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FILED

FEB 27 2010

DEPARTMENT OF REAL ESTATE

By K. Mak

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of
MICHAEL JOSEPH MALONE,
Respondent.

No. H-32395 LA

ORDER DENYING REMOVAL OF RESTRICTIONS

On February 7, 2006, a Decision was rendered denying the real estate broker application of Respondent, but granting Respondent a restricted broker license which was issued on March 1, 2006. It had been determined that there was cause to deny Respondent's license pursuant to Business and Professions Code Sections 480 and 10177(b), due to criminal convictions.

On May 12, 2008, Respondent petitioned for removal of restrictions from said real estate broker license.

I have considered the petition of Respondent and the evidence submitted in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant removal of restrictions from Respondent's real estate broker license at this time.

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1 The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State*
2 *Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and
3 integrity than an applicant for first time licensure. The proof must be sufficient to overcome the
4 prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

5 The Department has developed criteria in Section 2911 of Title 10, California
6 Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for
7 reinstatement of a license. Among the criteria relevant in this proceeding are:

8 Regulation 2911(i) – Proof of educational courses

9 Respondent has not provided proof of enrollment in or completion of educational
10 courses.

11 Regulation 2911(j) – Discharge of debts or monetary obligations

12 Respondent has not provided proof that liens and judgments filed against him
13 have been paid, or that he has made bona fide efforts toward payment.

14 Regulation 2911(k)-Correction of wrongful business practices.

15 Respondent has not provided proof of correction of business practices. A
16 corporation for which Respondent is the designated officer was been audited by the Department
17 of Real Estate in 2008. The audit found numerous audit violations.

18 Regulation 2911(l) Significant or conscientious involvement in community,
19 church or privately-sponsored programs designed to provide social benefits or to ameliorate
20 social problems.

21 Respondent has not provided evidence of qualifying community service activities.

22 Regulation 2911(n) Change in attitude from that which existed at the time of the
23 conduct in question as evidenced by any or all of the following:

24 (1) Testimony of applicant.

25 (2) Evidence from family members, friends or other persons familiar with
26 applicant's previous conduct and with Respondent's subsequent attitudes and behavioral
27 patterns.

1 Respondent has not provided proof from others of a change in attitude.

2 (3) Evidence from probation or parole officers or law enforcement officials
3 competent to testify as to applicant's social adjustments.

4 (4) Evidence from psychiatrists or other persons competent to testify with regard
5 to neuropsychiatric or emotional disturbances.

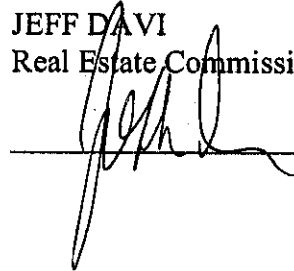
6 (5) Absence of subsequent felony or misdemeanor convictions that are reflective
7 of an inability to conform to societal rules when considered in light of the conduct in question.

8 Given the violations found and the fact that Respondent has not established that
9 Respondent has complied with Regulations 2911 (i), (j), (k), (l) and (n), I am not satisfied that
10 Respondent is sufficiently rehabilitated to receive an unrestricted real estate broker license.

11 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal of
12 restrictions on Respondent's real estate license is denied.

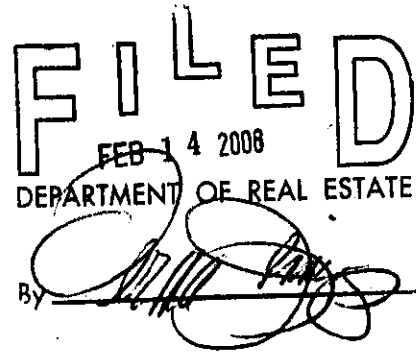
13 This Order shall become effective at 12 o'clock noon on MAR 18 2010

14 IT IS SO ORDERED 2-3-2010

15 JEFF DAVI
16 Real Estate Commissioner
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1 Department of Real Estate
2 320 W. 4th Street, Suite 350
3 Sacramento, CA 95818-7007

4 Telephone: (213) 576-6982



7 **DEPARTMENT OF REAL ESTATE**

8 **STATE OF CALIFORNIA**

9
10 *In the Matter of the Application of*

11
12 MICHAEL JOSEPH MALONE,

13
14 Respondent

)
) No. H- 32395 LA
)
)

) **STIPULATION AND**
) **WAIVER**
)
)

15 I, MICHAEL JOSEPH MALONE, respondent herein, do hereby affirm that I have applied to the
16 Department of Real Estate for a real estate broker license and that to the best of my knowledge I have
17 satisfied all of the statutory requirements for the issuance of the license, including the payment of the fee
18 therefor.

