

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED

SEP 16 2010

DEPARTMENT OF REAL ESTATE

By H. Contreras

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In the Matter of the Accusation of

ALFREDO COH III,

Respondent.

NO. H-10891 SF

OAH NO. N-2010060005

**DECISION**

The Proposed Decision dated August 17, 2010, 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

October 6, 2010.

IT IS SO ORDERED 9/15, 2010.

JEFF DAVI  
Real Estate Commissioner

Barbara J. Bigby

BY: Barbara J. Bigby  
Chief Deputy Commissioner

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Case No. H-10891 SF

OAH No. 2010060005

**PROPOSED DECISION**

Administrative Law Judge Dianna L. Albini, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on July 23, 2010.

Annette E. Ferrante, Counsel, represented Complainant E. J. Haberer II, Deputy Real Estate Commissioner.

No appearance was made by or on behalf of respondent Alfredo Coh III.

The record was closed and the matter was submitted on July 23, 2010.

**FACTUAL FINDINGS**

1. Respondent Alfredo Coh III was properly served with the Accusation pursuant to Government Code section 11505. Respondent filed a notice of defense, however, he failed to appear at hearing. This hearing proceeded by default pursuant to Government Code section 11520.

2. At all times relevant to this proceeding, respondent was licensed and had license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a real estate salesperson. Respondent's salesperson license will expire on August 18, 2012.

3. On February 18, 2009<sup>1</sup>, in the San Francisco County, respondent was convicted, on a plea of guilty, of violating Health and Safety Code section 11378 (possession for the sale of controlled substance-methamphetamine), a felony. Respondent was sentenced to five years in state prison. Imposition of sentence was suspended and he was placed on

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<sup>1</sup> Respondent entered his plea of guilty on February 18, 2009. On April 16, 2009, respondent was sentenced on his guilty plea.

probation for a period of five years, he was ordered to serve one year through a home detention program, pay fines and restitution of approximately \$10,000, and to register as a narcotics offender. Felony possession for the sale of methamphetamine bears a substantial relationship to the qualifications, functions and duties of a real estate licensee.

4. The facts and circumstances of respondent's April 2009 conviction were that he was in possession of illegal substances and drug paraphernalia including, large quantities of methamphetamine, cocaine, marijuana, digital scales, and plastic bags.

5. In respondent's confidential interview information statement, conviction detail report and the reporter's transcript of respondent's 2009 sentencing proceeding, he accepts responsibility for his conduct leading to his 2009 conviction. He is a single father and sole custodian of two daughters, ages six and eight. He stated his conduct was an attempt to make money by selling drugs in order to save his house from foreclosure.

6. On March 5, 1998, in San Mateo County, respondent was convicted, on a plea of nolo contendere, of violating Health and Safety Code section 11357, subdivision (a) (possession of a controlled substance-marijuana), a felony. Imposition of sentence was suspended and respondent was placed on probation for three years. The terms and conditions of probation were 45 days in jail, payment of fines and fees of approximately \$500, and to register as a narcotics offender.

7. No evidence of respondent's rehabilitation was presented at hearing.

### LEGAL CONCLUSIONS

1. Government Code section 11520, subdivision (a), provides that, if a respondent either fails to file a notice of defense or to appear at the hearing, the Department may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without notice to respondent.

2. Business and Professions Code section 10177, subdivision (b),<sup>2</sup> authorizes the Commissioner to suspend or revoke a real estate license if the licensee has been convicted of a felony, or a crime that is substantially related to the qualifications, functions or duties of a real estate licensee. Cause exists to suspend or revoke respondent's real estate salesperson license pursuant to section 10177, subdivision (b), by reason of the conviction set forth in Factual Finding 3.

3. Section 490 authorizes the Commissioner to suspend or revoke a real estate license if the licensee has been convicted of an offense that is substantially related to the qualifications, functions or duties of a real estate licensee.

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<sup>2</sup> All subsequent statutory references are to the Business and Professions Code.

