

1 The parties wish to settle this matter without further proceedings.

2 IT IS HEREBY STIPULATED by and between Respondent and the Complainant,
3 acting by and through Kenneth C. Espell, Counsel for the Department, as follows, for the
4 purpose of settling and disposing of the Statement of Issues filed by Complainant.

5 1. It is understood by the parties that the Real Estate Commissioner may adopt
6 this Stipulation and Agreement as his Decision in this matter, thereby imposing the penalty and
7 sanctions on Respondent's real estate license as set forth in the below "Decision and Order". In
8 the event the Commissioner in his discretion does not adopt the Stipulation and Agreement, the
9 Stipulation shall be void and of no effect; the Commissioner will review the transcript and the
10 evidence in the case, and will then issue his Decision after Rejection as his Decision in this
11 matter.

12 2. By reason of the foregoing and solely for the purpose of settlement of the
13 Statement of Issues without further administrative proceedings, it is stipulated and agreed that
14 the following shall be adopted as the Commissioner's Decision and Order:

15
16 FACTUAL FINDINGS

17 1. On December 3, 2009, Complainant, E.J. Haberer II, filed the Statement of
18 Issues in his official capacity as a Deputy Real Estate Commissioner, Department of Real Estate,
19 State of California.

20 2. On August 10, 2009, MATTHEW RAYMOND MARTINEZ submitted an
21 application for a real estate salesperson license to the Department. The Department denied
22 Respondent's application and he appealed.

23 3. Respondent filed a timely Notice of Defense.

24 4. The Department has alleged as cause for denial of Respondent's application
25 for a real estate license, his two criminal convictions, which include one felony conviction,
26 which bear a substantial relationship to his qualifications, functions or duties of a real estate
27 licensee.

1 a. On or about March 29, 2007, in the San Luis Obispo County Superior Court,
2 State of California, Case Number F000387762, Respondent was convicted of violating Section
3 11359 of the California Health and Safety Code (Possession for Sale of Marijuana), a felony.
4 Imposition of sentence was suspended and he was placed on formal probation for three years.
5 Conditions of probation included 90 days in jail, 40 hours of community service and fines and
6 fees in the amount of approximately \$700.00.

7 The facts and circumstances of Respondent's conviction for possession for sale
8 of marijuana are as follows. Respondent was attending junior college in San Luis Obispo, from
9 August 2004 until September 2007. On December 1, 2005, the police searched Respondent's
10 residence and discovered the following illicit substances: marijuana and ecstasy. He admits
11 selling small amounts of marijuana; however, Respondent asserts that ecstasy was for personal
12 use. Respondent attributes his marijuana for sale conviction to being "stupid" and irresponsible
13 at 20 years old.

14 On May 7, 2009, Respondent received an early termination of his probation.¹ On
15 November 17, 2009, his felony conviction of possession of marijuana was reduced to a
16 misdemeanor and his record was expunged.

17 b. On or about September 10, 2007, in the Sonoma County Superior Court,
18 State of California, Case Number SCR-495754, Respondent was convicted of violating Section
19 148(a)(1) of the California Penal Code (Resisting a Peace Officer), a misdemeanor. Imposition
20 of sentence was suspended and he was placed on formal probation for two years. Conditions of
21 probation included 10 days in jail, payment of fines, and fees of approximately \$200.00.

22 The facts and circumstances of Respondent's conviction of resisting a peace
23 officer are as follows. On August 3, 2006, Respondent was operating a vehicle in Sonoma,
24 California, when a police officer attempted a traffic stop. At the time, two of his friends were
25 passengers in the vehicle. Respondent sped and drove erratically in an attempt to evade the
26 officer. When he stopped the vehicle, Respondent fled the scene on foot. During the search of

27 ¹ Probation for Respondent's felony conviction of possession of marijuana for sale was scheduled to expire on May 25, 2010.

1 the vehicle, illegal substances and drug paraphernalia were discovered. The occupants of the
2 vehicle were neither arrested, nor prosecuted.

