

**FILED**

JAN 17 2012

DEPARTMENT OF REAL ESTATE

By R. Mark

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
 )  
WAYNE FRANCIS MILLER, ) NO. H-11190 SF  
 )  
Respondent. ) OAH NO. 2011090405  
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\_\_\_\_\_ )

DECISION

The Proposed Decision dated December 12, 2011, 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.

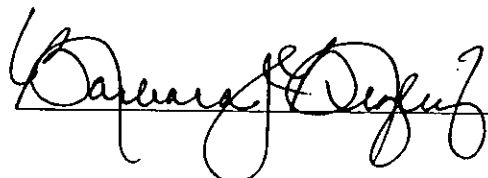
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime, but also grants the right to a restricted real estate broker license to respondent.

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 FEB - 7 2012

IT IS SO ORDERED 1/17/12

BARBARA J. BIGBY  
Acting Real Estate Commissioner



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

WAYNE FRANCIS MILLER,

Respondent.

Case No. H-11190 SF

OAH No. 2011090405

**PROPOSED DECISION**

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter on November 10, 2011, in Oakland, California.

Richard Uno, Counsel, represented complainant E.J. Haberer, II.

Edgardo Gonzalez, Attorney at Law, represented respondent Wayne Francis Miller, who was present at hearing.

The matter was submitted for decision on November 10, 2011.

**FACTUAL FINDINGS**

1. E.J. Haberer, II, made the accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.
2. Wayne Francis Miller (respondent) is currently licensed and has license rights under the Real Estate Law as a real estate broker. His license will expire on May 12, 2015, unless renewed.
3. On November 12, 2008, in the Superior Court of the State of California, County of Santa Clara, respondent was convicted, upon a plea of nolo contendere, of violating Penal Code section 647, subdivision (a) (disorderly conduct), a misdemeanor and a crime substantially related to the qualifications, functions or duties of a real estate licensee.

Imposition of sentence was suspended and respondent was placed on one year of court probation on terms and conditions that included performing 75 hours of volunteer work and paying fines and fees totaling \$495. Respondent was also ordered not to have contact with the victim or her family. Respondent successfully completed probation, and on June 25, 2010, respondent's conviction was expunged pursuant to Penal Code section 1203.4.

The facts underlying the conviction are that on April 3, 2008, respondent took the hand of a female tenant and placed it on the outside of his pants in the crotch area, while stating "this is how you make me feel" and "do you feel this." The tenant told police she could tell respondent had an erection, and that she immediately pulled her hand away and screamed "what are you doing." The tenant told police that respondent responded by stating "I'm so sorry. I'll never do it again" and "I don't know what I was thinking."

4. Respondent does not dispute the facts underlying his conviction and accepts full responsibility for his actions. He acknowledges that what occurred was "all [his] fault." Respondent explained that the victim, a 21 year old female, and her mother had lived at the apartment complex he manages for a couple of years. In his mind, he and the victim had a developed a flirtatious relationship with an underlying sexual overtone. Respondent now acknowledges that his perception of their interactions and "relationship" was different from reality and that he read way more into the victim's casual conversation and gestures than was warranted. Respondent's misperception caused him to engage in what he now acknowledges was inappropriate conduct. Respondent expresses remorse for the pain his conduct has caused to the victim, her family, and his family, and avers he will never engage in such conduct again.

Following his conviction, respondent began attending Sex and Love Addicts Anonymous (SLAA) in an effort to understand his conduct. Respondent states that his way of thinking changed after he began attending SLAA. He now realizes that he was "seeing his life wrong" and that "a casual touch on the shoulder or a smile from a girl is just an acknowledgement, not a flirtation." Respondent has participated in over 60 hours of peer counseling through SLAA, and continues to attend periodically when he feels the need to "refocus and refresh." Respondent has also had to address issues in his marriage as a result of his inappropriate conduct with the victim. Respondent feels that he and his wife have worked through their problems and are now happily married.

5. Respondent's wife Joan submitted a letter of support and also testified on respondent's behalf at hearing. Respondent disclosed his conduct to her after he was arrested. Initially, she was very angry and hurt. However, over time and through discussions, they have been able to work through respondent's indiscretion and their marriage has become stronger. Part of the healing has occurred because respondent constantly reminds her of her self-worth, how much he loves her and how important their relationship is to him. Respondent's wife confirmed that he has attended SLAA meetings, and noted that since he began attending the meetings he has been more respectful of her and reaffirmed her value and importance in his life. Respondent's wife feels he is basically an ethical person and she is not aware of any other inappropriate sexual conduct by respondent. She feels the incident that resulted in his conviction is totally out of character and was the result of a severe mistake in judgment. She also feels respondent has learned his lesson and that he is really sorry for all the problems he has caused. She has forgiven him.

6. Respondent's older brother, Ronald Miller, submitted a letter of support and also testified on his behalf at hearing. Miller is a licensed real estate broker. He owns Miller

& Hinkle Property Management in San Jose. Respondent has worked for Miller as a property manager for almost 21 years. Respondent supervises repairs, shows properties, renovates properties for re-rent, answers telephones, and "does pretty much everything" necessary to manage rental property. Respondent informed Miller of the incident that resulted in respondent's conviction within a day of its occurrence. Miller considers respondent's conduct an "unfortunate lapse in behavior" that was "very out of character." Miller is aware that respondent has undergone peer counseling and feels respondent has learned his lesson. He trusts respondent to perform his property management duties in an ethical and moral manner in the future and is comfortable allowing respondent to continue to work for him.

