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FILED
JUN 26 2007

DEPARTMENT OF REAL ESTATE

By *[Handwritten Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-29644 LA
DONALD ROBERT PEART, JR.,)
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On September 18, 2003 a Decision was rendered herein,
revoking Respondent's real estate salesperson license, but
granting Respondent the right to apply for and be issued a
restricted real estate salesperson license. A restricted real
estate salesperson license was issued to Respondent on October
9, 2003. Respondent has operated as a restricted licensee
without cause for disciplinary action against Respondent since
that time.

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1 On February 2, 2006, Respondent petitioned for
2 reinstatement of his real estate salesperson license and the
3 Attorney General of the State of California has been given
4 notice of the filing of Respondent's petition.

5 I have considered Respondent's petition and the
6 evidence and arguments submitted in support thereof. Respondent
7 has demonstrated to my satisfaction that Respondent meets the
8 requirements of law for the issuance to Respondent of an
9 unrestricted real estate salesperson license and that it would
10 not be against the public interest to issue said license to
11 Respondent.

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

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

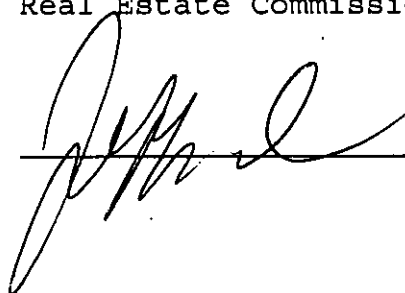
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1 2. Submittal of evidence of having, since the most
2 recent issuance of an original or renewal real estate license,
3 taken and successfully completed the continuing education
4 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
5 for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

6 This Order shall be effective immediately.

7 Dated: 6-6-07.

8 JEFF DAVI
9 Real Estate Commissioner

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FILED
SEP 19 2003

DEPARTMENT OF REAL ESTATE

By K. Medley

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	DRE No. H-29644 LA
DONALD ROBERT PEART, JR.,)	OAH No. L-2002090677
Respondent.)	

DECISION AFTER REJECTION

This matter was heard on December 10, 2002, by Administrative Law Judge ("ALJ") Vincent Nafarrete, at the Office of Administrative Hearings ("OAH) in Los Angeles, California.

Elliott Mac Lennan, Counsel, represented the Complainant.

Respondent DONALD ROBERT PEART, JR. ("Respondent") appeared personally and was represented by Frank Buda, Attorney at Law.

Evidence was received, the hearing was closed. At the conclusion of the hearing, the Administrative Law Judge granted Complainant's request to hold the record open for 60 days for the

1 filing of a letter from the Orange County Probation Department.
2 Respondent's counsel represented that he would obtain and file
3 the letter. On February 7, 2003, Respondent's counsel requested
4 an extension until March 14th, which was not opposed by
5 Complainant, and was granted.

6 On March 14, 2003, Respondent timely filed a certified
7 copy of a court order and Petition and Order under Penal Code
8 Section 1203.4, which collectively were marked as Exhibit J and
9 admitted into evidence.

10 On April 9, 2003, the Administrative Law Judge
11 submitted a Proposed Decision which I declined to adopt as my
12 Decision herein.

13 Pursuant to Section 11517(c) of the Government Code of
14 the State of California, Respondent was served with notice of my
15 determination not to adopt the Proposed Decision of the
16 Administrative Law Judge along with a copy of said Proposed
17 Decision. On May 15, 2003, Respondent was notified that the
18 case would be decided by me upon the record, the transcript of
19 proceedings held on December 10, 2002, and upon written argument
20 offered by Respondent and Complainant.

22 On July 11, 2003, argument was received from
23 Respondent. On August 21, 2003, Complainant submitted argument.

24 I have given careful consideration to the record in
25 this case including the transcript of proceedings of December 10,
26 2002. I have also considered the argument submitted by
27

1 Respondent and the argument submitted on behalf of Complainant.
2 The following shall constitute the Decision of the Real
3 Estate Commissioner in this proceeding:

4 II. FACTUAL FINDINGS

5 1. The Complainant, Maria Suarez, Deputy Real Estate
6 Commissioner of the Department of Real Estate of the
7 State of California (hereafter, "Department") filed Accusation
8 No. H-29644 LA in her official capacity on August 16, 2002.
9 Thereafter, DONALD ROBERT PEART, JR. ("Respondent") filed a
10 Notice of Defense requesting a hearing.

11 1. License History Respondent was licensed by the
12 Department as a real estate salesperson on or about October 16,
13 1997. Respondent is currently employed as a loan officer by
14 Pacific Mutual Funding, Inc., a mortgage lending company in Brea,
15 California.

