Department of Real Estate 320 West 4th Street, Suite 350 Los Angeles, CA 90013-1105 3 Telephone (213) 576-6982 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18

JAN 1 2 2006 DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of)

EMIL J. CANCHOLA,

Respondent.)

NO. H-31923 LA L-2005060507

STIPULATION AND WAIVER AND DECISION AFTER REJECTION

It is hereby stipulated by EMIL J. CANCHOLA, (hereinafter "Respondent") and Respondent's attorney Fredrick M. Ray, Esq., and the Complainant, acting by and through Alvaro Mejia, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Statement of Issues filed on May 19, 2005, in this matter.

Respondent hereby admits that the allegations contained in the Statement of Issues filed against him are true and correct and constitute a basis for the denial of his real estate salesperson license application.

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Respondent further acknowledge that the Real Estate Commissioner held a hearing on this Statement of Issues on September 9, 2005, before the Office of Administrative Hearings for the purpose of proving the allegations therein. Respondent was present at the hearing and represented by private counsel, Fredrick M. Ray. Further, Respondent has had an opportunity to read and review the Proposed Decision of the Administrative Law Judge.

Respondent understands that pursuant to Government Code Section 11517(c), the Real Estate Commissioner has rejected the Proposed Decision of the Administrative Law Judge. Respondent further understands that pursuant to the same Section 11517(c), the Real Estate Commissioner may decide this case upon the record, including the transcript, without taking any additional evidence, after affording Respondent the opportunity to present written argument to the Real Estate Commissioner.

Respondent further understands that by signing this Stipulation and Waiver, he is waiving his right to obtain a dismissal of the Statement of Issues through proceedings under Government Code Section 11517(c) if this Stipulation and Waiver is accepted by the Real Estate Commissioner. However, Respondent also understands that he is not waiving his rights to further proceedings to obtain a dismissal of the Statement of Issues if this Stipulation and Waiver is not accepted by the Real Estate Commissioner.

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Respondent hereby requests that the Real Estate

Commissioner in his discretion deny my application for a real
estate salesperson license and issue to me a restricted real
estate salesperson license under the authority of Section

10156.5 of the Business and Professions Code if Respondent
makes application therefor and pay to the Department of Real
Estate the appropriate fee for said license within 90 days from
the effective date of the Decision herein.

Respondent further understand that the restricted license shall be subject to the provisions of Section 10156.7 of the Business and Professions Code and the following conditions, limitations and restrictions will attach to the restricted license issued by the Department of Real Estate.

By reason of the foregoing and solely for the purpose of settlement of the Statement of Issues without further administrative proceedings, it is stipulated and agreed that the Commissioner shall adopt the following Order:

ORDER

Respondent's application for a real estate license is denied; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Code. The restricted salesperson license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of said Code:

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- 1. The restricted license issued to Respondent shall not confer any property right in the privileges exercised, and the Real Estate Commissioner may, by appropriate order and prior to a hearing, suspend the right to exercise any privileges granted under this restricted license in the event of:
- (a) Respondent's conviction (including a plea of nolo contendere) to a crime which is substantially related to Respondent's qualifications, fitness or capacity as a real estate licensee.
- (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 the conditions attaching to this restricted license.
- 2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years has elapsed from the effective date of this Decision.
- 3. Respondent shall submit with any application for license under an employing broker, or any application for a transfer to a new broker, a statement signed by the prospective employing broker on a form approved by the Department which shall certify:

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(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 otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

1. Six months after the issuance of the restricted license, and at six month intervals thereafter during the term of any restricted license issued pursuant to this Decision,

Respondent shall provide proof acceptable to the Real Estate

Commissioner that, during the preceding six months, Respondent has, each and every week, attended one or more sessions of

Alcoholics Anonymous or similar 12 Step or substance abuse Program, or that such attendance in any week was impractical due to travel for work, the illness of Respondent or a member of Respondent's family, vacation, incarceration, residential treatment for substance abuse, extreme personal hardship for Respondent or a member of Respondent's family, or family emergency. Respondent shall submit such proof to the Los Angeles Crisis Response Team Manager of the Department of Real Estate

The Commissioner may suspend the restricted license issued to Respondent pending a hearing held in accordance with Section 11500 et seq., of the Government Code, if such proof is not timely submitted as provided for herein, or as provided for

in a subsequent agreement between the Respondent and the Commissioner. The suspension shall remain in effect until such proof is submitted or until Respondent enter in into an agreement satisfactory to the Commissioner to provide such proof, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

5. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent is required, within (18) months of the issuance of the restricted license, to submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance, or advanced real estate appraisal. If Respondent fails to timely present the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of the lifting of the suspension.