19 I acknowledge that I have received and read the Statement of Issues and the Statement to Respondent
20 filed by the Department of Real Estate on January 13, 2006, in connection with my application for a real
21 estate broker license. I understand that the Real Estate Commissioner may hold a hearing on this Statement
22 of Issues for the purpose of requiring further proof of my honesty and truthfulness and to prove other
23 allegations therein, or that he may in his discretion waive the hearing and grant me a restricted real estate
24 broker license based upon this Stipulation and Waiver. I also understand that by filing the Statement of
25 Issues in this matter the Real Estate Commissioner is shifting the burden to me to make a satisfactory
26 showing that I meet all the requirements for issuance of a real estate broker license. I further understand that
27

1 by entering into this stipulation and waiver I will be stipulating that the Real Estate Commissioner has
2 found that I have failed to make such a showing, thereby justifying the denial of the issuance to me of an
3 unrestricted real estate broker license.

4 I hereby admit that the allegations of the Statement of Issues filed against me are true and correct and
5 request that the Real Estate Commissioner in his discretion issue a restricted real estate broker license to me
6 under the authority of Section 10156.5 of the Business and Professions Code.

7 I am aware that by signing this Stipulation and Waiver, and if this Stipulation and Waiver is accepted
8 by the Real Estate Commissioner, I am waiving my right to a hearing and the opportunity to present
9 evidence at the hearing to establish my rehabilitation in order to obtain an unrestricted real estate broker
10 license. I am not waiving my right to a hearing and to further proceedings to obtain a restricted or
11 unrestricted license if this Stipulation and Waiver is not accepted by the Commissioner.

12 I further understand that the following conditions, limitations, and restrictions will attach to a
13 restricted license issued by the Department of Real Estate pursuant hereto:

14 1. The license shall not confer any property right in the privileges to be exercised and the Real
15 Estate Commissioner may by appropriate order suspend the right to exercise any privileges
16 granted under this restricted license in the event of:

17 a. The conviction of respondent (including a plea of nolo contendere) to a crime which bears a
18 substantial relationship to respondent's fitness or capacity as a real estate licensee; or

19 b. The receipt of evidence that respondent has violated provisions of the California Real
20 Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or
21 conditions attaching to this restricted license.

22 2. I shall not be eligible to apply for the issuance of an unrestricted real estate license nor the
23 removal of any of the conditions, limitations, or restrictions attaching to the restricted license
24 until two years have elapsed from the date of issuance of the restricted license to respondent.

25 Respondent can signify acceptance and approval of the terms and conditions of this Stipulation and
26 Waiver by faxing a copy of the signature page, as actually signed by respondent, to the Department at fax
27 number (213) 576-6917. Respondent agrees, acknowledges and understands that by electronically sending

1 to the Department a fax copy of his actual signature as it appears on the Stipulation and Waiver. That receipt
2 of the faxed copy by the Department shall be as binding on Respondent as if the Department had received
3 the original signed Stipulation and Waiver.

4 1/25/2006

5 Dated

6 Michael J. Malone

7 MICHAEL JOSEPH MALONE, Respondent

8 ***

9 I have read the Statement of Issues filed herein and the foregoing Stipulation and Waiver signed by
10 respondent. I am satisfied that the hearing for the purpose of requiring further proof as to the honesty and
11 truthfulness of respondent need not be called and that it will not be inimical to the public interest to issue a
12 restricted real estate broker license to respondent.

13 Therefore, IT IS HEREBY ORDERED that a restricted real estate broker license be issued to
14 respondent MICHAEL JOSEPH MALONE if respondent has otherwise fulfilled all of the statutory
15 requirements for licensure. The restricted license shall be limited, conditioned, and restricted as specified in
16 the foregoing Stipulation and Waiver.

