

with 2/10/05

FILED
JAN 19 2005
DEPARTMENT OF REAL ESTATE

By *K. M. Maderhals*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of) NO. H-28816 LA
ALE CANISTER, JR.,)
Respondent.)

ORDER GRANTING UNRESTRICTED LICENSE

On April 27, 2001, a Decision was rendered herein,
denying Respondent's application for a real estate broker
license, but granting Respondent the right to the issuance of a
restricted real estate broker license. A restricted real estate
broker license was issued to Respondent on May 23, 2001.
Respondent has operated as a restricted licensee without cause
for disciplinary action against Respondent since that time.

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1 On December 15, 2003, Respondent petitioned for the
2 removal of restrictions attaching to Respondent's real estate
3 broker license.
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5 I have considered the petition of Respondent and
6 the evidence submitted in support thereof. Respondent has
7 demonstrated to my satisfaction that Respondent meets the
8 requirements of law for the issuance to Respondent of an
9 unrestricted real estate broker license and that it would not be
10 against the public interest to issue said license to
11 Respondent.

12 NOW, THEREFORE, IT IS ORDERED that Respondent's
13 petition for removal of restrictions is granted and that a real
14 estate broker license be issued to Respondent if Respondent
15 satisfies the following conditions within nine (9) months from
16 the date of this Order:

17 1. Submittal of a completed application and payment
18 of the fee for a real estate broker license.

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1 2. Submittal of evidence of having since the most
2 recent issuance of an original or renewal real estate license,
3 taken and successfully completed the continuing education
4 requirements of Article 2.5 of Chapter 3 of the Real Estate
5 Law for renewal of a real estate license.

6 This Order shall be effective immediately.

7 Dated: 1-11-85
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9 JEFF DAVI
10 Real Estate Commissioner
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23 cc: Ale Canister, Jr.
24 9751 Reseda Blvd., # 24
25 Northridge, CA 91324

26 8726 S. Sepulveda Blvd., # A-161
27 Los Angeles, CA 90045

By Laura B. Cron

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Application of) No. H-28816 LA
ALE CANISTER, JR.,) L-2000100511
Respondent.)

DECISION AFTER REJECTION

The above-entitled matter came on for hearing before Joseph D. Montoya, Administrative Law Judge of the Office of Administrative Hearings at Los Angeles, California, on December 8, 2000.

Complainant was represented by James R. Peel, Counsel. Respondent ALE CANISTER, JR. was present at the hearing and represented himself. Evidence was received and the matter submitted on this date.

On January 8, 2001, the Administrative Law Judge submitted a Proposed Decision which I declined to adopt as the Decision of the Real Estate Commissioner. Pursuant to Section 11517(c) of the Government Code of the State of California,

1 Respondent was served with a copy of the Proposed Decision dated
2 January 8, 2001, and with Notice that the case would be decided
3 by me upon the record including the transcript of proceedings
4 held on December 8, 2000 and upon any written argument offered
5 by the parties.

6 Argument has been submitted on behalf of the
7 respondent. I have given careful consideration to the record in
8 this case including the transcript of proceedings of December 8,
9 2000.

10 The Decision in this matter is set forth below.

11 The Findings of Facts set forth in the Proposed
12 Decision are adopted as the Findings of Facts in this Decision
13 except Finding 12 is not adopted.

14 The Legal Conclusions set forth in the Proposed
15 Decision are adopted as the Legal Conclusions in this Decision
16 except Legal Conclusion 2 is not adopted.

17 Legal Conclusion 2 shall be as follows:

18 The recommendation of the Administrative Law Judge of
19 a full broker license is considered to be inappropriate.
20 Considering Respondent's extensive criminal history, it has not
21 been shown that Respondent is rehabilitated pursuant to Section
22 2911, Chapter 6, California Code of Regulations. However, the
23 public interest will be adequately protected by issuing
24 Respondent a restricted broker license.

1 The Order in this matter shall be as follows:
2

3 ORDER

4 The application of Respondent ALE CANISTER, JR. for a
5 real estate broker license is denied; provided, however, a
6 restricted real estate broker license shall be issued to
7 Respondent pursuant to Section 10156.5 of the Business and
8 Professions Code if Respondent makes application therefor and
9 pays to the Department of Real Estate the appropriate fee for
10 the restricted license within 90 days from the effective date of
11 this Decision. The restricted license issued to Respondent
12 shall be subject to all of the provisions of Section 10156.7 of
13 the Business and Professions Code and to the following
14 limitations, conditions and restrictions imposed under authority
15 of Section 10156.6 of that Code:

16 1. The restricted license issued to Respondent may be
17 suspended prior to hearing by Order of the Real Estate
18 Commissioner in the event of Respondent's conviction or plea of
19 nolo contendere to a crime which is substantially related to
20 Respondent's fitness or capacity as a real estate licensee.

