

FILED

FEB 17 2011

DEPARTMENT OF REAL ESTATE

*[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of

PHILLIP JEFFERY RUNCO,

No. H-10416 SF

Respondent.

ORDER GRANTING UNRESTRICTED LICENSE

On September 5, 2008, a Decision was rendered herein denying Respondent's application for a real estate salesperson license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on October 7, 2008, and Respondent has operated as a restricted licensee since that time.

On April 26, 2010, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

I have considered Respondent's petition and the evidence submitted in support thereof including Respondent's record as a restricted licensee. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of

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1 an unrestricted real estate salesperson license and that it would not be against the public interest  
2 to issue said license to Respondent.

3 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal of  
4 restrictions is granted and that a real estate salesperson license be issued to Respondent if  
5 Respondent satisfies the following requirements:

- 6 1. Submits a completed application and pays the fee for a real estate  
7 salesperson license within the 12 month period following the date of this Order; and  
8 2. Submits proof that Respondent has completed the continuing education  
9 requirements for renewal of the license sought. The continuing education courses must be  
10 completed either (i) within the 12 month period preceding the filing of the completed  
11 application, or (ii) within the 12 month period following the date of this Order.

12 This Order shall become effective immediately.

13 IT IS SO ORDERED

2/95/204

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15 JEFF DAVIS  
Real Estate Commissioner

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FILED

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

SEP 11 2008

DEPARTMENT OF REAL ESTATE

\* \* \*

By R. Henry

In the Matter of the Application of )  
PHILLIP JEFFERY RUNCO, ) NO. H-10416 SF  
Respondent. ) OAH NO. N-2008060626

DECISION

The Proposed Decision dated August 13, 2008, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon  
OCT - 2 2008  
on \_\_\_\_\_

IT IS SO ORDERED 9-5-08

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 Application of:

PHILLIP JEFFERY RUNCO,

Respondent.

Case No. H-10416 SF

OAH No. 2008060626

**PROPOSED DECISION**

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on August 7, 2008.

Real Estate Counsel Angela L. Cash represented complainant Charles W. Koenig, a Deputy Real Estate Commissioner.

Respondent Phillip Jeffery Runco was present and represented himself.

The matter was submitted for decision on August 7, 2008.

**FACTUAL FINDINGS**

1. On October 31, 2007, respondent Phillip Jeffery Runco filed with the Department of Real Estate an application for a real estate salesperson license. Any license that issues from this application is subject to the conditions of Business and Professions Code section 10153.4.

2 On July 16, 2003, respondent was convicted in Contra Costa County, on his plea of guilty, of a misdemeanor violation of Penal Code section 550, subdivision (b)(3) (concealing facts affecting right to insurance benefit or payment). The offense involves moral turpitude and is substantially related to the qualifications, functions, or duties of a real estate licensee.

Imposition of sentence was suspended and respondent was placed on court probation for three years on terms and conditions that included a stayed 30-day jail term, 60 hours of community service, restitution of \$833.50, and a restitution fine of \$100.

3. In connection with proceedings before the Board of Chiropractic Examiners in 2004 (see Factual Finding 5, below), respondent admitted the circumstances of his offense were as follows:

The underlying circumstances of respondent's conviction are that on or about February 26, 1999, through December 16, 2000, in connection with the submission of a false insurance claim to American Specialty Health Plans, respondent knowingly conspired with another person to conceal/or fail to disclose the occurrence of an event that affected that person's continued right or entitlement to any insurance benefit for payment.

The underlying event that affected the patient's right or entitlement to insurance coverage was that an injury/condition of the patient that was treated by respondent in his chiropractic practice was work-related and therefore covered by the workers' compensation carrier and not the patient's HMO.

4. Respondent completed all conditions of his criminal probation, including making restitution to America Specialty Health Plans. His probation ended July 2006.

