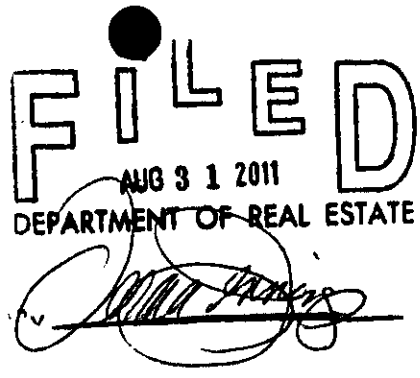


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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of	)	No. H-32749 LA
	)	
EDWARD LEVY JR.,	)	
	)	
Respondent.	)	

ORDER GRANTING UNRESTRICTED LICENSE

On November 12, 2006, a Decision was rendered herein denying the real estate salesperson license of Respondent, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on January 27, 2007, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On or about March 26, 2010, Respondent petitioned for removal of restrictions of said real estate salesperson license.

I have considered Respondent's petition and the evidence and arguments submitted in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate

1 salesperson license and that it would not be against the public interest to issue said license to
2 Respondent.

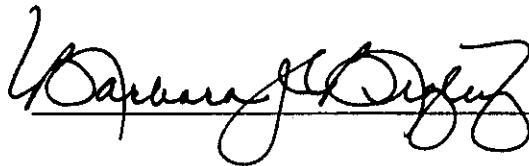
3 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal
4 of restrictions is granted and that a real estate salesperson license be issued to Respondent, if
5 Respondent satisfies the following conditions:

- 6 1. Submits a completed application and pays the fee for a real estate salesperson
7
8 license within the 12 month period following the date of this Order; and
9 2. Submits proof that Respondent has completed the continuing education
10 requirements for renewal of the license sought. The continuing education courses must be
11 completed either (i) within the 12 month period preceding the filing of the completed application,
12 or (ii) within the 12 month period following the date of this Order.

13 This Order shall be effective immediately.

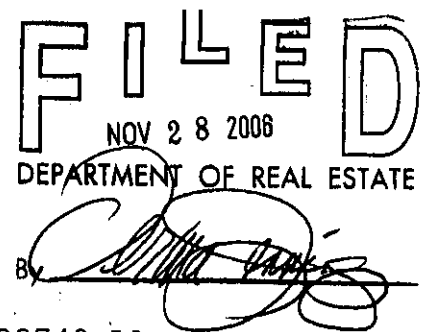
14
15 Dated: 6/29/11

16 BARBARA J. BIGBY
17 Acting Real Estate Commissioner

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DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *



In the Matter of the Application of) No. H-32749 LA
)
)
EDWARD LEVY, JR.,) L-2006060715
)
)
Respondent.)
_____)

DECISION

The Proposed Decision dated October 19, 2006, 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.

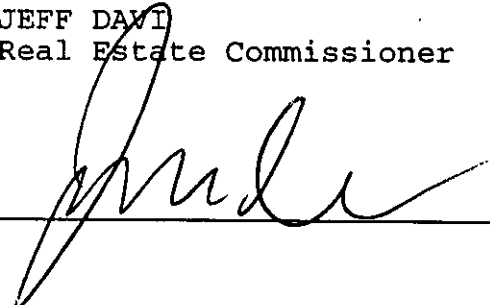
The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy of Section 11522 is attached hereto for the information of respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is attached hereto.

This Decision shall become effective at 12 o'clock noon on December 18, 2006.

IT IS SO ORDERED

JEFF DAVIS
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

EDWARD LEVY, JR.,

Respondent.

NO. H-32749 LA

OAH NO. L2006060715

PROPOSED DECISION

On September 26, 2006, Administrative Law Judge Timothy S. Thomas, Office of Administrative Hearings, heard this matter in Los Angeles, California.

Lisette Garcia, Real Estate Counsel, represented complainant Phillip Ihde, Deputy Real Estate Commissioner of the Department of Real Estate (hereinafter the department, or DRE).

Mark Stephen Smith, Attorney at Law, represented Edward Levy, Jr. (hereinafter respondent).

The matter was submitted on September 26, 2006.