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	6. Pursuant to Section 10154, if Respondent has not		
1 2	satisfied the requirements for an unqualified license under		
3	Section 10153.4, Respondent shall not be entitled to renew the		
4	restricted license, and shall not be entitled to the issuance of		
5	another license which is subject to Section 10153.4 until four		
6	years after the date of the issuance of the preceding restricted		
7	license.		
8	DATED: 12/27/05 ALVARO MEJIA, COMPSEI		
9	ALVARO MEJIA, COMISAL DEPARTMENT OF REAL ESTATE		
10			
11	I have read the Stipulation and Waiver, have discussed		
12	it with my counsel, and its terms are agreeable and acceptable to		
13	me. I understand that I am waiving my rights given to me by the		
14	California Administrative Procedure Act (including but not		
15	limited to Section 11506, 11508, 11509, and 11513 of the		
16	Government Code), and I willingly, intelligently, and voluntarily		
17	waive those rights.		
18	DATED: 12/20/05		
19	EMIL J. CANCHOLA, Respondent		
20	I have reviewed the Stipulation and Agreement as to form		
21	and content and have advised my client accordingly.		
2.2	DATED: 12/20/05 FREDRICK M. RAY,		
23	Attorney for Respondent		
24	* * *		
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H-31923 LA

I have read the Statement of Issues filed herein, the 1 Proposed Decision of the Administrative Law Judge dated October 2 3, 2005, and the foregoing Stipulation and Waiver signed by Respondent. I am satisfied that it will not be inimical to the public interest to issue a restricted salesperson license to Respondent. б Therefore, IT IS HEREBY ORDERED that the application for real estate salesperson license of Respondent be denied and a 8 restricted real estate salesperson license be issued to 10 Respondent if Respondent has otherwise fulfilled all of the 11 statutory requirements for licensure. The restricted license 12 shall be limited, conditioned and restricted as specified in the 13 foregoing Stipulation and Waiver. This Order shall become effective on

January 31, 2006.

IT IS SO ORDERED /- 9-06

JEFF DAVI Real Estate Commissioner

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H-31923 LA

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DEPARTMENT OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of EMIL J. CANCHOLA,

Respondent.

No. H-31923 LA

L-2005060507

NOTICE

TO: EMIL J. CANCHOLA, Respondent, and FREDRICK RAY, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated October 3, 2005, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated October 3, 2005, 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 September 9, 2005, and any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of September 9, 2005, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown. Written argument of Complainant to be considered by me

must be submitted within 15 days after receipt of the argument of Respondent at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED:	10-24.05	,	2005

JEFF DAVI

Real Estate Commissioner

BEFORE THE DEPARTMENT OF REAL ESTATE STATE OF CALIFORNIA

In the Matter of the Application of:

Case No.: H-31923 LA

EMIL J. CANCHOLA,

OAH No.: L2005060507

Respondent.

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on September 9, 2005.

Darlene Averetta, Supervising Staff Counsel, represented the Complainant.

Respondent appeared in person and was represented by Fredrick Ray, Attorney at Law.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued and thereafter submitted.

The Administrative Law Judge now finds, concludes and orders as follows:

FINDINGS OF FACT

- 1. The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, brought the Statement of Issues in her official capacity.
- 2. Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license on December 13, 2004, with the knowledge and understanding that any license issued as a result of the application would be subject to the conditions of Business and Professions Code section 10153.4.
- 3. On December 3, 1991, in the Westminster Judicial District, State of California, County of Orange, in Case No. FVW226, Respondent was convicted of violating California Vehicle Code section 23152(a) (Driving under the Influence of Alcohol/Drugs), a misdemeanor.