21 2. The restricted license issued to Respondent may be
22 suspended prior to hearing by Order of the Real Estate
23 Commissioner on evidence satisfactory to the Commissioner that
24 Respondent has violated provisions of the California Real Estate
25 Law, the Subdivided Lands Law, Regulations of the Real Estate
26 Commissioner or conditions attaching to the restricted license.
27



1 3. Respondent shall not be eligible to apply for the
2 issuance of an unrestricted real estate license nor for the
3 removal of any of the conditions, limitations or restrictions of
4 a restricted license until two years have elapsed from the
5 effective date of this Decision.

6 Petition for reinstatement of a revoked real estate
7 license is controlled by Section 11522 of the Government Code.
8 A copy of Section 11522 is attached hereto for the information
9 of respondent.

10 If and when application is made for a real estate
11 license through a petition for reinstatement, all competent
12 evidence of rehabilitation presented by the respondent will be
13 considered by the Real Estate Commissioner. A copy of the
14 Commissioner's Criteria of Rehabilitation is attached hereto.

15 This Decision shall become effective at 12 o'clock
16 noon on May 23, 2001

17 IT IS SO ORDERED

18 *April 27, 2001*
19
20 PAULA REDDISH ZINNEMANN
21 Real Estate Commissioner
22 *Paula Reddish*
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Step 2

FILED
JAN 30 2001

DEPARTMENT OF REAL ESTATE

By *K. Melcherholt*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Application of)	No. H-28816 LA
ALE CANISTER, JR.,)	L-2000100511
Respondent.)	

NOTICE

TO: ALE CANISTER, JR., Respondent

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated January 8, 2001, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated January 8, 2001, is attached hereto for your information.

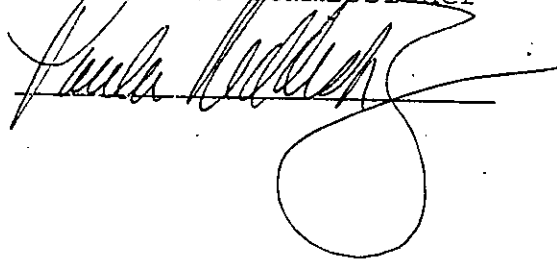
In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on December 8, 2000, and any written argument hereafter submitted on behalf of respondent and complainant.

1
2 Written argument for respondent to be considered
3 by me must be submitted within 15 days after receipt of the
4 transcript of the proceedings of December 8, 2000, at the
5 Los Angeles office of the Department of Real Estate unless
6 an extension of the time is granted for good cause shown.

7 Written argument of complainant to be considered
8 by me must be submitted within 15 days after receipt of the
9 argument of respondent at the Los Angeles office of the
10 Department of Real Estate unless an extension of the time is
11 granted for good cause shown.

12 DATED: January 27, 2001.

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14 PAULA REDDISH ZINNEBANN
Real Estate Commissioner

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**DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Application of :	)	Case No. H-28816 LA
	)	
ALE CANISTER, JR.,	)	OAH No. L-2000100511
	)	
	)	
Respondent.	)	
_____	)	

PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge, Office of Administrative Hearings, heard this matter at Los Angeles, California on December 8, 2000. Complainant was represented by Mr. James Peel, Staff Counsel, Department of Real Estate. Respondent appeared *in propria persona*.

Evidence was received, the case argued, and the matter submitted for decision on the hearing date. The Administrative Law Judge hereby makes his findings of fact, conclusions of law, and orders, as follows:

FACTUAL FINDINGS

1. Complainant Thomas McCrady filed the Statement of Issues in the above-captioned proceeding while acting in his official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate ("the Department"), State of California.
2. Respondent Ale Canister, Jr. applied to the Department for a real estate broker's license on or about May 25, 2000. In his application he disclosed that he had been convicted of several crimes in the past, the latest in 1993. That led to this proceeding.
3. Respondent's crimes were established by Complainant, as follows:
 - (A) On August 9, 1993, in the Municipal Court of California, County of Los Angeles, Inglewood Judicial District, in the case *People v. Ale Canister, Jr.*, case no. 93M02966, Respondent pled nolo contendere to one count of violating Penal Code section 475a. By that plea he was then convicted of possessing a bad check or money order, a misdemeanor.

