, cause for disciplinary action against respondent exists pursuant to Business and Professions Code sections 490 and 10177, subdivision (b) for each of these convictions.

4. In California Code of Regulations, title 10, section 2912, the department has adopted criteria to be used in evaluating the rehabilitation of a licensee who has been convicted of a crime. One criterion is the passage of at least two years since the conviction. Another is successful completion of probation. As complainant pointed out, because respondent was convicted in March 2008 and is still on formal probation, he does not meet either of these criteria.

Nevertheless, as to his drug convictions, respondent has demonstrated substantial rehabilitation. There is no question that respondent's 2005 arrest had a profound effect on him and caused him to make significant changes in his life, the most important of which was to become clean and sober. Respondent has now maintained his sobriety for more than three years. He is active in working the 12 Steps of NA/AA and in encouraging others to participate in the program. His sponsor believes respondent "gets it" and there is every reason to believe he will remain clean and sober.

But respondent failed to demonstrate that he is sufficiently rehabilitated from his 2008 convictions to justify permitting him to retain his real estate salesperson license, even on a restricted basis. Respondent's 2008 convictions were for sexual acts with minors and dissuading a witness. Concerning those convictions, respondent denied that he had sex with minors, and testified he cannot remember doing anything to dissuade a witness from testifying. Other than that, respondent had little to say at the hearing about the circumstances leading to these convictions or his rehabilitation from them.

It is true that the acts that led to respondent's 2008 convictions occurred at least four years earlier, before respondent's 2005 epiphany that led him to become clean and sober. And it is also true that following conviction respondent was not required to register as a sex offender. But respondent has been in mandated counseling at the Impulse Treatment Center for only about eight months. And while his counselor stated in a letter that respondent "understands the nature of his . . . sexual behaviors," respondent did not testify about this; he offered no insight into how he views his past behavior and what he may have gained from treatment. As a result, the counselor's letter constitutes only hearsay upon which a finding may not be based. Similarly, the letter from respondent's therapist constitutes only her hearsay opinions. Again, this is an insufficient basis for a finding in this matter. While two letter writers expressed the opinions that they trusted respondent with their children, there was no indication these writers knew respondent had been convicted of sexually-related crimes with minors.

5. In sum, respondent has failed to present sufficient evidence to demonstrate he has rehabilitated himself from his most recent convictions to the extent that permitting him to retain his license would be justified. It was not shown that the public interest would

be adequately protected if respondent were permitted to remain licensed, even with a restricted real estate salesperson license. While respondent is to be commended for his efforts at rehabilitation from his drug convictions, those are not his only convictions and his drug recovery efforts alone provide an insufficient basis to find he is fully rehabilitated.

ORDER

All licenses and licensing rights of Kelly R. Crawford under the Real Estate Law are revoked pursuant to Legal Conclusions 2 and 3, separately and collectively.

DATED: December 2, 2008

A handwritten signature in black ink, appearing to read "Michael C. Cohn", written over a horizontal line.

MICHAEL C. COHN  
Administrative Law Judge  
Office of Administrative Hearings

FILED

MAY 15 2008

DEPARTMENT OF REAL ESTATE

By K. Mar

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	
	)	No. H-10398 SF
KELLY R. CRAWFORD,	)	
	)	<u>ACCUSATION</u>
Respondent.	)	
	)	

The Complainant, E. J. HABERER, II, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against KELLY R. CRAWFORD, also known as "Kelly Ralph Crawford", (herein "Respondent"), is informed and alleges as follows:

I

Complainant, E. J. HABERER, II, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondent in his official capacity.

II

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (herein "the Code") as a real estate salesperson.

1 III

2 On or about September 18, 2007, in the Superior Court  
3 of the State of California, County of Contra Costa (Case Number  
4 214033-3), Respondent was convicted of the crime of Possession  
5 Of A Controlled Substance in violation of Health and Safety Code  
6 Section 11550(a), and the crime of Possession Of Paraphernalia  
7 in violation of Health and Safety Code Section 11364, each a  
8 misdemeanor and a crime involving moral turpitude which bears a  
9 substantial relationship under Section 2910, Title 10,  
10 California Code of Regulations (herein "the Regulations"), to  
11 the qualifications, functions, or duties of a real estate  
12 licensee.

13 IV

14 On or about September 18, 2007, in the Superior Court  
15 of the State of California, County of Contra Costa (Case Number  
16 3-221004-5), Respondent was convicted of the crime of Hit And  
17 Run Driving in violation of Vehicle Code Section 20002(a), a  
18 misdemeanor and a crime involving moral turpitude which bears a  
19 substantial relationship under Section 2910 of the Regulations  
20 to the qualifications, functions, or duties of a real estate  
21 licensee.

22 V

23 On or about March 24, 2008, in the Superior Court of  
24 the State of California, County of Contra Costa (Case Number  
25 5-051311-9), Respondent was convicted of the following crimes,  
26 each of which bears a substantial relationship under Section

27 ///

1 2910 of the Regulations to the qualifications, functions, or  
2 duties of a real estate licensee:

3 (a) The crime of Sodomy On A Person Under 18 in  
4 violation of Penal Code Section 286(b)(1), a misdemeanor;

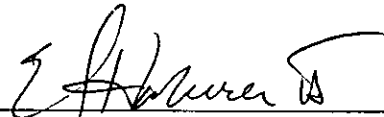
5 (b) Two counts of the crime of Unlawful Sexual  
6 Intercourse in violation of Penal Code Section 261.5, a  
7 misdemeanor; and

8 (c) The crime of Preventing/Dissuading A Victim Of A  
9 Crime in violation of Penal Code Section 136.1(b), a felony.

10 VI

11 The facts alleged above constitute cause under  
12 Sections 490 and 10177(b) of the Code for suspension or  
13 revocation of Respondent's license and all license rights under  
14 the Real Estate Law.

15 WHEREFORE, Complainant prays that a hearing be  
16 conducted on the allegations of this Accusation and that upon  
17 proof thereof, a Decision be rendered imposing disciplinary  
18 action against all licenses and license rights of Respondent  
19 under the Code, and for such other and further relief as may be  
20 proper under provisions of law.

21  
22   
23 E. J. HABERER II  
Deputy Real Estate Commissioner

24 Dated at Oakland, California  
25 this 14th day of May, 2008.