16 2. Conviction

17 On January 12, 2000, before the Superior Court of
18 California, County of Orange, in People v. Donald Robert Peart,
19 Jr., Case No. 99CF0965, Respondent was convicted on his plea of
20 guilty of violating Penal Code Section 182.1 (conspiracy) and
21 Health and Safety Code Section 11351 (possession for sale of a
22 controlled substance) and Section 11352(a) (sale or
23 transportation of a controlled substance), felonies.

24 These crimes involve moral turpitude and are
25 substantially related to the qualifications, functions or duties
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1 of a real estate licensee under Section 2910, Chapter 6, Title 10
2 of the California Code of Regulations ("Regulations").

3 3. Sentence On January 12, 2000, was sentenced upon
4 his guilty plea on September 15, 1999, and thereby stood
5 convicted. Rubenstein v. Reinecke (1977) 71 Cal. App 3d 406).

6 Imposition of prison sentence was suspended.

7 Respondent was placed on probation for three (3) years on
8 condition that he serve 360 days in the county jail with credit
9 time served, pay a restitution fine of \$500, register as drug
10 offender under Health and Safety Code Section 11590, use no
11 unauthorized drugs or narcotics, submit to drug or narcotic
12 testing program, submit his person and property to search and
13 seizure at any time, cooperate with the probation officer in a
14 plan for alcohol and drug treatment, seek employment and maintain
15 residence and associates as approved by the probation officer,
16 obey all laws and rules and regulations, and pay the costs of
17 probation.
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19 In addition, Respondent was ordered not to drive a
20 motor vehicle with a measurable amount of alcohol in his blood or
21 without a valid California driver's license on his person, submit
22 to chemical testing of his blood on demand of a peace or
23 probation officer, not be present in any establishment where
24 alcoholic beverages are the primary items for sale, and not
25 consume any alcoholic beverages.

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1 Respondent served the balance of his jail sentence at
2 Working Alternatives in Long Beach. He was also ordered to
3 attend Alcoholics Anonymous ("AA") and Narcotics Anonymous ("NA")
4 12-step programs, obtain an AA or NA sponsor, and abstain from
5 drug and alcohol use.

6 4. Facts and Circumstances of the Conviction The
7 facts and circumstances of Respondent's conviction and crime were
8 that, on or about May 28, 1998, Respondent knowingly and
9 willfully conspired with one Michael Jeffrey Whitlock to possess
10 for sale and transport over 100 grams of cocaine and knowingly
11 and willfully possessed for sale and transported cocaine. On May
12 28, 1998, Orange County Sheriffs deputies stopped Respondent for
13 a driving violation. The deputies found approximately 4.1 ounces
14 of cocaine and \$350 in currency in his vehicle.

15 5. Expungement On March 14, 2003, Respondent filed
16 with the Office of Administrative Hearings a certified copy of a
17 Court Order and Petition and Order Under Penal Code Section
18 1203.4, setting aside the conviction.

19 6. Factors in Mitigation

20 Respondent admits his conviction and underlying
21 offenses. Respondent testified that in May 1998, at the time of
22 his arrest for the instant crime, Respondent was addicted to
23 cocaine and had agreed to transport cocaine for a drug dealer in
24 exchange for cocaine for his own use. Respondent had been using
25 or addicted to cocaine for several years. He had suffered a
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1 earlier conviction in 1991 for the possession or purchase for
2 sale of a controlled substance - cocaine. Respondent testified
3 to feeling and shame for his crimes.

4 Respondent testified that he served his jail sentence
5 by living at a work release program; has paid the restitution
6 fine; successfully completed in 2001 an eleven month residential
7 drug treatment program at Cornerstone; and is undergoing recovery
8 with the AA 12 Step program. Respondent testified that since his
9 successful completion of the Cornerstone program, he has
10 regularly attended AA meetings including organizing an AA group
11 that meets at his house. Respondent also testified that
12 Respondent has an AA sponsor who is also a loan officer and with
13 whom he is in daily contact. Respondent testified that he has
14 not used alcohol or drugs for over two years after experiencing a
15 setback in his recovery when he drank alcohol in July 2000.
16

17 Respondent testified to the following: He regrets his
18 former lifestyle and has sought to change his life via the AA 12-
19 step self-improvement program; has learned to take direction from
20 others; has devoted his life to his family and career in real
21 estate and lending; has changed his attitude about life and the
22 needs of others, including his family; no longer associates with
23 drug users or sellers; and, has made new friends through the AA
24 program.

25 Respondent also testified that he has matured since his
26 conviction; married his long-standing girlfriend a year ago and
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1 they now have an infant son. His step-son, age 8, and his 13
2 year old daughter, Chelsey Peart, live with his parents.

3 Respondent testified that his daughter has indicated that she has
4 gotten closer to him.

5 For the past six months, Respondent has worked as a
6 loan officer for Pacific Mutual Funding, Inc., a mortgage lending
7 company in Brea. During this six-month period, Respondent has
8 completed approximately 100 loan transactions and has received no
9 complaints about his real estate activities. Respondents sister,
10 Veronica Vaughn, a licensed real estate broker, testified that
11 she has referred many buyers to Respondent for home loans.