(B) On July 29, 1993, in the Municipal Court of California, County of Los Angeles, Inglewood Judicial District, in the case *People v. Ale Canister, Jr.*, case no. 93M03275, Respondent pled nolo contendere to one count of violating Penal Code section 470. By that plea he was then convicted of misdemeanor forgery.

(C) On or about November 7, 1989, in the Municipal Court of California, County of Los Angeles, Inglewood Judicial District, in the case *People v. Ale Canister, Jr.*, case no. 89M08870, Respondent was convicted of misdemeanor forgery.

(D)) On or about September 1, 1988, in the Municipal Court of California, County of Los Angeles, Los Angeles Judicial District, in the case *People v. Ale Canister, Jr.*, case no. 31272673, Respondent pled nolo contendere to one count of violating Penal Code section 476A(a). By that plea he was convicted of issuing a check with insufficient funds.

4. Further, by the admissions set forth in his license application, it was established that in 1978 Respondent was convicted in Texas of felony possession of a controlled substance, in that he was in possession of less than a gram of powdered cocaine.

5. In each of the four misdemeanor cases, Respondent was placed on informal probation for two to three years. But, as a condition of probation, he also served time in the county jail. Thus, in the 1988 conviction, he served six days in jail; in the 1989 and July 1993 convictions, he served ninety days in jail. He received forty five days in the last case, served concurrently with the sentence imposed in the July 1993 conviction.

6. All of the misdemeanor convictions are for crimes of moral turpitude, substantially related to the duties, qualifications, and functions of a real estate professional. However, it is not established that the conviction for cocaine possession was such a crime.

7. The facts and circumstances of the four misdemeanors vary in some way, but all were ultimately related to Respondent's use of drugs. Thus, in the 1993 conviction for forgery, he used a counterfeit one-hundred dollar traveler's check to take a room at a local hotel. His main motivation was to obtain change (the room did not cost \$100.00) so that he could buy cocaine, although he did want a room where he could use the cocaine. In another instance, he attempted to impersonate a relative, who happened to be a police officer, to buy a motorcycle.

8. Respondent is no longer on probation for any crime, and has made restitution for his wrongs. He long ago entered a program designed to assist him with his drug problems, and he has renounced the use of drugs, and alcohol. He has not used drugs in more than seven years, and has turned his activities toward lawful pursuits, and to activities that contribute to the community.

9. Respondent is now a teacher, employed by the Los Angeles County of Education. He holds three teaching credentials from the State of California, and has been teaching for approximately four years. He currently teaches juvenile offenders. He has earned a master's degree, while working at the Juvenile Hall located in Sylmar, California. He obtained his bachelor's degree in 1996.

10. Respondent has been married for over 16 years. He now acts as a foster parent for two children, having received a criminal record exemption from the California Department of Social Services.¹ Respondent is very active in his church, where his recovery program is based. He is involved with outreach to others, and is making a positive contribution to his community.

11. Respondent was highly credible in his testimony. In his demeanor, he was open and sincere, and answered all questions without hint of evasion or prevarication. Further, his testimony was corroborated by documents that he offered. Thus, for example, he was able to document his bachelor's and master's degrees, his employment by the County of Los Angeles, and his marriage.

12. Respondent is rehabilitated such that his application for a real estate broker's license should be granted.

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's application for a real estate broker's license, pursuant to Business and Professions Code sections 480 and 10177(b), for his commission of crimes of moral turpitude, substantially related to the duties, qualifications, and functions of a real estate broker, and each of them, based on Factual Findings 3(A) through (D), and 6.

2. Notwithstanding his convictions, Respondent established his rehabilitation, sufficient to justify the issuance of a broker's license, pursuant to Business and Professions Code sections 480(b) and 482, and Title 10, California Code of Regulations, section 2911, based on Factual Findings 8 through 12, and the discussion below.

¹ That Department will not allow persons who have been convicted of crimes to have contact with foster children, or persons in care at the various types of facilities licensed by that Department, unless they have an exemption from the statutory requirement of a "clear" record. Such exemption is not to be issued unless it is established that the person is now of good character, i.e., that the person has been rehabilitated.