- 4. On July 8, 1993, in the Municipal Court of the State of California, County of Santa Cruz, in Case No. 43-05112, Respondent was convicted of violating California Vehicle Code section 23152(a) (Driving Under the Influence of Alcohol/Drugs with Prior Conviction), a misdemeanor.
- 5. On December 17, 2002, in the Superior Court of the State of California, County of Orange, in Case No. 02WM09900, Respondent was convicted of violating California Vehicle code section 23152 (a) (Driving Under the Influence of Alcohol/Drugs), a misdemeanor, and violating California Vehicle Code section 23152(b) (Driving with Blood Alcohol 0.08% or more), a misdemeanor.
- 6. On June 26, 2003, despite the history of three convictions involving the abuse of alcohol, Respondent had too much alcohol to drink. He got into his vehicle in an inebriated state with his girl-friend and drove at a high and dangerous rate of speed, thus, attracting pursuit by a police vehicle. Upon noticing his pursuers, Respondent stopped his vehicle. He and his girl-friend, who was a passenger, left his vehicle. In an attempt to avoid arrest he and his companion hide under another nearby vehicle in the neighborhood. Shortly thereafter, police officers found him, and exercising reasonable force, pulled Respondent out from under the vehicle and restrained him. He was arrested and subjected to criminal proceedings. Thereafter, on May 7, 2003, in the Superior Court of the State of California, County of Orange, in Case No. 03WM01521, Respondent was convicted of violating California Vehicle Code section 23152(a) (Driving Under the Influence of Alcohol/Drugs), a misdemeanor, and violating California Vehicle Code section 23152(b) (Driving with Blood Alcohol 0.08% or more), a misdemeanor and violating California Penal Code section 148(a) (Resist, Obstruct or Delay or Peace Officer), a misdemeanor.
- 7. Respondent has completed probation in all cases except the 2003 case. He has paid all fines and complied with all other court-ordered sanctions including the completion of a drunk-driver course. He has abstained from the abuse of alcohol since January 26, 2003. He does attend Alcoholics Anonymous meetings on a monthly basis. He did complete all requirements to reinstate a suspended driver's license and the Department of Motor Vehicles has reinstated that license.
- 8. Respondent was open and honest in the application and in the interview process. He revealed all information required by the Department and volunteered additional information that was helpful to the Department. He was truthful in his testimony and did credibly testify to a change in attitude from that which existed at the time of the last conviction. The negative impact of his wrongful conduct on others has contributed, in part, to that change. He lost his fiancée and was, to an extent, estranged from his family. His present daily routine of work and exercise has also contributed, in part, to that change. He is contrite about his past alcoholic abusive conduct. He is now aware that such conduct presents a risk of harm to himself and to others.

9. Respondent's change in attitude was further supported by a Finding of the Driver Safety Officer, set forth in a Department of Motor Vehicle Decision (case number C6435223) dealing with Respondent's driver's licensing privileges:

The demeanor or attitude of Respondent while testifying is credible, in that: he answered all questions fully and without hesitation. Furthermore, as to his demeanor while testifying, Respondent appeared to be remorseful and willing to obey traffic laws henceforth.

- 10. Respondent has new and different social relationships then existed at the time of the 2003 misdemeanors. He is a dirt bike enthusiast as are many of his present friends. He has strong social rapport with his colleagues at work. Presently, he has strong family ties with his mother, father and three older sisters and his family does constitute a strong support group. Respondent has met and fulfilled familial responsibilities.
- 11. Since the time of this last conviction Respondent has been gainfully employed by American Home Loans, a mortgage company. He is, presently, a team leader and supervises 12 employees. He is entrusted with the personal information of clients. While so employed he has worked with diligence, competence, integrity, reliability, and trustworthiness. He has a strong work ethic. He is an asset to his employer and an asset to the clients of his employer.
- 12. Respondent is, presently, a professionally and socially responsible person. By reason of the totality of rehabilitation set forth in Findings 7 through 11, Respondent did demonstrate substantial and convincing evidence to support a reasonable belief that he is of such good character, at this time, as to justify the granting of license on a restricted status.

LEGAL CONCLUSIONS

- 1. This proceeding 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 11528 of the Government Code.
- 2. Respondent's convictions under Vehicle Code section 23152(b) are substantially related to the qualifications, functions, or duties of a real estate licensee, in accordance with the criteria of substantial relationship listed in California Code of Regulations, title 10, section 2910, as follows:

- Each DUI conviction constitutes the doing of any unlawful act with threat of doing substantial injury to the person or property of another and, therefore, by reason of subsection (a)(8) of section 2910, each DUI is substantially related.
- Each DUI conviction following the 1991 conviction involves conduct which demonstrates a pattern of repeated and willful disregard of law, and, therefore, by reason of subsection (a)(10) of section 2910, each subsequent DUI is substantially related.
- The totality of the DUIs constitute two or more convictions involving the consumption or use of alcohol or drugs and convictions involve driving and the use or consumption of alcohol or drugs and, therefore, the DUIs, taken together, are substantially related.
- Respondent's violation of Penal Code section 148(a) and Vehicle Code section 23152(a), when combined with the past violations of Penal Code section 23152(b), demonstrates a pattern of repeated and willful disregard of law and, therefore, the misdemeanors resulting from the violation of Penal Code section 148(a) and Vehicle Code section 23152(a) are substantially related.
- 3. The substantially related crimes of which Respondent was convicted, as set forth in Findings 3, 4, 5 and 6, constitutes cause for denial of Respondent's application for a real estate license under Business and Professions Code sections 475(a)(2) and 480(a)(1). However, licensure of Respondent in a restricted status is consistent with the public interest by reason of finding 12.