12 Respondent testified that he attends Calvary Chapel
13 church in Costa Mesa. When they lived in Corona before moving to
14 Irvine, he and his wife attended Cross Roads Church in Corona. He
15 coaches youth football and is involved with his stepson in Indian
16 Guides.

17
18 Respondent's probation officer, Michael Takesuye,
19 stated in a letter to the court that Respondent had not been in
20 violation of any condition of his formal probation and maintained
21 his monthly visits with his probation officer and he found him a
22 pleasure to supervise.

23 7. Factors in Aggravation

24 Included in the Accusation as Aggravation was a 1991
25 conviction for a violation of Health and Safety Code Section
26 11351 (possession or purchase for sale - controlled substance.
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1 Respondent's 2000 crime was serious. He conspired to transport
2 and sell a large quantity a large quantity of cocaine. This
3 evidences a desire to corrupt others. People v. Castro (1985) 38
4 Cal. 3d 301, 317; People v. Standard (1986) 181 Cal. App 3rd 431.

5 8. Witnesses on Respondent's Behalf

6 Respondent's sister, Veronica Vaughn, testified. She
7 is a licensed real estate broker who has referred many buyers to
8 Respondent for home mortgage loans. She testified that she finds
9 Respondent to be dependable and has received compliments from
10 buyers about Respondent's loan activities. She is aware of her
11 brother's conviction and has seen how he has changed over the
12 last three years. She testified that she finds him to be healthy,
13 happy, sober and working hard at his job as a loan officer.

14 Richard Gundzik, Respondent's employer and the
15 designated officer for Pacific Mutual Funding, testified that he
16 sees Respondent three to four times weekly and finds him to be an
17 honest employee who explains and follows good faith estimates
18 faithfully and helps borrowers. Mr. Gundzik wants to retain
19 Respondent as a loan officer for the company and is willing to
20 supervise his activities if he is placed on probation. He is
21 aware of Respondent's conviction and testified on behalf of
22 Respondent at the hearing in this matter.

24 Mark Vanous, Respondent's AA sponsor, corroborated that
25 Respondent has changed, desires to stay clean and sober, and has
26 handed over control of his life to a higher power in the parlance
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1 of the 12-step program of AA.

2 Although Respondent presented several positive
3 character references from people who have known him or dealt with
4 him, including recovering alcoholics and addicts, this is not
5 conclusive evidence of Respondent's character. Authors Wayne
6 Desire and Joanna Lee Smith's letters did not indicate an
7 awareness of respondents criminal background.

8 CONCLUSIONS OF LAW

9 1. Cause exists to deny Respondent DONALD ROBERT
10 PEART, JR.'s Salesperson License Application under the provisions
11 of Business and Professions Code Sections 490 and 10177(b) in
12 that Respondent was convicted of felony crimes involving moral
13 turpitude which are substantially related to the qualifications,
14 functions or duties of a licensed real estate salesperson.

15 2. Cause to issue a restricted real estate salesperson
16 license was not established as is discussed further below.

17 3. All evidence presented as mitigation and
18 rehabilitation has been considered.

19 4. Contrary to the opinion of the Administrative Law
20 Judge, I do not feel that the public interest would be adequately
21 protected if Respondent was permitted to remained licensed even
22 as a restricted licensee. In light of the serious nature of the
23 crime and Respondent's lengthy drug addiction history,
24 insufficient time has elapsed to determine that Respondent is
25 rehabilitated, as discussed below.
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Criteria of Rehabilitation

1. Criteria of Rehabilitation (Suspension or Revocation) have been developed by the Department pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee when the licensee has been convicted of a crime. Said Criteria of Rehabilitation are set forth in Section 2912, Title 10, Chapter 6, California Code of Regulations ("Regulations").

2. Applying the Criteria of Rehabilitation, subsections "a" through "m" in Section 2912 to the instant case results in the following:

Regulation (a): Although over two years has passed since Respondent's conviction on January 12, 2000, rehabilitation must be viewed over a period of time longer than two years in this case. Respondent's conviction resulted from a history of drug addiction existing approximately ten years and for which Respondent testified that he has been clean and sober for only approximately three years.

Regulation (b) Respondent has paid a "restitution fine" in the amount of \$500 as required.

Regulation (c) Respondent's conviction was recently expunged on March 13, 2003.

Regulation (d) Regulation 2910(d) relating to Penal Code Section 290 does not apply as this is not a sexual offense.

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1 Regulation (e) Respondent completed probation earlier
2 this year.