Discussion and Rationale:²

Crimes of dishonesty, such as forgery, generally constitute crimes of moral turpitude. (E.g., *In Re Rothrock* (1944) 25 Cal. 2d 588.) Such crimes are related to the duties and qualifications of a real estate professional because the public must rely on the honesty and integrity of those licensees. Real estate agents routinely have access to unattended homes through lock-boxes. The people they deal with in every aspect of every transaction must rely on the honesty and integrity of the licensee. The Department's licensees are called upon to execute and handle important documents pertaining to financing and title. Respondent's convictions are expressly "related" under the law. (See CCR sections 2910(a)(1), (a)(2), (a)(4), and (a)(8).)

However, the possession of drugs is generally not treated as a crime of moral turpitude. (See, e.g., *People v. Dossman* (1985) 171 Cal. App. 3d 843.) Thus, Respondent's conviction for possession of cocaine, some 22 years ago, was not deemed a crime of moral turpitude.

The law recognizes that people can and do reform, and in such circumstances should not be barred from holding a professional or occupational license. (See Code sections 480(b), 481, and 482.) In recognition of this fact, and in compliance with the law, the Department has promulgated regulations designed to assess whether or not an applicant has been rehabilitated. (See CCR section 2911.) Here Respondent has carried his burden of establishing rehabilitation under the applicable regulation.

First and of great significance is the fact Respondent has met the standard set in CCR section 2911(a), which calls for the passage of at least two years from the most recent conviction or wrongful act. To be sure, that regulation states that more time may be required in cases where there is a history of criminal activity. In this case over seven years have passed since the last conviction, and even longer from the time of the last wrongful act. This is significant evidence that Respondent has left criminal activity behind.

Section 2911(b) applies favorably to Respondent, because in at least one case Respondent was required to make restitution. That he did so establishes another element of rehabilitation.

Respondent has not presented any evidence that he has received an expungement pursuant to Penal Code section 1203.4. However, little weight was given to that fact. First of all, an "expungement" under Penal Code section 1203.4 does not establish rehabilitation in the eyes of administrative agencies such as the Department. Second, in the Administrative Law Judge's experience, the Respondent

² The section that follows is within the ambit of Government Code section 11425.50(d) and is intended to explain the basis for the findings and conclusions, and to discuss legal issues. To the extent stated it is to augment credibility findings as well.

could obtain such relief if he filed a motion for it, especially in light of the passage of time and his various achievements since his last conviction.

Respondent has completed probation successfully, and more than three years ago. Thus he has satisfied the requirement of subsection 2911(d). Likewise, it is reasonably inferred that he has paid all fines imposed upon him, satisfying subsection (f) of CCR section 2911; to conclude otherwise would be contrary to the evidence that Respondent has completed probation.

Respondent's problems with the law were plainly related to his abuse of cocaine. In this case, he has satisfied the test imposed by section 2911(e), as he has not used drugs since May 1993. This is substantially longer than the two-year period set forth in that part of the regulation.

Turning to CCR section 2911(g), the evidence is that Respondent has been married over sixteen years, and is now caring for two foster children. His lifestyle is stable, and he is a man fulfilling his familial and parental obligations.

Likewise, subsection (h) of section 2911 turns in his favor. Respondent has earned two college degrees since his last conviction. Further, he has obtained teaching credentials from the State of California, no mean feat for a person with a criminal record.³ He has also taken courses to qualify himself for a real estate license. Thus he has engaged in self-improvement within the meaning of CCR section 2911(h).

Subsection (i) does not appear relevant, in that the only credible evidence was that Respondent has paid restitution as ordered; there was no evidence of some pertinent indebtedness. Likewise, section 2911(j) does not appear to be applicable in this case, as Respondent's business activities were not what landed him in trouble with the law.

Respondent presented evidence of regular participation in community activities of the type referenced in subsection (k). Indeed, one reason he applied for a real estate license is so that he and members of his church could assist those less-fortunate in obtaining a place to live, and to learn valuable trades such as construction skills. It is fairly inferred that Respondent meets the requirements of subsection (l) of CCR section 2911, as he has a new career as a teacher, and spends a substantial amount of time in church-related activities.

³ The trier of fact may evaluate evidence based on his or her training and experience. (Government Code section 11425.50(c).) The undersigned has heard cases for the Commission on Teacher Credentialing and the Department of Social Services. Both require a substantial showing of rehabilitation before they will issue, respectively, a teaching credential, or a criminal record clearance exemption. That each agency has done so for Mr. Canister is deemed reliable evidence of his achievements, and rehabilitation.