3 Respondent attributes his evasion of a peace officer to fear, panic and confusion.
4 Respondent does not know why he resisted the peace office. Respondent accepts complete
5 responsibility for his conduct and acknowledged it was wrong. He appears to be remorseful and
6 embarrassed by his actions. The drug paraphernalia charge was subsequently dismissed. While
7 in jail in San Luis Obispo, Respondent learned of the Sonoma County outstanding warrant for
8 his arrest. After his release and following his return to Sonoma, Respondent surrendered
9 himself to the police department.

10 On May 7, 2009, Respondent received an early termination of his probation.² On
11 September 23, 2009, Respondent's record was expunged and his resisting a peace officer
12 conviction was set aside.

13 5. Respondent, age 24, lives with his mother in Sonoma, California.
14 Respondent's father passed away when he was very young and Respondent was raised by his
15 mother. Respondent attended two years of junior college, but has not obtained an AA Degree.
16 He is currently employed by MacArthur Place in Sonoma, where Respondent has held various
17 positions since he was hired in August 2007.

18 While serving his 90 day sentence in San Luis Obispo for his felony possession
19 sale of marijuana conviction, Respondent learned of the outstanding Sonoma County warrant
20 for his arrest as a result of his resisting a peace officer. In approximately September of 2007,
21 following his return to Sonoma, he served his jail sentence and completed his probation.

22 Following his release from the Sonoma County Jail, Respondent was the primary
23 caregiver for his mother, who was recovering from knee replacement surgery. During this time,
24 Respondent attended private therapy and started attending church. Respondent has accepted
25 full responsibility for his 2007 criminal convictions. Respondent appeared embarrassed and
26 ashamed in discussing the facts and circumstances of each conviction. He was emotional when

27 ² Probation for Respondent's misdemeanor conviction of evading a peace officer was scheduled to expire on
September 10, 2010.

1 discussing his regret and remorse for Respondent's unlawful acts and the pain and
2 embarrassment his conduct has caused his mother.

3 Respondent fully disclosed his prior criminal convictions in his application for a
4 real estate salesperson license. A letter from Mr. Brian Connell, manager/broker of Frank
5 Howard Allen Realtor's, indicates if a salesperson license is issued, Respondent will commence
6 employment as a real estate salesperson at Frank Howard Allen Realtor's.

7 6 Bradley Cagel was present at the hearing. He met Respondent in San Luis
8 Obispo and has known Respondent since 2006. Respondent admitted to Cagel that Respondent
9 was selling marijuana. However, Cagel was unaware that Respondent had been charged for
10 possession of ecstasy.

11 7. MATTHEW Petri was also present at the hearing. Petri has known
12 Respondent since high school. Respondent informed him of his felony possession of marijuana
13 and the misdemeanor conviction for resisting a peace officer. However, Petri was unaware
14 Respondent had fled the scene of the attempted traffic stop.

15 LEGAL CONCLUSIONS

16 1. Pursuant to Business and Professions Code section 480, subdivision (a),
17 the Commissioner may deny an application for a real estate salesperson license if the applicant
18 has been convicted of an offense that is substantially related to the qualifications, functions, or
19 duties of the licensed activity. As a separate cause for denial, the Commissioner, pursuant to
20 Business and Professions Code section 10177, subdivision (b), may deny an application for a
21 real estate salesperson license if the applicant has been convicted of a felony, or a crime that is
22 substantially related to the qualifications, functions, or duties of a real estate licensee.

23 California Code of Regulations, Title 10, Section 2910, sets forth criteria to determine whether
24 a conviction is substantially related to the qualifications, functions or duties of a real estate
25 licensee which includes: "[d]oing of any unlawful act with the intent of conferring a financial or
26 economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to
27

1 the person or property of another" (subd. (a)(8)); or, [c]onduct which demonstrates a pattern of
2 repeated and willful disregard of law (subd. (a)(10)).

3 2. Respondent's felony conviction of possession of marijuana for sale is an
4 unlawful act performed with the intent of conferring an economic benefit, and therefore, is
5 substantially related to the qualifications, functions or duties of a real estate licensee. As to
6 Respondent's misdemeanor conviction of resisting a peace officer, Respondent's actions coupled
7 with his possession for sale of marijuana conviction, demonstrates a pattern of repeated and
8 willful disregard of the law.