3 Regulation (f) Respondent's criminal conduct was
4 related to alcohol or drug abuse. Respondent has been addicted
5 to cocaine since at least 1991 evidenced by his prior conviction.
6 Respondent's temporary efforts to quit cocaine were unsuccessful
7 and he suffered relapses both prior to and after his 1998 arrest
8 including relapsing again in July 2000 by drinking alcohol, a
9 trigger for his earlier relapse in the 1990's. Respondent
10 testified that he has not used cocaine for approximately two
11 years. Respondent, subsequent to his last relapse in 2000,
12 received extensive drug rehabilitation through Cornerstone, an
13 alternative sentencing recovery program including an 11 month
14 residential in-patient stay where respondent received counseling,
15 drug testing and treatment for his cocaine addiction.

16 Regulation (g) No fines other than the restitution
17 fine of \$500 per Regulation (b), above, were imposed.

18 Regulation (h) No issue of correction of business
19 practices causing the crimes is present.
20

21 Regulation (i) Respondent testified that he has
22 established new and different social relationships from those
23 which existed at the time of the commission of the crime.

24 Regulation (j) Respondent testified to his new found
25 stable family life and fulfillment of parental and familial
26 responsibilities subsequent to the criminal conviction including
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1 marrying his girlfriend who is the mother of his infant son,
2 purchasing a home in Irvine, and reconnecting with his teenage
3 daughter.

4 Regulation (k) No evidence was presented of new formal
5 educational or vocational training courses for economic self-
6 improvement other than Respondent's involvement in AA.

7 Regulation (l) With regards to community activities,
8 Respondent testified to his participation in football coaching
9 and Indian Guides for his 8 year old stepson and his attendance
10 at Calvary Chapel church in Costa Mesa, California.

11 Regulation (m) Respondent's testimony and the
12 testimony of his sister, AA sponsor, and employer - all familiar
13 with his 2000 conviction, testified to his maturation. All of
14 this testimony although self-serving directly or indirectly,
15 indicated that Respondent is a continuing member of the AA 12-
16 step program and now a responsible person. No evidence was
17 presented from mental health professionals or other persons
18 competent to pass on Respondent's mental, character or emotional
19 disturbances that gave rise to his addiction other than Mark
20 Vanous, his AA Sponsor.
21

22 3. In reviewing the "Criteria for Rehabilitation" set
23 forth above, it is hereby determined that rehabilitation is not
24 complete and that a longer probation-free period of time is
25 necessary to establish rehabilitation.

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1 4. Reasonable minds may differ as to the propriety of
2 the penalty given, Golde v. Fox (1979) 98 Cal. App. 3rd 167, 188-
3 189; however, under Business and Professions Code Section 10077,
4 the degree of discipline/penalty imposed is a matter squarely
5 within the discretion of the Real Estate Commissioner. "The
6 public exposing themselves to a real estate licensee has reason
7 to believe the licensee must have demonstrated a degree of
8 honesty and integrity in order to have obtained a license", supra
9 at 178.

10 5. The period of rehabilitation for Respondent does
11 not begin until 2003, i.e. the completion of his probation for
12 the 2000 conviction. It is thus premature to gauge his level of
13 rehabilitation at this time.

14 When a person has been convicted of multiple crimes
15 involving moral turpitude a showing must be made that
16 rehabilitation has occurred and that the person is committed and
17 dedicated to maintaining a professional life. In re Gossage
18 (2000) 23 Cal. 4th 1080.

19 California courts have held that little weight is
20 placed on the fact that a licensee did not commit additional
21 crimes while in prison, or while on parole or probation. (See In
22 re Menna (1995) 11 Cal.4th 975; Seide v. Committee of Bar
23 Examiners (1989) 49 Cal.3d 933). In re Gossage, supra, the court
24 noted that persons under the direct supervision of correctional
25 authorities are required to behave in an exemplary fashion and
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1 gave little weight to the fact that a licensee did not commit
2 additional crimes during the period of probation or while engaged
3 in the disciplinary process. Such is the case with Respondent.
4 Whether Respondent is a low risk to engage in recidivism or will
5 continue to avoid committing crimes is unknown. After Respondent
6 has spent a period of time without the supervision of the
7 criminal justice system, his actions can again be evaluated and
8 his level of rehabilitation can be more accurately determined.

9 6. The disciplinary procedures provided for in the
10 Real Estate Law are intended to protect the public when they deal
11 with real estate licensees (Business and Professions Code Section
12 10050 and Handeland v. DRE (1975) 58 Cal. App. 513.). The
13 purpose of these disciplinary procedures is not penal. Hughes v.
14 Board of Architectural Examiners (1998) 17 Cal. 4th 763, 786-787.

15 Weighing the totality of the record presented and
16 for all of the above reasons, the following Order is
17 appropriate.
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ORDER

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2 All licenses and licensing rights of Respondent
3 DONALD ROBERT PEART, JR., under the Real Estate Law are revoked;
4 provided, however, a restricted real estate salesperson license
5 shall be issued to Respondent DONALD ROBERT PEART, JR., pursuant
6 to Section 10156.5 of the Business and Professions Code, if
7 Respondent makes application therefor and pays to the Department
8 of Real Estate the appropriate fee for the restricted license
9 within ninety (90) days from the effective date of this Decision.