ORDER

Respondent's application for a real estate salesperson license is denied; provided however, a restricted real estate salesperson license shall be issued to Respondent pursuant to section 10153.5 of the Business and Professions Code. The restricted license issued to the Respondent shall be subjected to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of said Code:

- It. The license 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 that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.
- 2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to Respondent.
- 3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:
 - (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 otherwise exercise close supervision over the licensee's performance of acts for which a license is required.
- 4. Respondent's restricted real estate salesperson license is issued subject to the requirements of section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.

5. Pursuant to section 10154, if Respondent has not satisfied 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 years after the date of the issuance of the preceding restricted license.

ی Dated:

RICHARD J. LOPEZ

Administrative Law Judge

Office of Administrative Hearings

RJL:rfm

ALVARO MEJIA, Counsel (SBN 216956) 1 Department of Real Estate 320 West 4th Street, Suite 350 .5 Los Angeles, California 90013-1105 3 Telephone: (213) 576-6982 (Direct) (213) 576-6916 DEPARTMENT OF REAL ESTATE 5 6 7 8 BEFORE THE DEPARTMENT OF REAL ESTATE 9 STATE OF CALIFORNIA 10 11 In the Matter of the Application of NO. H-31923 LA 12 EMIL J. CANCHOLA, STATEMENT OF ISSUES 13 Respondent. 14 15 The Complainant, Maria Suarez, a Deputy Real Estate 16 Commissioner of the State of California, for cause of Statement 17 of Issues against EMIL J. CANCHOLA, aka Emil John Canchola 18 ("Respondent"), is informed and alleges as follows: 19 1. 20 The Complainant, Maria Suarez, a Deputy Real Estate 21 Commissioner of the State of California, makes this Statement of 22 Issues against Respondent in her official capacity. 23 24 1// 25 111 26 111 27

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Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about December 13, 2004, with the knowledge and understanding that any license issued as a result of said application would be subject to the conditions of Business and Professions Code ("Code") Section 10153.4.

3.

(CRIMINAL CONVICTIONS)

On or about May 7, 2003, in the Superior Court of the State of California, County of Orange, in case No. 03WM01521, Respondent was convicted of violating California Vehicle Code Section 23152 (a) (Driving Under the Influence of Alcohol/Drugs), a misdemeanor, and violating California Vehicle Code Section 23152(b) (Driving with Blood Alcohol 0.08% or more), a misdemeanor, and violating California Penal Code Section 148(a) (Resist, Obstruct or Delay of Peace Officer), a misdemeanor. These are crimes involving moral turpitude and are substantially related under Title 10, Chapter 6, Section 2910, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

4.

On or about December 17, 2002, in the Superior Court of the State of California, County of Orange, in case No. 02WM09900, Respondent was convicted of violating California Vehicle Code Section 23152 (a) (Driving Under the Influence of

Alcohol/Drugs), a misdemeanor, and violating California Vehicle Code Section 23152(b) (Driving with Blood Alcohol 0.08% or more), a misdemeanor. These are crimes involving moral turpitude and are substantially related under Title 10, Chapter 6, Section 2910, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

5.

On or about July 8, 1993, in the Municipal Court of the State of California, County of Santa Cruz, in case No. 43-05112, Respondent was convicted of violating California Vehicle Code Section 23152 (a) (Driving Under the Influence of Alcohol/Drugs with Prior Conviction), a misdemeanor. This is a crime involving moral turpitude and is substantially related under Title 10, Chapter 6, Section 2910, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

6.

On or about December 3, 1991, in the Westminster

Judicial District, State of California, County of Orange, in

case No. FVW226, Respondent was convicted of violating

California Vehicle Code Section 23152 (a) (Driving Under the

Influence of Alcohol/Drugs), a misdemeanor. This is a crime

involving moral turpitude and is substantially related under

Title 10, Chapter 6, Section 2910, California Code of

Regulations, to the qualifications, functions or duties of a

real estate licensee.

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7.

The crimes of which Respondent was convicted, as alleged herein above in Paragraphs 3, 4, 5, and 6, constitutes cause for denial of Respondent's application for a real estate license under Business and Professions Code Sections 475(a)(2); 480(a)(1); and/or 10177(b).

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 and 11529 of the Government Code.

WHEREFORE, 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 salesperson license to Respondent, EMIL J. CANCHOLA, and for such other and further relief as may be proper under other provisions of law.

Dated at Los Angeles, California

this/4//day of //lly

, 2005.

Maria Suarez

Deputy Real Estate Commissioner

Cc: EMIL J. CANCHOLA Maria Suarez

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