9 Separate cause exists for denial of Respondent's license under Business and
10 Professions Code Sections 480, subdivision (a), and Section 10177, subdivision (b) based upon
11 convictions set forth in Factual Findings 4(a) and 4(b).

12 3. Pursuant to California Code of Regulations, Title 10, Section 2911, the
13 Department of Real Estate has adopted nonexclusive criteria for determining rehabilitation of an
14 applicant's conviction as follows: the passage of not less than two years since his most recent
15 conviction (subd. (a)); payment of restitution (subd. (b)); expungement of criminal record (subd.
16 (c)); expungement of registration requirement (subd. (d)); successful completion of probation
17 (subd. (e)); abstinence from drugs or alcohol for at least two years (subd. (f)); payment of fines
18 and fees of conviction (subd. (g)); stability of family life (subd. (h)); completion of, or sustained
19 enrollment in, formal education or vocational training courses for economic self-improvement
20 (subd. (i)); discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary
21 obligations to others (subd. (j)); correction of business practices resulting in injury to others or
22 with the potential to cause such injury (subd. (k)); significant or conscientious involvement in
23 community, church or privately-sponsored programs designed to provide social benefits or to
24 ameliorate social problems (subd. (l)); new and different social and business relationships from
25 those which existed at the time of the conduct that is the basis for denial of the departmental
26 action sought (subd. (m)); and, change in attitude (subd. (n)).

27

1 1. The license shall not confer any property right in the privileges to be
2 exercised, and the Real Estate Commissioner may, by appropriate order, suspend the right to
3 exercise any privileges granted under this restricted license in the event of:

4 (a) The conviction of Respondent (including a plea of nolo
5 contendere) of a crime which is substantially related to
6 Respondent's fitness or capacity as a real estate licensee; or

7 (b) The receipt of evidence that Respondent has violated provisions of
8 the California Real Estate Law, the Subdivided Lands Law,
9 Regulations of the Real Estate Commissioner, or conditions
10 attaching to this restricted license.

11 2. Respondent shall not be eligible to apply for the issuance of an unrestricted
12 real estate license nor the removal of any of the conditions, limitations, or restrictions' attaching
13 to the restricted license until two (2) years have elapsed from the date of issuance of the
14 restricted license to Respondent.

15 3. With the application for license, or with the application for transfer to a new
16 employing broker, Respondent shall submit a statement signed by the prospective employing real
17 estate broker on a form approved by the Department which shall certify as follows:

18 (a) That the employing broker has read the Decision which is the basis
19 for the issuance of the restricted license; and

20 (b) That the employing broker will carefully review all transaction
21 documents prepared by the restricted licensee and otherwise
22 exercise close supervision over the licensee's performance of acts
23 for which a license is required.

24
25 DATED: July 9, 2010

26 
27 KENNETH C. ESPELL, Counsel
DEPARTMENT OF REAL ESTATE

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

I have read the Stipulation and Agreement and its terms are understood by me and are agreeable and acceptable to me. I willingly and voluntarily agree to enter into this Stipulation.

Respondent can signify acceptance and approval of the terms and conditions of this Stipulation and Waiver by faxing a copy of the signature page, as actually signed by Respondent, to the Department at fax number, (916) 227-9458. Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of his actual signature as it appears on the Stipulation and Waiver, that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation and Waiver.

DATED: 07/06/10

Matthew Martinez
MATTHEW RAYMOND MARTINEZ,
Respondent

I have reviewed the Stipulation and Waiver as to form and content and have advised my client accordingly.

DATED: 7-6-10

Frank M. Buda
FRANK M. BUDA, ESQ.
Attorney for Respondent

////
////
////
////

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

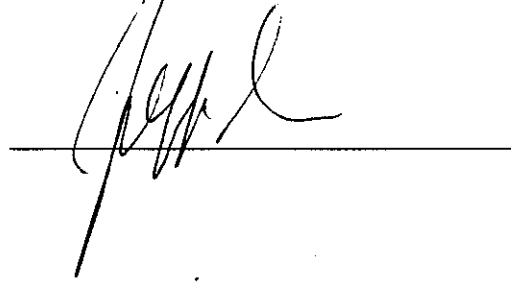
DECISION AFTER REJECTION AND ORDER

The foregoing Stipulation and Agreement is hereby adopted by the Real Estate Commissioner as his Decision after Rejection and Order.

