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FEB - 2 2005
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

by *Laura B. Ome*

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In the Matter of the Application of)	No. H-31251 LA
FRANK DANIEL JOSEPH III,	L-2004100399
)	
)	
)	
)	
Respondent.	

DECISION

The Proposed Decision dated January 10, 2005, 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 application for a real estate salesperson license is denied. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on FEB 22 2005.

IT IS SO ORDERED 1-25-05

JEFF DAVI
Real Estate Commissioner

[Signature]

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

In the Matter of the Statement of Issues Against:

FRANK DANIEL JOSEPH III,

Respondent.

Case No. H-31251 LA

OAH No. L2004100399

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on December 15, 2004, in Los Angeles.

Chris Leong, Real Estate Counsel, represented Complainant.

Respondent appeared and represented himself.

Oral and documentary evidence was received and argument made. The record was closed and the matter submitted at the conclusion of the hearing on December 15, 2004.

The below order DENIES Respondent's application for a real estate broker license.

FACTUAL FINDINGS

1. On August 11, 2003, Respondent submitted an application to the California Department of Real Estate (DRE) for a real estate broker license. Respondent had previously been licensed as a real estate broker by the DRE on October 26, 1984, but he allowed that license to expire on October 25, 1996.

2. Maria Suarez (Complainant), a DRE Deputy Real Estate Commissioner, filed the Statement of Issues in her official capacity. Complainant requests administrative denial of the application by virtue of Respondent's conviction described below. Respondent filed a Notice of Defense, which requested the hearing that ensued.

3. As a result of his divorce, Respondent was ordered by an Orange County court in 1985 to pay child support for his son who was born in 1984. Respondent got behind on his child support payments and by the 1990s he was in arrears up to \$74,000.00. Respondent allowed his DRE real estate broker license to expire in 1996 because he believed the DRE would take action against his license for failure to pay child support.

4A. On March 14, 2003, in the Superior Court of the State of California, County of Orange, in Case No. 02CM03223, Respondent was convicted, upon his plea of guilty, to one count of violating Penal Code section 270 (Failure to Provide for a Minor), and to one count of violating Penal Code section 166, subdivision (a)(4) (Disobeying a Child Support Order), both misdemeanors.

4B. Imposition of sentence was suspended, and Respondent was placed on three (3) years formal probation under various terms, including that he make monthly payments of \$500.00 toward his child support arrearages and pay a \$100.00 restitution fine. His probation was later converted to informal status. Respondent is now in compliance with his child support payment order but he is still approximately \$56,000.00 in arrears. His probation is currently not scheduled to terminate until March 2006.

4C. The circumstances underlying the conviction were that between September 1, 2001, and March 31, 2002, Respondent willfully and unlawfully failed to furnish necessary support for his minor child; and that between September 1, 2001, and September 30, 2001, Respondent willfully disobeyed a lawful court order by not paying child support.

5. *Mitigation.* Respondent did not establish mitigating circumstances from his crimes, as follows:

A. Respondent testified that he was unable to pay his child support due to a physical disability and a period of unemployment, and that he therefore did not willfully or unlawfully avoid his child support obligations. However, he failed to corroborate his claim.

B. Respondent also testified that he only pled guilty to the two above-described criminal counts when promised that his broker license would be renewed in exchange. He also failed to corroborate that testimony. Even if that had occurred, it would not have been reasonable for him to rely on such statements allegedly made by a deputy district attorney and/or his court-appointed public defender because neither are agents of the DRE nor do they have any knowledge or authority regarding the renewal of DRE licenses. The "State Licensing Match System Release Form" sent to the DRE by the County of Orange (exhibit A) after the conviction only indicates Respondent was then current on his child support order and that the "... release will allow you to renew your license." There is no assurance that renewal is automatic; just confirmation that a license hold on a DRE license, if any, pursuant to Family Code section 17520, was released.