10 The restricted license issued to Respondent shall be subject to
11 all of the provisions of Section 10156.7 of the Code and the
12 following limitations, conditions and restrictions imposed under
13 authority of Section 10156.6 of that Code:

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

19 2. The restricted license issued to Respondent may
20 be suspended prior to hearing by Order of the Real Estate
21 Commissioner on evidence satisfactory to the Commissioner that
22 Respondent has violated provisions of the California Real Estate
23 Law, the Subdivided Lands Law, Regulations of the Real Estate
24 Commissioner or conditions attaching to the restricted license.
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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 (2) years has elapsed from the
5 effective date of this Decision.

6 4. Respondent shall submit with any application for
7 license under an employing broker, or any application for
8 transfer to a new employing broker, a statement signed by the
9 prospective employing real estate broker on a form approved by
10 the Department of Real Estate which shall certify:

11 (a) That the employing broker has read
12 the Decision of the Commissioner which
13 granted the right to a restricted license;
14 and

15
16 (b) That the employing broker will exercise
17 close supervision over the performance by the
18 restricted licensee relating to activities
19 for which a real estate license is required.

20 5. Respondent shall, within nine (9) months from the
21 effective date of this Decision, present evidence satisfactory to
22 the Real Estate Commissioner that Respondent has, since the most
23 recent issuance of an original or renewal real estate license,
24 taken and successfully completed the continuing education
25 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
26 for renewal of a real estate license. If Respondent fails to
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1 satisfy this condition, the Commissioner may order the suspension
2 of the restricted license until the Respondent presents such
3 evidence. The Commissioner shall afford Respondent the
4 opportunity for a hearing pursuant to the Administrative
5 Procedure Act to present such evidence.

6 6. During the term of any restricted license,
7 Respondent shall submit to the Department of Real Estate as of
8 the last day of each March, June, September and December, proof
9 satisfactory to the Real Estate Commissioner of Respondent's
10 ongoing participation in a recognized drug and alcohol diversion
11 program. Said proof shall be submitted to the Manager of the
12 Crisis Response Team at the Los Angeles Office of the Department
13 of Real Estate and shall be verified as true and accurate by
14 Respondent under penalty of perjury.

15 The Commissioner may suspend the restricted license
16 issued to Respondent pending a hearing held in accordance with
17 Section 11500 et seq., of the Government Code, if such proof is
18 not timely submitted as provided for herein, or as provided for
19 in a subsequent agreement between the Respondent and the
20 Commissioner. The suspension shall remain in effect until such
21 proof is submitted or until Respondent enters into an agreement
22 satisfactory to the Commissioner to provide such proof, or until
23 a decision providing otherwise is adopted following a hearing
24 held pursuant to this condition.

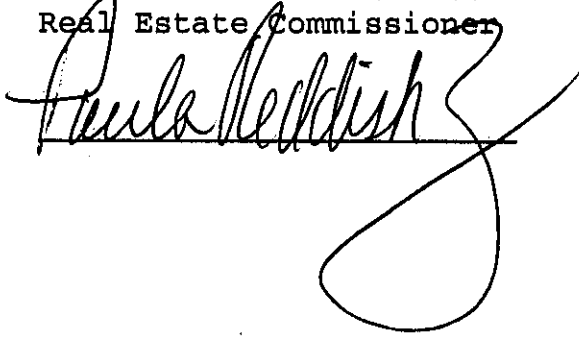
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This Decision shall become effective at 12 o'clock noon on
OCT - 9 2003

IT IS SO ORDERED September 18, 2003.

PAULA REDDISH ZINNEBANN
Real Estate Commissioner



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FILED
MAY 15 2003
DEPARTMENT OF REAL ESTATE

By *K. Medelby*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA
* * *

In the Matter of the Accusation of)	No. H-29644 LA
)	
DONALD ROBERT PEART, JR.,)	L-2002090677
)	
Respondent.)	
)	

NOTICE

TO: DONALD ROBERT PEART, JR., Respondent, and FRANK BUDA, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated April 9, 2003, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated April 9, 2003, 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 December 10,

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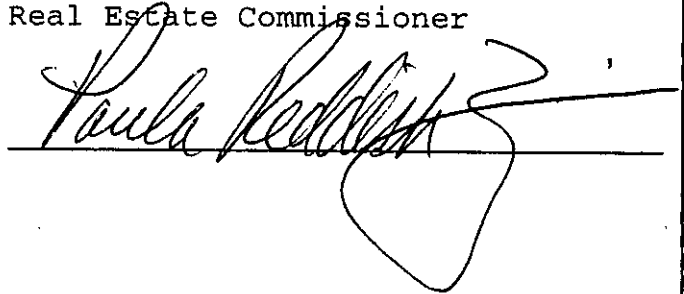
1 2002, and any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of December 10, 2002, at the Los Angeles
6 office of the Department of Real Estate unless an extension of
7 the time is granted for good cause shown.