5. Respondent has been licensed as a chiropractor in California since January 1, 1985. As a result of his criminal conviction, the Board of Chiropractic Examiners of the State of California instituted disciplinary proceedings against respondent's chiropractor license. Respondent, who was represented by counsel, entered into a stipulated settlement and disciplinary order in Case No. 2004-445. Effective October 21, 2004, the Board revoked respondent's license, stayed the revocation, and placed the license on probation for five years with stated terms and conditions, including a 15-day suspension, auditing of his billing practices, and a college-level ethics course. The discipline was based on admitted violations of Business and Professions Code section 1000-10 and title 10, California Code of Regulations, section 317, subdivisions (g) and (h) (conviction of a substantially-related crime), and section 317, subdivisions (k) and (q) (commission of acts involving moral turpitude, dishonesty, fraud, and misrepresentation).

6. Respondent has fully complied with the requirements of his probation to the Board of Chiropractic Examiners to date. Respondent remains on probation to the Board until October 2009.

7. Respondent has dramatically changed the operation of his chiropractic practice. At the time of the offense, he had an extremely busy practice, in which he saw 70 patients a day and dealt with multiple insurance companies and HMO's. In such a hectic practice, respondent delegated a great deal to a large administrative staff, including preparing documents, reports and billings. In respondent's view, this style of business practice is what led to his criminal trouble.

Respondent now has a much less busy chiropractic practice. He sees 30-35 patients a day, and he does not treat patients through HMO's. He personally prepares all reports for his office, and he has reduced the size of his administrative staff. He shares an office with another chiropractor, Christopher W. Pedretti, D.C., whom he has known for 15 years. In a letter dated August 5, 2008, Dr. Pedretti attests to respondent's good character.

8. Respondent has been married to his wife for 25 years and has two children. He provides the sole financial support for his family. Respondent is a referee in a youth soccer league, and he attends church regularly.

9. Respondent has become interested in real estate through his association with Gary Wuestenberg, a real estate broker and owner of Realty World Preferred Properties in Martinez. Wuestenberg, who is respondent's sponsoring broker, has known respondent for 15 years, both as a friend and as a chiropractic patient. For the last year, respondent has worked 10 to 15 hours a week in Wuestenberg's office, on a volunteer basis, in order to learn the business. Wuestenberg is aware of respondent's criminal conviction. In a letter dated August 5, 2008, he attests to respondent's good character and "strongly" recommends his licensure.

10. Respondent testified at hearing in a forthright and truthful manner.

### LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 10177, subdivision (b), read in conjunction with Business and Professions Code section 480, subdivision (a), the Commissioner may deny an application for a real estate license if the applicant has been convicted of a felony, or a crime that involves moral turpitude, which bears a substantial relationship to the licensed activity. (*Department of Real Estate v. Petropoulos* (2006) 142 Cal.App.4th 554.)

Factual Finding 2: Respondent has been convicted of a misdemeanor violation of Penal Code section 550, subdivision (b)(3).<sup>1</sup> The offense involves moral turpitude. The offense is substantially related to the qualifications, functions, or duties of a real estate licensee as it involved the employment of fraud, deceit, falsehood or misrepresentation to achieve an end (Cal. Code Regs., tit. 10, § 2910, subd. (a)(4)). Cause to deny respondent's application for a real estate salesperson license exists pursuant to Business and Professions Code section 10177, subdivision (b), read in conjunction with Business and Professions Code section 480, subdivision (a).

2. Pursuant to Business and Professions Code section 10177, subdivision (f), the Commissioner may deny an application for a real estate license to an applicant who has had a license issued by another agency of this state revoked or suspended for acts that if done by a licensee would be grounds for suspending or revoking a real estate license.

Factual Finding 5: Respondent's chiropractic license has been disciplined for acts, which if done by a real estate licensee, would be cause for license revocation pursuant to

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<sup>1</sup> Penal Code section 550, subdivision (b), provides in relevant part: "It is unlawful to do, or to knowingly assist or conspire with any person to do, any of the following: [¶] . . . (b) Conceal, or knowingly fail to disclose the occurrence of, an event that affects any person's initial or continued right or entitlement to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled."

Business and Professions Code section 10177, subdivisions (b) (conviction of a substantially-related crime) and (j) (fraud or dishonest dealing). Cause to deny respondent's application for a real estate salesperson license exists pursuant to Business and Professions Code section 10177, subdivision (f).