C. In any event, a conviction "... stands as conclusive evidence of [Respondent's] guilt of the offense charged." *Arneson v. Fox (DRE)* (1980) 28 Cal.3d 440, 449. Thus, for purposes of this case, the fact Respondent was convicted of these two crimes conclusively establishes he engaged in the required elements of the crimes described in Finding 4C.

6. Respondent is a 51 year-old man. He currently works as a loan consultant for Washington Mutual in a capacity which does not require a DRE license. He requests a real estate broker license so he can also work on his off-hours to earn more income to pay off his remaining child support debt. He has no other criminal record and had no prior discipline with the DRE when he previously had a broker license.

7. *Rehabilitation.* Respondent failed to establish rehabilitation from his conviction. California Code of Regulations, title 10, section 2911, subdivisions (a)-(n), sets forth the criteria developed by the DRE for evaluating rehabilitation of a license applicant following a conviction. The balance of factors do not weigh in favor of Respondent's rehabilitation, as follows:

Subdivision (a). Not less than two years have passed since the conviction, so this factor is not met.

Subdivision (b). Although Respondent is now current on his child support obligations, he still owes \$56,000.00, so this factor regarding restitution is not met.

Subdivision (c). Respondent is not now eligible to expunge his conviction while he remains on probation, so this factor is not met.

Subdivision (d). Respondent is not required to register pursuant to Penal Code section 290, so this factor is not applicable.

Subdivision (e). Respondent has not completed his probation, so this factor is not met.

Subdivision (f). The conviction did not involve alcohol or drugs, so this factor is not applicable.

Subdivision (g). Respondent has paid his restitution fine and is current on his court-ordered monthly child support payments, so this factor is met.

Subdivision (h). It was not established that Respondent has a stable family life. He is single. He has no contact with his ex-wife and a few contacts with his two adult children each year. No other information was provided. This factor is not met.

Subdivision (i). It was not established that since his conviction Respondent has completed educational or vocational courses, so this factor is not met.

Subdivision (j). Respondent currently owes \$56,000.00, so this factor regarding no outstanding debts or monetary obligations is not met.

Subdivisions (k) & (m). Respondent has corrected prior problems leading to his conviction. He apparently is no longer physically incapacitated, as evidenced by his current employment and desire to also work as a licensed broker on his own time. His job has allowed him to stay current on his monthly child support payments. Thus, the problems he contends prevented him from paying the support initially are no longer apparent. This factor is therefore met.

Subdivision (l). It was not established that Respondent since his conviction has significant or conscientious involvement in community, church or privately sponsored programs designed to provide social benefits, so this factor is not met.

Subdivision (n). Respondent failed to establish a change in attitude from that which existed at the time of his conviction. It is too early to confirm that such has occurred due to the close proximity of the conviction and the fact that his good behavior since is obviously compelled by probation. Moreover, Respondent did not appear remorseful at the hearing and did not appear to accept responsibility for his crimes. No evidence was presented from any other source familiar with him before and after his conviction who could confirm his change of attitude, such as a family member, friend or other familiar person.

LEGAL CONCLUSIONS

1. The 2003 conviction constitutes cause for denial of Respondent's application for a real estate broker license pursuant to Business and Professions Code section 480, subdivision (a)(1), in that it is substantially related to the qualifications, functions and duties of a licensed real estate broker, based on California Code of Regulations, title 10, section 2910, subdivision (a)(9) ("... willful failure to comply with a court order.") Factual Findings 1-4.

2. Cause does not exist for denial of Respondent's application for a real estate broker license pursuant to Business and Professions Code section 10177, subdivision (b). The conviction did not involve a felony. It was not established that either crime for which Respondent was convicted factually involved moral turpitude, nor did Complainant cite legal authority indicating such. Factual Findings 1-4.

3. Respondent failed to establish rehabilitation from his 2003 conviction, within the meaning of California Code of Regulations, title 10, section 2911, so as to justify a restricted license. Rehabilitation is especially important when considering a prospective broker licensee because a broker is not subject to supervision by another licensee, unlike a licensed real estate salesperson. California courts have held that little weight is placed on the fact that a license applicant has a record of good behavior while on parole or probation. *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933; *In Re: Gossage* (2000) 23 Cal.4th 1080. Whether Respondent is a low risk to engage in recidivism or will continue to avoid future crimes is currently unknown. Respondent is still on probation, so his recent good conduct is required. While he meets some of the rehabilitation factors, he does not currently meet many of the others. Factual Findings 1-7.