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

13 DATED: May 13, 2003

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15 PAULA REDDISH ZINNEMANN
16 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

DONALD ROBERT PEART, JR.,

Respondent.

Case No. H-29644 LA

OAH No. L-2002090677

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles on December 10, 2002. Complainant was represented by Elliott Mac Lennan, Counsel. Respondent Donald Robert Peart, Jr., was present and represented by Frank Buda, Attorney at Law.

At the conclusion of the hearing, the Administrative Law Judge granted complainant's request to hold the record open for 60 days for the filing of a letter from the Orange County Probation Department. Respondent's counsel represented that he would obtain and file the letter. On February 7, 2003, respondent's counsel requested an extension until March 14th, which was not opposed by complainant and granted. Respondent's request was marked as Exhibit I and complainant's reply was marked as Exhibit 5.

On March 14, 2003, respondent timely filed a certified copy of a Court Order and Petition and Order Under Penal Code Section 1203.4, which were collectively marked as Exhibit J and admitted into evidence.

Oral and documentary having been received, the Administrative Law Judge submits this matter for decision on March 14, 2003, and finds as follows:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on or about August 13, 2002, the Accusation was made and filed by Maria Suarez in her official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of California (hereinafter Department).

2. On or about October 16, 1997, the Department issued real estate salesperson's license no. 01227387 and licensing rights to Donald Robert Peart, Jr. (hereinafter respondent). Said license expires on October 15, 2005, and is in full force and effect.

3. On or about January 12, 2000, before the Superior Court of California, County of Orange, in People v. Donald Robert Peart, Jr., Case No. 99CF0965, respondent was convicted on his plea of guilty of violating Penal Code Section 182.1 (conspiracy) and Health and Safety Code Section 11351 (possession for sale of a controlled substance) and Section 11352(a) (sale or transportation of a controlled substance), felonies and crimes involving moral turpitude.

4. (A) As a result of the plea and conviction, imposition of sentence was suspended and respondent was placed on probation for three (3) years on condition that he serve 360 days in the county jail with credit for 64 days actual time served and 32 days good time work time, pay a restitution fine of \$500, register as drug offender under Health and Safety Code Section 11590 and Penal Code Section 290, use no unauthorized drugs or narcotics, submit to drug or narcotic testing program, submit his person and property to search and seizure at any time, cooperate with the probation officer in a plan for alcohol and drug treatment, seek employment and maintain residence and associates as approved by the probation officer, obey all laws and rules and regulations, and pay the costs of probation.

(B) In addition, respondent was ordered not to drive a motor vehicle with a measurable amount of alcohol in his blood or without a valid California driver's license on his person, submit to chemical testing of his blood on demand of a peace or probation officer, not be present in any establishment where alcoholic beverages are the primary items for sale, and not consume any alcoholic beverages.

(C) Respondent was permitted to serve the balance of his jail sentence at Working Alternatives in Long Beach. He was also ordered to attend Alcoholics and Narcotics Anonymous 12-step programs, obtain an AA or NA sponsor, and abstain from drug use as well as alcohol.

5. The facts and circumstances of respondent's conviction and crimes that, on or about May 28, 1998, respondent knowingly and willfully conspired with one Michael Jeffrey Whitlock to possess for sale and transport over 100 grams of cocaine and knowingly and willfully possessed for sale and transported cocaine. On said date, Orange County Sheriff's deputies observed respondent leaving the Fountain Valley apartment of the suspected narcotics dealer. For about seven hours, deputies followed respondent while he drove around in his car, using counter-surveillance driving techniques to avoid detection. When they stopped respondent for a driving violation, deputies found approximately 4.1 ounces of cocaine and \$350 in currency in his vehicle.

6. Based on Findings 3 -5 above, respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a licensed real estate salesperson.

7. Respondent admits his conviction and underlying offenses. In May 1998, he was addicted to cocaine and had agreed to transport cocaine for the drug dealer in order to earn cocaine for his own use. He had been using or addicted to cocaine for several years. He had suffered a conviction earlier in 1991 for possession of a controlled substance. Respondent admits his addiction and demonstrates remorse and shame for his crimes.

8. Respondent served his jail sentence by living at the work release program and has paid the fines and restitution ordered by the criminal court. He has completed a residential drug treatment program and is undergoing recovery with the AA program.

9. Following his sentencing in January 2000, respondent was remanded to the custody of the Working Alternatives and allowed to serve his jail sentence by living in a half-way house and work release program in Inglewood. After several months, in August 2000, he then entered the residential drug treatment and rehabilitation program of Cornerstone of Southern California, an alternative sentencing recovery program. For the next eleven months, respondent lived in the Cornerstone residential recovery programs situated in Orange and Tustin where he received counseling, drug testing, and treatment for his drug addiction. He successfully completed the Cornerstone drug treatment program in July 2001.