This Decision and Order shall become effective at 12 o'clock noon on
AUG 19 2010

IT IS SO ORDERED 7/27/2010

JEFF DAVIS
Real Estate Commissioner



A handwritten signature in black ink, appearing to read 'Jeff Davis', is written over a horizontal line.

FILED

MAY -6 2010

DEPARTMENT OF REAL ESTATE

By R. Henry

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

MATTHEW RAYMOND MARTINEZ,

Respondent.

No. H-10815 SF
OAH No: 2010010091

NOTICE

TO: MATTHEW RAYMOND MARTINEZ, Respondent, and Frank M. Buda, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated March 18, 2010, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated March 18, 2010, 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 February 16, 2010, and any written argument hereafter submitted on behalf of Respondent and Complainant.

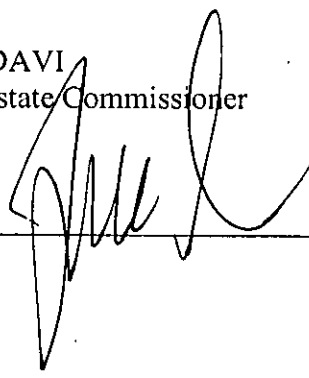
Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of February 16, 2010, at the

1 Sacramento office of the Department of Real Estate unless an extension of the time is granted for
2 good cause shown.

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

7 DATED: 5.3.200

9 JEFF DAVI
10 Real Estate Commissioner

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:

MATTHEW RAYMOND MARTINEZ,

Respondent.

Case No. H-10815-SF

OAH No. 2010010091

PROPOSED DECISION

Administrative Law Judge Dianna L. Albini, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on February 16, 2010.

Department of Real Estate Counsel Kenneth C. Espell represented Complainant E.J. Haberer, II, Deputy Real Estate Commissioner.

Respondent Matthew Raymond Martinez was present and represented by Frank M. Buda, esq.

The matter was submitted on February 16, 2010.

FACTUAL FINDINGS

1. On August 10, 2009, the Department of Real Estate (Department) received an application for a real estate salesperson license from respondent, Matthew Raymond Martinez. Complainant denied respondent's application based on his prior criminal convictions that bear a substantial relationship to the qualifications, functions or duties of a real estate licensee.

2. On March 29, 2007, in San Luis Obispo County, respondent was convicted on a plea of nolo contendere of violating Health and Safety Code section 11359 (possession for sale of marijuana), a felony. Imposition of sentence was suspended and he was placed on formal probation for three years. Conditions of probation included 90 days in jail, 40 hours of community and fines and fees in the amount of approximately \$700.

The facts and circumstances of respondent's conviction of possession for sale of marijuana are as follows. Respondent attended junior college in San Luis Obispo, from August of 2004 until September of 2007. On December 1, 2005, the police, searched respondent's residence and discovered the following illicit substances, marijuana and ecstasy. He admits selling small amounts of marijuana; however, respondent asserts the

ecstasy was for personal use. Respondent attributes his marijuana for sale conviction to being "stupid" and irresponsible at 20 years old.

On May 7, 2009, respondent received an early termination of his probation.¹ On November 17, 2009, his felony conviction of possession of marijuana for sale was reduced to a misdemeanor and his record was expunged.

3. On September 10, 2007, in Sonoma, County, respondent was convicted on his plea of nolo contendere of Penal Code section 148, subdivision (a)(1) (resisting a peace officer), a misdemeanor. Imposition of sentence was suspended and he was placed on formal probation for two years. Conditions of probation included 10 days in jail, payment of fines and fees of approximately \$200.

The facts and circumstances of respondent's conviction of resisting a peace officer are as follows. On August 3, 2006, respondent was operating a vehicle in Sonoma, California, when a police officer attempted a traffic stop. At the time, two of his friends were passengers in the vehicle. Respondent sped and drove erratically in an attempt to evade the officer. When he stopped the vehicle, respondent fled the scene on foot. During a search of the vehicle, illegal substances and drug paraphernalia were discovered. The occupants of the vehicle were neither arrested, nor prosecuted.