17 This Order is effective immediately.

18 IT IS SO ORDERED _____

19 Jeff Davi

20 Real Estate Commissioner

1 to the Department a fax copy of his actual signature as it appears on the Stipulation and Waiver, that receipt
2 of the faxed copy by the Department shall be as binding on Respondent as if the Department had received
3 the original signed Stipulation and Waiver.

4
5 _____
6 Dated

MICHAEL JOSEPH MALONE, Respondent

7 * * *

8 I have read the Statement of Issues filed herein and the foregoing Stipulation and Waiver signed by
9 respondent. I am satisfied that the hearing for the purpose of requiring further proof as to the honesty and
10 truthfulness of respondent need not be called and that it will not be inimical to the public interest to issue a
11 restricted real estate broker license to respondent.

12 Therefore, IT IS HEREBY ORDERED that a restricted real estate broker license be issued to
13 respondent MICHAEL JOSEPH MALONE if respondent has otherwise fulfilled all of the statutory
14 requirements for licensure. The restricted license shall be limited, conditioned, and restricted as specified in
15 the foregoing Stipulation and Waiver.

16 This Order is effective immediately.

17 IT IS SO ORDERED 2-7-06

18 _____
19 Jeff Davi
20 Real Estate Commissioner
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FILED
JAN 13 2006
DEPARTMENT OF REAL ESTATE
[Signature]

JAMES R. PEEL, Counsel (SBN 47055)
Department of Real Estate
320 West Fourth Street, Ste. 350
Los Angeles, California 90013-1105

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

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	No. H-32395 LA
MICHAEL JOSEPH MALONE,)	<u>STATEMENT OF ISSUES</u>
Respondent.)	

The Complainant, Janice A. Waddell, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against MICHAEL JOSEPH MALONE (Respondent) is informed and alleges in her official capacity as follows:

I

On or about December 28, 2004, Respondent applied to the Department of Real Estate of the State of California for a real estate broker license.

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II

In response to Question 20 of said application, to wit,
"Have you ever been convicted of any violation of law?",
Respondent answered "No".

III

On or about November 8, 1993, in the State of Michigan,
Sixth Circuit Court, Respondent was convicted of violating Sec.
750.479, C.L. 1979; M.S.A. 28.747 (resisting/obstructing police
officer), a crime involving moral turpitude.

IV

On or about November 27, 1991, in the Sate of Michigan,
45 B Judicial District, Respondent was convicted of violating
C/M/F: F 750380 B (malicious destruction building \$100 or less).

V

The matters alleged in Paragraphs III and IV are
substantially related to the duties, functions, and
qualifications of a real estate licensee.

VI

The matters alleged in Paragraphs III and IV are
grounds to deny Respondent's application for a real estate
license under Sections 480(a)(1) and 10177(b) of the Code.

VII

Respondent's failure to reveal the matters set forth in
Paragraphs III and IV in said application constitutes the attempt
to procure a real estate license by fraud, misrepresentation or
deceit, or by making a material misstatement of fact or knowingly
making a false statement of fact required to be revealed in said

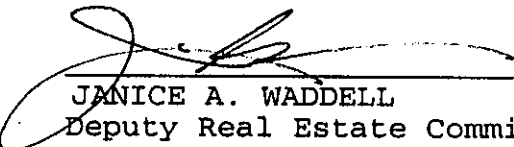
1 application, which failure is cause for denying Respondent's
2 application for a real estate license under Sections 480(c) and
3 10177(a) of the Code.

4 The Statement of Issues is brought under the provisions
5 of Section 10100, Division 4 of the Business and Professions Code
6 of the State of California and Sections 11500 through 11528 of
7 the Government Code.

8 WHEREFORE, the Complainant prays that the above-
9 entitled matter be set for hearing and, upon proof of the charges
10 contained herein, that the Commissioner refuse to authorize the
11 issuance of, and deny the issuance of, a real estate broker
12 license to Respondent, MICHAEL JOSEPH MALONE, and for such other
13 and further relief as may be proper in the premises.

14 Dated at Los Angeles, California,

15 this 8 day of September, 2005.

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18 
19 JANICE A. WADDELL
20 Deputy Real Estate Commissioner

21 cc: Michael Joseph Malone
22 Janice A. Waddell
23 Sacto.
24 LA
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