ORDER

The application of Respondent FRANK DANIEL JOSEPH III for a real estate broker
license is DENIED.

DATED: January 10, 2005

A handwritten signature in black ink, appearing to read 'Eric Sawyer', written over a horizontal line.

ERIC SAWYER,
Administrative Law Judge
Office of Administrative Hearings

Sacto Joe

FILED
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DEPARTMENT OF REAL ESTATE

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

By *Jama B. Dine*

In the Matter of the Application of

FRANK DANIEL JOSEPH III,

} Case No. H-31251 LA

} OAH No. L-2004100399

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 the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California 90013 on **DECEMBER 15, 2004**, at the hour of 1:30 p.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 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 15, 2004

By *Chris Leong*
CHRIS LEONG, Counsel

cc: Frank Daniel Joseph III
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AUG 30 2004
DEPARTMENT OF REAL ESTATE

CHRIS LEONG, Counsel (SBN 141079)
Department of Real Estate
320 West Fourth Street, Suite 350
Los Angeles, California 90013-1105

By *Jama B. Stone*

Telephone: (213) 576-6982
-or- (213) 576-6910 (Direct)

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	
FRANK DANIEL JOSEPH III,)	No. H-31251 LA
Respondent.)	<u>STATEMENT OF ISSUES</u>

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against FRANK DANIEL JOSEPH III, ("Respondent") alleges as follows:

I

Respondent made application to the Department of Real Estate of the State of California ("Department") for a real estate broker license on or about August 11, 2003. Respondent was licensed as a real estate broker by the Department on or about October 26, 1984. Respondent's license expired on or about October 25, 1996.

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II

1 Complainant, Maria Suarez, a Deputy Real Estate
2 Commissioner of the State of California, makes this Statement
3 of Issues in her official capacity.
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III

5 On or about March 14, 2003, in the Superior Court of
6 California, County of Orange, in Case No. 02CM03223, Respondent
7 was convicted of violating Penal Code Sections 270 (Failure to
8 Provide for Minor Child) and 166(a)(4) (Disobey Court Order),
9 crimes involving moral turpitude, which are substantially
10 related to the qualifications, functions and duties of a real
11 estate licensee. Respondent was placed on probation for three
12 (3) years and owes approximately \$58,000 in child support
13 arrearages.
14

IV

15 Respondent's conviction, as set forth in Paragraph
16 III is cause to deny Respondent's real estate license
17 application pursuant to Code Sections 480(a)(1) and 10177(b).
18

19 These proceedings are brought under the provisions of
20 Section 10100, Division 4 of the Business and Professions Code of
21 the State of California and Sections 11500 through 11528 of the
22 Government Code.

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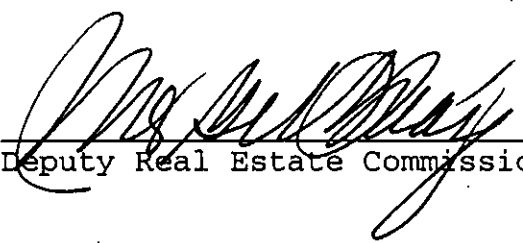
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1 WHEREFORE, the Complainant prays that the above-
2 entitled matter be set for hearing and, upon proof of the
3 charges contained herein, that the Commissioner refuse to
4 authorize the issuance of, and deny the issuance of, a real
5 estate broker license to Respondent, FRANK DANIEL JOSEPH III,
6 and for such other and further relief as may be proper in the
7 premises.

8 Dated at Los Angeles, California

9 this 26th day of August, 2004.

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12 Deputy Real Estate Commissioner
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23 cc: Frank Daniel Joseph III
24 Maria Suarez
25 Sacto.
26 LF
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