Respondent attributes his evasion of a peace officer conviction with fear, panic and confusion. Respondent does not know why he resisted the peace officer. Respondent accepts complete responsibility for his conduct and acknowledged it was wrong. He appears remorseful and embarrassed by his actions. The drug paraphernalia charge was subsequently dismissed. While in jail in San Luis Obispo, respondent learned of the Sonoma County outstanding warrant for his arrest. After his release and following his return to Sonoma, respondent surrendered himself to the police department.

On May 7, 2009, respondent received an early termination of his probation.² September 23, 2009, respondent's record was expunged and his resisting a peace officer conviction set aside.

4. Respondent age 24 currently lives with his mother in Sonoma, California. Respondent's father passed away when he was very young and respondent was raised by his mother. Respondent attended two years of junior college, but has not obtained an AA degree. He is currently employed by MacArthur Place in Sonoma, where respondent has held various positions since he was hired in August of 2007.

While serving his 90 day sentence in San Luis Obispo for his felony possession for

¹ Probation for respondent's felony conviction of possession of marijuana for sale was scheduled to expire on May 25, 2010.

² Probation for respondent's misdemeanor conviction of evading a peace officer was scheduled to expire on September 10, 2010.

sale of marijuana conviction, respondent learned of the outstanding Sonoma County warrant for his arrest as a result of his resisting a peace officer. In approximately September of 2007, following his return to Sonoma, he served his jail sentence and completed his probation.

Following his release from the Sonoma County Jail, respondent was the primary care giver for his mother, who was recovering from knee replacement surgery. During this time, respondent attended private therapy and started attending church. Respondent has accepted full responsibility for his 2007 convictions. Respondent appeared embarrassed and ashamed in discussing the facts and circumstances of each conviction. He was emotional when discussing his regret and remorse for respondent's unlawful acts and the pain and embarrassment his conduct has caused his mother.

Respondent fully disclosed his prior criminal convictions in his application for a real estate salesperson's license. A letter from Mr. Brian Connell, manager/broker of Frank Howard Allen realtor's, indicates if a salesperson's license is issued, respondent, will commence employment as a real estate salesperson at Frank Howard Allen realtor's.

5. Bradley Cagel was present at hearing. He met respondent in San Luis Obispo and has known respondent since 2006. Respondent admitted to Cagel that respondent was selling marijuana. However, Cagel was unaware that respondent had been charged for possession of was later convicted of resisting a peace officer.

6. Matthew Petri was also present at hearing. Petri has known respondent since high school. Respondent informed him of the felony conviction of possession for sale of marijuana and the misdemeanor conviction for resisting a peace officer. However, Petri was unaware respondent had fled the scene of the attempted traffic stop.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 480, subdivision (a), the Commissioner may deny an application for a real estate salesperson license if the applicant has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the licensed activity. As a separate cause for denial, the Commissioner, pursuant to Business and Professions Code section 10177, subdivision (b), may deny an application for a real estate salesperson license if the applicant has been convicted of a felony, or a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee.

California Code of Regulations, title 10, section 2910, sets forth criteria to determine whether a conviction is substantially related to the qualifications, functions or duties of a real estate licensee which includes: "[d]oing of any 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" (subd. (a)(8)); or, [c]onduct which demonstrates a pattern of repeated and willful disregard of law (subd. (a)(10)).

2. Respondent's felony conviction of possession of marijuana for sale is an

unlawful act performed with the intent of conferring an economic benefit, and therefore, is substantially related to the qualifications, functions or duties of a real estate licensee. As to respondent's misdemeanor conviction of resisting a peace officer, respondent's actions coupled with his possession for sale of marijuana conviction, demonstrates a pattern of repeated and willful disregard of the law.

Separate cause exists for denial of respondent's license under Business and Professions Code sections 480, subdivision (a), and section 10177, subdivision (b) based upon convictions set forth in Factual Findings 2 and 3.