California Code of Regulations, title 10, section 2910, sets forth the department's substantial relationship criteria. Subdivision (a)(8) identifies as substantially related the doing 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.

Possession for the sale of methamphetamine is an unlawful act in which respondent was to receive an economic benefit. His 2009 conviction constitutes an act of fiscal dishonesty with the intent to corrupt others. As such, his conviction is substantially related to the qualifications, functions or duties of a real estate licensee. Cause exists to suspend or revoke respondent's real estate salesperson license pursuant to section 490, by reason of the conviction set forth in Factual Finding 3.

4. Pursuant to Business and Professions Code section 10101, the statute of limitations applicable to this proceeding requires that the Accusation must be filed not later than three years from the occurrence of the alleged grounds for disciplinary action, with an exception not applicable in this case. Since the Accusation in this case was filed on March 4, 2010, the statute operates to preclude grounds for disciplinary action that occurred prior to March 4, 2007. Thus, respondent's conviction and plea from 1998, as found in Factual Findings 6, does not constitute independent grounds for disciplinary action. However, respondent's 1998 conviction is considered a matter in aggravation for purposes of discipline related to the 2009 felony conviction.


5. In California Code of Regulations, title 10, section 2912, the department has established criteria to be used in evaluating the rehabilitation of a licensee who has committed a criminal offense. The burden is on the licensee to show that he or she is sufficiently rehabilitated so that it would be appropriate to allow the licensee to retain the real estate license.

There is a direct nexus between the 2009 offense respondent committed and the functions and duties of a real estate licensee. The 2009 conviction is less than two years old and respondent remains on formal probation until 2014. In the absence of any evidence of rehabilitation, the protection of the public interest requires the revocation of respondent's real estate salesperson license.

#### ORDER

All licenses and licensing rights of respondent Alfredo Coh III under the Real Estate Law are revoked.

DATED: 8/17/10

  
DIANNA L. ALBINI  
Administrative Law Judge  
Office of Administrative Hearings

FILED

MAR 26 2010

DEPARTMENT OF REAL ESTATE

By R. Henry

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In the Matter of the Accusation of	)	H-10891 SF
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ALFREDO COH III,	)	<u>ACCUSATION</u>
	)	
Respondent.	)	
	)	
	)	

The Complainant, E. J. HABERER II, in his official capacity as a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against ALFREDO COH III (hereinafter "Respondent"), is informed and alleges as follows:

1  
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) (hereinafter "the Code") as a real estate salesperson.

2  
On or about April 16, 2009, in the San Francisco Superior Court, State of California, Case No. 2332463, Respondent was convicted of violating Section 11378 of the California Health and Safety Code (Possession for the Sale of a Controlled Substance, Methamphetamine), a felony which bears a substantial relationship under Section 2910, Title

1 10; California Code of Regulations ("Regulations"), to the qualifications, functions, or duties of  
2 a real estate licensee.

3 MATTER IN AGGRAVATION


4 3

5 On or about March 5, 1998, in the San Mateo County Superior Court, State of  
6 California, Case No. COM 0167525, Respondent was convicted of violating Section 11359 of  
7 the California Health and Safety Code (Possession of Marijuana for Purpose of Sale), a felony  
8 which bears a substantial relationship under Section 2910, of the Regulations to the  
9 qualifications, functions, or duties of a real estate licensee.

10 4

11 The crimes of which Respondent was convicted, as alleged in Paragraphs 2 and  
12 3, above, individually and collectively, constitute cause for suspension or revocation of all  
13 licenses and license rights of ALFREDO COH III under Sections 490 and 10177(b) of the  
14 California Business and Professions Code.

15 WHEREFORE, Complainant prays that a hearing be conducted on the  
16 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing  
17 disciplinary action against all licenses and license rights of Respondent under the Real Estate  
18 Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further  
19 relief as may be proper under the provisions of law.

20   
21 E. J. HABERER II  
22 Deputy Real Estate Commissioner

23 Dated at Oakland, California,  
24 this 4th day of March, 2010.