7. In addition, respondent submitted letters of support from attorney Richard P. Pointer and attorney John Hinkle. In a letter dated October 11, 2011, Pointer states that he represented respondent in the case that resulted in respondent's conviction. Pointer notes that respondent was fully cooperative with the court throughout the proceeding, successfully completed probation and has had his conviction expunged. On a personal level, Pointer was impressed with respondent's integrity and strong values, and he opines respondent "is a man of high moral and personal character, trustworthy and reliable."

In a letter dated October 6, 2011, Hinkle states that he has been a friend of respondent since 1974, and that respondent has been his property manager for approximately 20 years. Hinkle opines that despite respondent's poor judgment in the incident underlying his conviction, respondent is honest, trustworthy, of excellent moral character, and respected throughout the community. He notes that respondent readily admitted his mistake.

Respondent also submitted letters from Eric V. and Bill Sullivan, dated October 7, 2011, and October 4, 2011, respectively, which confirm respondent's regular attendance and participation at SLAA. And respondent submitted two notes of appreciation from tenants.

8. Respondent is 60 years old. He and his wife have been married for 36 years and have two adult sons. In the past respondent was actively involved in his sons sport activities and volunteered at their schools. He was also active in his church. Respondent presently works for his brother as a property manager. He plans to continue in that position if he is allowed to retain his broker license.

9. Respondent represents he has completed all required continuing education coursework.

### LEGAL CONCLUSIONS

1. Cause for suspension or revocation of respondent's license exists pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), in that respondent has been convicted of a crime that is substantially related to the qualifications, functions or duties of a real estate broker. Respondent's conviction for disorderly conduct (set forth in

Factual Finding 3) is substantially related to the qualifications, functions, or duties of a real estate licensee because it involved sexually related conduct affecting a non-consenting participant in the conduct. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(5).)

2. Respondent has taken positive steps toward his rehabilitation, as demonstrated by the fact that he admits his inappropriate conduct, has sought peer counseling to address the underlying cause of his conduct, and accepts full responsibility for his actions. While respondent's inappropriate conduct was a serious matter, it appears to have been an isolated, uncharacteristic incident and respondent expresses sincere remorse for the pain he has caused. Apart from this incident, respondent has an excellent record as a real estate licensee/property manager, and is considered honest and ethical. After considering all of the evidence, it is determined that it would not be contrary to the public interest to allow respondent to retain his real estate license on a restricted basis.

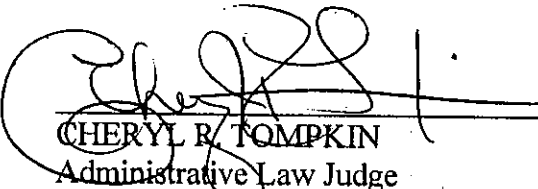
#### ORDER

All licenses and licensing rights of respondent Wayne Francis Miller under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this decision. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under the authority of Business and Professions Code section 10156.6:

1. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this decision.
4. Respondent shall, within nine months from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license,

taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: December 12, 2011



CHERYL R. TOMPKIN  
Administrative Law Judge  
Office of Administrative Hearings

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2 Department of Real Estate  
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5 Telephone: (916) 227-0792 (direct)  
6 (916) 227-0789 (main)

**FILED**

AUG 10 2011

DEPARTMENT OF REAL ESTATE  
By R. Mat

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \*\*\*

11 In the Matter of the Accusation of )  
12 ) No. H-11190 SF  
13 WAYNE FRANCIS MILLER, )  
14 ) ACCUSATION  
15 Respondent. )

16 The Complainant, E. J. HABERER, II, a Deputy Real Estate Commissioner of  
17 the State of California, for cause of Accusation against WAYNE FRANCIS MILLER  
18 ("Respondent"), is informed and alleges as follows:

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20 The Complainant makes this Accusation in his official capacity.

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

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26 On or about November 12, 2008, in the Superior Court of the State of California,  
27 County of Santa Clara, Case No. CC809135, Respondent was convicted of violating Section

1 647(a) of the California Penal Code (lewd/dissolute conduct in public place), a misdemeanor  
2 and a crime that bears a substantial relationship under Section 2910, Title 10, California Code  
3 of Regulations, to the qualifications, functions or duties of a real estate licensee.

4 4

5 The facts alleged in Paragraph 3, above, constitute cause under Sections 490  
6 (conviction of crime) and 10177(b) (conviction of crime) of the Code for suspension or  
7 revocation of all licenses and license rights of Respondent under the Real Estate Law.

8 WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
9 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary  
10 action against all licenses and license rights of Respondent under the Code, and for such other  
11 and further relief as may be proper under the provisions of law.

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15 E. J. HABERER, II  
Deputy Real Estate Commissioner

16 Dated at Oakland, California,  
17 this 5 day of August, 2011.  
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