3. Pursuant to California Code of Regulations, title 10, section 2911, the Department of Real Estate has adopted nonexclusive criteria for determining rehabilitation of an applicant's conviction as follows: the passage of not less than two years since his most recent conviction (subd. (a)); payment of restitution (subd. (b)); expungement of criminal record (subd. (c)); expungement of registration requirement (subd. (d)); successful completion of probation (subd. (e)); abstinence from drugs or alcohol for at least two years (subd. (f)); payment of fines and fees of conviction (subd. (g)); stability of family life (subd. (h)); completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement (subd. (i)); discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others (subd. (j)); correction of business practices resulting in injury to others or with the potential to cause such injury (subd. (k)); significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems (subd. (l)); new and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought (subd. (m)); and, change in attitude (subd. (n)).

The burden of proof is on the applicant for a license. (*Martin v. Alcohol Beverage Control Appeals Bd.* (1959) 52 Cal.2d 265.) The purpose of this proceeding is not to further punish respondent for his criminal conduct (*Donaldson v. Department of Real Estate* (2005) 134 Cal.App.4th 948, 958, fn. 10), but to ensure that real estate licensees will be honest, truthful, and worthy of the fiduciary responsibilities they bear (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402).

All relevant criteria of rehabilitation have been considered. Respondent's most recent conviction was approximately three years ago. He has successfully completed all the terms and conditions of probation including payment of fees and fines, as well as participating in private therapy. Respondent's criminal felony and misdemeanor convictions have been expunged. Respondent has worked steadily since his release from jail. He has new and different social and business relationships from those which existed at the time of his conviction. Respondent appears to have a stable family life. Moreover, respondent has a letter of support from Mr. Brian Connell, manager/broker of Frank Howard Allen realtor's, indicating his employment pending licensure. Respondent regularly attends church.

But there are concerns regarding him becoming a real estate licensee. The seriousness of Respondent's criminal history along with his recent completion of probation precludes Respondent from gaining an unrestricted real estate salesperson license. But, it would not be contrary to the public interest to grant Respondent's application for a real estate salesperson on a restricted basis.

ORDER

The application for a real estate salesperson license by Respondent Matthew Raymond Martinez 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

(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

Not Adopted

Not adopted

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.

ORDER

The application of respondent Matthew Raymond Martinez for a real estate salesperson license is denied.

DATED: 3/18/10



DIANNA L. ALBINI
Administrative Law Judge
Office of Administrative Hearings

RECEIVED
Dept of Real Estate

MAR 24 2010

SACRAMENTO LEGAL

FILED

DEC 03 2009

DEPARTMENT OF REAL ESTATE

By VR Henry

1 KENNETH C. ESPELL, Counsel (SBN 178757)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789
5 -or- (916) 227-0868 (Direct)

6
7 BEFORE THE DEPARTMENT OF REAL ESTATE
8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Application of)

) NO. H- 10815 SF

) STATEMENT OF ISSUES

11)
12 MATTHEW RAYMOND MARTINEZ,)

13 Respondent.)
14)

15 The Complainant, E.J. HABERER, II, in his official capacity as a Deputy Real
16 Estate Commissioner of the State of California, for this Statement of Issues against MATTHEW
17 RAYMOND MARTINEZ, (hereinafter "Respondent"), is informed and alleges as follows:

18 1

19 On or about August 10, 2009, Respondent made application to the Department of
20 Real Estate of the State of California for a real estate salesperson license.

21 2

22 On or about March 29, 2007, in the San Luis Obispo County Superior Court,
23 State of California, case number F000387762, Respondent was convicted of violating Section
24 11359 of the California Health and Safety Code (Possession for Sale of Marijuana), a felony
25 which bears a substantial relationship under Section 2910, Title 10, California Code of
26 Regulations, to the qualifications, functions, or duties of a real estate licensee.

27 ///

On or about September 10, 2007, in the Sonoma County Superior Court, State of California, case number SCR-495754, Respondent was convicted of violating Section 148(a)(1) of the California Penal Code (Resisting a Peace Officer), a misdemeanor which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

Respondent's conviction, as alleged in Paragraph 2 and 3, above, constitutes cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

WHEREFORE, the 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 under other provisions of law.


E.J. HABERER II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 30th day of November, 2009 .