10. Since his successful completion of the Cornerstone program, respondent has diligently attended meetings of Alcoholic Anonymous three to five times per week and has organized an AA group that meets at his house. Respondent has an AA sponsor who is also a loan officer; they met two years at AA meetings. He and his sponsor speak to each other daily about their mutual job stresses. Said sponsor corroborates that respondent has changed, desires to stay clean and sober, and has handed over control of his life to a higher power in the parlance of the 12-step program. Respondent has not used alcohol or drugs for over two years after having a setback in his recovery when he drank alcohol in July 2000.

11. (A) Respondent has successfully completed probation for his offense and conviction. On March 13, 2003, the Orange County Superior Court granted his Petition Under Penal Code Section 1203.4 and decreed that the plea be set aside and vacated, a plea of not guilty be entered, and the criminal complaint dismissed. On the same date, the Superior Court ordered that respondent's probation in his criminal case be terminated.

(B) Respondent did not violate any condition of his probation and kept his monthly visits with his probation officer who found him a pleasure to supervise. The probation officer indicated that respondent occupied his time by tending to his real estate activities and family and had a positive outlook on his future.

12. Respondent regrets his former lifestyle but he has striven to change his life by diligently following the dictates of the AA 12-step program. He has learned to take direction and devoted his life to his family and career in real estate and lending. He has changed his attitude about life by tending to the needs of others, including his family. His 13 year old daughter indicates she has gotten closer to her father and receives love and support from him.

Respondent no longer associates with drug users or sellers and has made new friends through the AA program.

13. Respondent has matured since his conviction. He married his long-standing girlfriend a year ago and they now have an infant son. His wife also has an eight year old son and respondent's daughter lives with his parents in Palmdale. Respondent and his wife recently purchased a home in Irvine where they live with their two boys.

14. For the past six months, respondent has worked as a loan officer for Pacific Mutual Funding, Inc., a mortgage lending company in Brea. During this six-month period, respondent has completed about 100 loan transactions and has received no complaints about his real estate activities. The designated officer for Pacific Mutual Funding sees respondent three to four times weekly and has found respondent to be an honest employee who explains and follows good faith estimates faithfully and helps borrowers. The designated officer wants to retain respondent as a loan officer for the company and is willing to supervise his activities if he is placed on probation. The designated officer is aware of respondent's conviction and testified on behalf of respondent at the hearing in this matter.

15. Respondent's sister is a licensed real estate broker who has referred many buyers to respondent for home mortgage loans. She finds respondent to be dependable and has received compliments from buyers about respondent's loan activities. She is aware of her brother's conviction and has seen how he has changed over the last three years. She finds him to be healthy, happy, and sober and working hard at his job as a loan officer.

16. On May 20, 2002, respondent was interviewed by a Department of Real Estate Commissioner who completed a Report of Interview (Exh. A) and asked respondent to fill out a Declaration (Exh. B). Respondent's statements to the Commission and in his Declaration are substantially the same as and corroborated by his testimony and that of his witnesses at the hearing. Respondent testified in a forthright and heart felt manner.

17. Respondent attends Calvary Chapel church in Costa Mesa. When they lived in Corona before moving to Irvine, he and his wife attended Cross Roads Church in Corona. He coaches youth football and is involved with his stepson in Indian Guides.

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Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist to revoke or suspend respondent's real estate salesperson's license pursuant to Business and Professions Code Sections 490 and 10177(b) in that respondent was convicted of felonies and crimes involving moral turpitude and substantially related to the qualifications, functions, or duties of a licensed real estate salesperson, as set forth in Findings 3 - 6 above.

2. Rehabilitation--Based on Findings 7 - 17 above, respondent presented significant evidence of rehabilitation from his conviction of conspiracy, possessing a controlled substance for sale, and transporting a controlled substance under the criteria of Title 10, California Code of Regulations, Section 2912. Respondent's conviction was three years ago and he successfully completed probation for his conviction. He admits his crimes and demonstrates remorse and shame for his past conduct. He explains that he was addicted to cocaine at the time of his offenses but, pursuant to his criminal probation, embarked upon and successfully completed a drug treatment and counseling program. Respondent completed the drug treatment program in July 2001 and has not used drugs or alcohol for over two years. He has embraced the tenets and beliefs of the AA 12-step program and has continued his participation and leadership in said drug and alcohol program.

Moreover, respondent has changed his lifestyle and associates since his conviction in January 2000. He no longer associates with drug users or sellers. He no longer uses illegal drugs. He has friends in AA as well as an AA sponsor with whom he speaks every day about their mutual stresses of working in the real estate industry. He married his long-standing girlfriend and he and his spouse have bought a home in Irvine where they are raising their two children. Respondent attends church and is active in children's lives. His teenage daughter attests that she is now closer to her father and receives love and support from him.