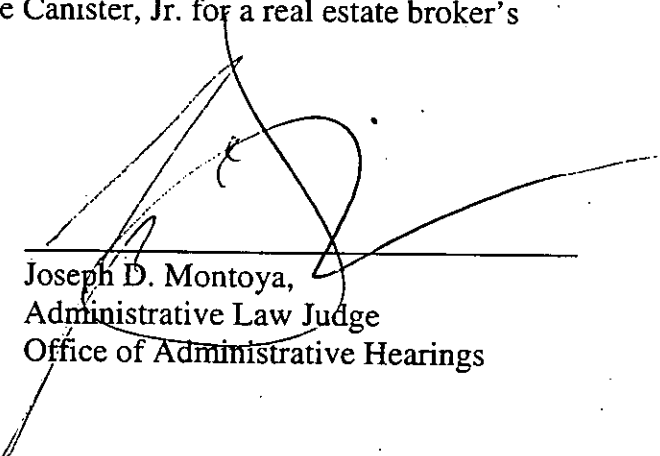
As to subsection (m), which looks to a change in attitude, the evidence is substantially in Respondent's favor. While he made clear that drugs were in part the culprit, he freely acknowledged his wrongdoing, and his responsibility for his actions. He made it clear that drug abuse is behind him, and that his life is now taken up with positive actions in every sphere.

Respondent was credible in his testimony. As found, he demonstrated a credible manner, and he credibly responded to the cross-examination he was subjected to. Since he put drug use behind himself, he has steadily improved his lot in life, and is now a contributing citizen. Having received an opportunity from the Department of Social Services, and the Commission on Teacher Credentialing, there is no reason that he should be denied an opportunity by this agency. Under all of the circumstances, he has met his burden of proving his rehabilitation, and should receive a salesperson's license.

ORDER

The application of Respondent Ale Canister, Jr. for a real estate broker's license is granted.

January 8, 2001



Joseph D. Montoya,
Administrative Law Judge
Office of Administrative Hearings

NOT RECORDED

fact for

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
NOV - 1 2000
DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

ALE CANISTER, JR.,

By *K. Vielerhoff*

Case No. H-28816 LA

OAH No. L-2000100511

Respondent

NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____
Office of Administrative Hearings, 320 West Fourth St., Ste. 630
Los Angeles, CA

on December 8, 2000, at the hour of 11:00 a.m.
or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: November 1, 2000

By *James R. Peel*

Counsel

RE 500 (Rev. 8/97)

cc: Ale Canister, Jr.
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JAMES R. PEEL, Counsel, State Bar No. 47055
Department of Real Estate
320 West Fourth Street, Ste. 350
Los Angeles, California 90013

Telephone: (213) 576-6982
(Direct) (213) 576-6913

FILED
OCT 11 2000
DEPARTMENT OF REAL ESTATE

By *K. McCreedy*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Application of)	No. H-28816 LA
ALE CANISTER, JR.,	)
Respondent.	)
_____	)
	<u>STATEMENT OF ISSUES</u>

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against ALE CANISTER, JR., (Respondent) is informed and alleges in his official capacity as follows:

I

On or about May 25, 2000, Respondent applied to the Department of Real Estate of the State of California for a real estate broker license.

II

On or about April 12, 1993, in the Municipal Court For the County of Los Angeles, State of California, respondent

1

2 was convicted of violating Penal Code Section 475(a) (possess
3 bad check), a crime involving moral turpitude.

4

III

5 On or about July 29, 1993, in the Municipal Court
6 For the County of Los Angeles, State of California, respondent
7 was convicted of violating Penal Code Section 470 (forgery), a
8 crime involving moral turpitude.

9

IV

10 On or about November 9, 1989, in the Municipal Court
11 For the County of Los Angeles, State of California, respondent
12 was convicted of violating Penal Code Section 470 (forgery), a
13 crime involving moral turpitude.

14

V

15 On or about September 1, 1988, in the Municipal
16 Court For the County of Los Angeles, State of California,
17 respondent was convicted of violating Penal Code Section
18 476A(A) (NSF checks), a crime involving moral turpitude.

19

VI

20 The crimes of which respondent was convicted, as
21 described in Paragraphs II, III, IV, and V, constitute cause
22 for denial of his application for a real estate license under
23 Sections 480(a) and 10177(b) of the California Business and
24 Professions Code.

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The Statement of Issues is brought under the provisions of Section 10100, Division 4 of the Business and Professions Code of the State of California and Sections 11500 through 11529 of the Government 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 broker license to respondent, and for such other and further relief as may be proper in the premises.

Dated at Los Angeles, California
this 11th day of October, 2000.

THOMAS MC CRADY
Deputy Real Estate Commissioner

cc: Ale Canister, Jr.
Sacto
KM