3. In California Code of Regulations, title 10, section 2911, the Department has established criteria to be used in evaluating the rehabilitation of an applicant. The burden is on respondent to show that he has sufficiently rehabilitated himself so that it would be appropriate to issue him a real estate license. Respondent has sustained this burden. In particular, it is noted that the conviction is more than three years old, respondent has made restitution to the victim, and he has successfully completed probation. In addition, respondent has changed his business practices, and he has been fully compliant with his probation to the Board of Chiropractic Examiners. All matters have been considered in concluding that it would not be contrary to the public interest to grant respondent a real estate salesperson license on a restricted basis.

#### ORDER

Respondent's application for a real estate salesperson license is denied by reason of Legal Conclusions 1 and 2, jointly and for each of them; 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 Business and Professions Code section 10156.5:

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 or the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two (2) 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

(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. The suspension shall not be lifted unless, prior to the expiration of the restricted license, respondent has submitted the required evidence of course completion and the Commissioner has given written notice to respondent of lifting of the suspension.

5. Pursuant to section 10154, if respondent has not satisfied the requirements for an unqualified license under section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to section 10153.4 until four years after the date of the issuance of the preceding restricted license.

DATED: August 13, 2008



MELISSA G. CROWELL  
Administrative Law Judge  
Office of Administrative Hearings



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2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007

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

FILED

JUN - 3 2008

DEPARTMENT OF REAL ESTATE

By K. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Application of )  
12 PHILLIP JEFFERY RUNCO, )  
13 Respondent. )

No. H- 10416 SF

STATEMENT OF ISSUES

14  
15 The Complainant, Charles W. Koenig, a Deputy Real  
16 Estate Commissioner of the State of California, for Statement of  
17 Issues against PHILLIP JEFFERY RUNCO (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 October 31, 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 July 16, 2003, Superior Court of  
8 California, County of Contra Costa, Respondent was convicted of  
9 the crime of Hide Facts: Insurance Entitlement Benefits in  
10 violation of Penal Code Section 550(b)(3), a misdemeanor and a  
11 crime involving moral turpitude which bears a substantial  
12 relationship under Section 2910, Title 10, California Code of  
13 Regulations, to the qualifications, functions or duties of a  
14 real estate licensee.

### 15 IV

16 Effective October 21, 2004, in Case No. 2004-445,  
17 before the California Board of Chiropractic Examiners after  
18 giving Respondent fair notice of the charges, an opportunity for  
19 a hearing and other due process protections required by the  
20 Administrative Procedure Act, the California Department of  
21 Insurance revoked Respondent's Chiropractor license, number DC-  
22 16845, pursuant to the provisions of Title 16 of the California  
23 Code of Regulations, section 317(g) and (h) and section 1000-10  
24 of the Code for acts which, if committed by a real estate  
25 licensee, would constitute grounds for the suspension or  
26 revocation of a California real estate license pursuant to the  
27 provision of Section 10177(g) and 10177(j) of the Code.

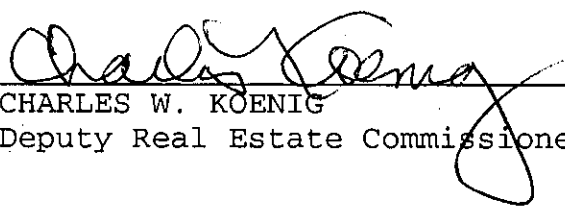
1 V

2 Respondent's acts and omissions described in Paragraph  
3 IV, above, constitutes cause for denial of Respondent's  
4 application for a real estate license under Section 10177(f) of  
5 the Code.

6 VI

7 Respondent's criminal conviction, as described in  
8 Paragraph III, above, constitutes cause for denial of  
9 Respondent's application for a real estate license under  
10 Sections 480(a) and 10177(b) of the Code.

11 WHEREFORE, Complainant prays that the above-entitled  
12 matter be set for hearing and, upon proof of the charges  
13 contained herein, that the Commissioner refuse to authorize the  
14 issuance of, and deny the issuance of a real estate salesperson  
15 license to Respondent, and for such other and further relief as  
16 may be proper in the premises.

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19 CHARLES W. KOENIG  
Deputy Real Estate Commissioner

20 Dated at Sacramento, California,  
21 this 30<sup>th</sup> day of May, 2008.  
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