FACTUAL FINDINGS

1. Complainant filed the Statement of Issues in his official capacity as Deputy Real Estate Commissioner.

2. Respondent was licensed as a real estate salesperson in California from 1986 until 1995, when the license expired. Prior to that period of time, respondent had completed three and one-half years of college, where he studied finance, and had served for nearly 10 years in the U.S. Army in various assignments, including telecommunications, intelligence and recruiting. He received an Honorable Discharge in 1986. Respondent was married in 1974 and fathered and supported two children during that marriage.

3. Respondent had no history of arrests or criminal convictions when, in October of 1992, he was charged in United States District Court, Eastern District of Michigan, with violating Title 21 United States Code (U.S.C.) section 846 (conspiracy to possess with the intent to distribute cocaine) and Title 21 U.S.C. section 841(a)(1) (possession with intent to

distribute cocaine). On or about June 11, 1993, respondent was convicted on his plea of guilty of a violation of Count I of the indictment (21 U.S.C. § 846). As part of a plea bargain, Count II (21 U.S.C. § 841(a)(1)) was dismissed. Respondent was sentenced to eight years in prison and fined \$50.00.¹ Respondent actually served seven years and seven months of his sentence. After his release, he was subject to supervised parole for five years, during which time he committed no parole violations. He was released from parole in August 2005.

4. Respondent's 1993 conviction was for a felony substantially related to the qualifications, functions and duties of a licensed real estate salesperson.

5. Respondent testified that in 1992, he was working for Conservative Mortgage, Inc., of Beverly Hills, where he was in charge of sales and operations. The CEO, Joseph Caplin, had identified a small mortgage company in Perris, California, that he wanted to acquire and sent respondent there to meet with its managing partner, Adalberto Torres (known to respondent as "Pedro"). Torres appeared "scared," and told respondent that his life and the lives of his family members were in danger because he owed money to the wrong people. Torres asked respondent if he knew anyone who could help him. Apparently, Torres had access to a large quantity of cocaine that he wanted to sell in order to be able to raise cash. Respondent testified he first advised Torres to go to the police, but eventually made a phone call to an acquaintance respondent believed to be a drug dealer. Respondent introduced Torres to his acquaintance, who insisted that respondent be personally present at a meeting. Eventually, Torres and respondent both traveled to Detroit, Michigan, where the acquaintance delivered 20 kilograms of cocaine to a "stash house." There, the three men met up with the supposed buyer, who was actually an undercover special agent with the Drug Enforcement Administration. (It turned out that respondent's acquaintance was a DEA informant.) Respondent was present when the drugs were delivered. Respondent testified that he was offered money for his involvement in the scheme, but declined. He confesses to being "stupid and naïve," but insists he was only trying to help Torres out of his predicament. When asked why he thought Torres would ask him to help consummate a drug deal, respondent testified, "Because I'm black and lived in Compton, I guess."

6. Respondent cooperated fully with law enforcement officials following his arrest and conviction. In fact, the United States Attorney recommended, and the sentencing judge applied, a "downward departure" from federal sentencing guidelines due to respondent's cooperation.

7. Following respondent's conviction and during his period of incarceration, respondent's wife divorced him. He received no visits from his wife or children for the nearly eight years he was in prison.

8. While incarcerated, respondent was involved in a prison education program and church activities. He was also able to attend classes sponsored by a local community

¹ It is inferred that respondent paid the \$50.00 assessment, as the plea agreement required payment prior to sentencing. (See Exhibit 3, page 4.)

college. Following his release, respondent worked in the telecommunications field and held a second job with the San Diego Community Development Corps, where he performed job placement duties for first-time, non-violent offenders. Respondent has caught up with the child support payments he could not make while in prison. He recently moved back to the Los Angeles area and works as a consultant in construction. He remarried in 2001 and has a small child.

9. On March 8, 2004, respondent submitted an application to DRE to again become licensed as a real estate salesperson. Two brokers have offered him employment should he regain his salesperson's license. Respondent fully disclosed his conviction in the application and asked that a license issue "so I can help myself get my life back on track. Real estate is the only thing I know, the only thing I'm good at." The application was denied by the department on March 22, 2004.