For the past several months, respondent has worked diligently and successfully for a mortgage lending company whose designated officer knows of his conviction and is willing to supervise his real estate activities. He is an honest employee who has received accolades about his work, integrity, and temperament. His sister is a real estate broker and refers buyers to respondent for loans. She corroborates that respondent is a happy, sober, and a hard-working husband and father. Respondent thus has changed his attitude from that which existed at the time of his offenses.

Inasmuch as respondent's conviction was for felonies, he only recently completed probation for his conviction, and he has a prior conviction, it cannot be concluded that respondent is completely rehabilitated from his conviction. Yet, public interest and safety would not be affected and, in fact, would militate in favor of granting respondent a restricted

license for a relatively short time period to ensure that he continues his drug rehabilitation and new lifestyle and real estate career.

* * * * *

WHEREFORE, the following Order is hereby made:

ORDER

Real estate salesperson's license no. 01227387 and licensing rights previously issued by the Department of Real Estate to respondent Donald Robert Peart, Jr., shall be revoked, based on Conclusions of Laws No. 1 above; provided, however, a restricted real estate salesperson's license will be issued to respondent pursuant to Business and Professions Code Section 10156.5 if respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (90) days from the effective date of this Decision, based on Conclusions of Law no. 2 above. 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 Section 10156.5:

1. The restricted license issued to respondent 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 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 terms and conditions attached to this restricted license.

2. Respondent shall within nine (9) months of the issuance of the restricted license, submit evidence satisfactory to the Real Estate Commissioner that he 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 his restricted license until respondent presents such evidence. The Commissioner will afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

NOT ADOPTED

3. Pursuant to Business and Professions Code Section 10154, in the event that respondent does not satisfy 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 (4) years after the date of issuance of the preceding restricted license.


4. Respondent shall submit with any application for license under an employing broker or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

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 will otherwise exercise close supervision over the restricted licensee's performance of acts for which a real estate license is required.

5. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for the removal of any of the conditions, limitations, or restrictions of the restricted license until two (2) years have elapsed from the effective date of this Decision.

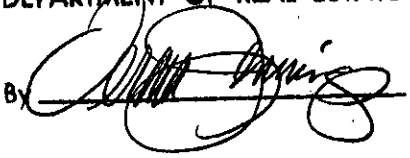
DATED: April 9, 2003



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

SACED

1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Ste. 350
4 Los Angeles, California 90013-1105
5 Telephone: (213) 576-6982
6 -or- (213) 576-6913 (Direct)

FILED
AUG 16 2002
DEPARTMENT OF REAL ESTATE
By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-29644 LA
12 DONALD ROBERT PEART, JR.,) ACCUSATION
13 Respondent.)
14

15 The Complainant, Maria Suarez, a Deputy Real Estate
16 Commissioner of the State of California, for cause of accusation
17 against DONALD ROBERT PEART, JR., alleges as follows:

18 I

19 The Complainant, Maria Suarez, a Deputy Real Estate
20 Commissioner of the State of California, makes this Accusation in
21 her official capacity.

22 II

23 DONALD ROBERT PEART, JR. (hereinafter referred to as
24 "Respondent"), is presently licensed and/or has license rights
25 under the Real Estate Law (Part 1 of Division 4 of the Business
26 and Professions Code, hereinafter referred to as the "Code").
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III

At all times herein mentioned, Respondent was licensed by the Department of Real Estate of the State of California as a real estate salesperson.

IV

On or about January 12, 2000, in the Superior Court, For the County of Orange, State of California, Respondent was convicted of violating Penal Code Section 182.1 (Conspiracy) and Health and Safety Code Section 11351 (Possession for Sale of a Controlled Substance) and Health and Safety Code Section 11352 (a) (Sale or Transportation of a Controlled Substance), felonies involving moral turpitude.

V

The crime of which Respondent was convicted bears a substantial relationship to the qualifications, functions or duties of a real estate licensee.

VI


Respondent's criminal conviction is cause under Sections 490 and 10177(b) of the Code for suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

PRIOR HISTORY

Respondent was previously convicted of violating Section 11351 of the Health and Safety Code in the Superior Court, County of Orange, Case No. C-75971, on or about October 1, 1991, within the meaning of Health and Safety Code Section 11370.2(a).

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and license rights of Respondent
5 DONALD ROBERT PEART, JR., under the Real Estate Law (Part 1 of
6 Division 4 of the Business and Professions Code) and for such
7 other and further relief as may be proper under other applicable
8 provisions of law.

9 Dated at Los Angeles, California,
10 this 13th day of August, 2002.

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14 Deputy Real Estate Commissioner

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25 cc: Donald Robert Peart, Jr.
26 Bayside First Mortgage Inc.
27 Maria Suarez
Sacto.
LF