10. John Goldberger testified on respondent's behalf. Mr. Goldberger, who has owned an accounting firm for 20 years, has known respondent for 18 years. For the last three or four years, respondent has acted as the manager of the witness' family trust, which includes a fund of \$850,000. Respondent issues checks and makes decisions regarding trades of stocks and bonds. Mr. Goldberger described respondent as completely trustworthy, "a great guy" and a "good risk" for licensure by DRE.

11. Clyde Sparrow also testified to respondent's good character. Mr. Sparrow is a real estate broker and the owner of First Choice Real Estate. He has known respondent over 20 years and employed respondent as a salesperson beginning in 1986. In 1988 respondent helped the witness start a mortgage loan business. His observation is that respondent is honest and would employ him again should respondent become licensed. Mr. Sparrow is aware of respondent's conviction and feels it was "out of character" for him.

12. Respondent submitted three letters in support of his application. The pastor of Bread of Life Christian Center, Major Johnson, authored a letter on respondent's behalf. Pastor Johnson wrote that respondent has been an active member of his church for 20 years and has served on several committees. He opined that respondent is "just, honest and sincere," compassionate, kind and understanding.

The president of Milestone Mortgage, Richard L. Thomas, wrote that he has also known respondent for 20 years and believes him to be "personable, fair and respectable both socially and in business." He has made an offer of employment to respondent.

Respondent's friend of 20 years, Gregory Muro, praised respondent's work with youth in their community.

13. Respondent's criminal activity could not have been predicted by any experiences of record in his educational, occupational or military backgrounds. Likewise, respondent's reputation, as reported by two credible witnesses and by three who authored letters, as well as respondent's own demeanor while testifying, infers that the 1992 conduct

was anomalous in the extreme. Respondent appears sincere in his expressions of remorse and, although he insists his role in the crime was secondary and not for personal gain, has accepted responsibility for his misconduct from the outset. He paid dearly for what was, at best, incredibly bad judgment. Finally, respondent's cooperation with the authorities and his successful completion of a supervised program of parole are further indicators of rehabilitation.

LEGAL CONCLUSIONS

1. Cause has been established for the denial of respondent's application for licensure as a real estate salesperson pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b), in that respondent was convicted of a felony crime substantially related to the qualifications, functions or duties of the licensed profession, based on Factual Findings 3, 4 and 5.

2. DRE has developed criteria to assist the decision-maker in determining whether a respondent convicted of a crime has rehabilitated himself sufficiently to be eligible for licensure. (Cal. Code Regs., tit. 10, § 2911.) They are:

(a) The passage of not less than two years since the most recent criminal conviction.

(b) Restitution to any person who has suffered monetary loss through "substantially related" acts of omissions of the applicant.

(c) Expungement of criminal convictions resulting from immoral or antisocial acts.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.

(g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction.

(h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to conviction.

(i) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(j) Discharge of adjudicated debts or monetary obligations to others.

(k) Correction of business practices resulting in injury to others or with the potential to cause such injury.

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

(m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

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

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitude and behavioral patterns.

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

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

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

3. Of the eight criteria that are applicable to respondent's situation,² respondent offered favorable testimony or evidence regarding seven of them. More than two years have passed since the conviction; indeed, the passage of 13 years since the conviction and six years since his release from prison are significant ameliorating factors. Respondent successfully completed his lengthy parole and paid the modest fine imposed at sentencing. He has remarried and started a new family and again enjoys a stable family life. He has achieved substantial progress in a college program and continued his education while in prison. Respondent has known success as a real estate agent and mortgage loan agent, with no hint of misconduct in the discharge of his professional duties. Respondent has devoted

² Criteria (b), (c), (d), (f), (j) and (k) are inapplicable. Criterion (c) is not applicable because Congress has not granted to the federal courts a general power to expunge criminal records. (See *United States of America v. Crowell* (2003) 374 F.3d 790, 793.)

significant and conscientious time to community and church involvement. He provided proof by means of his own testimony as to his change in attitude that caused him to enter into a criminal enterprise in 1992, and there is an absence of subsequent convictions that might be reflective of an inability to conform to societal rules in the future.

An analysis of the single remaining criterion does not yield negative results of any significance. While the record does not include any evidence of "new and different social and business relationships from those which existed at the time of the conduct that is the basis for denial" of the application, it is reasonable to infer that respondent no longer associates with the only individuals implicated by the evidence as undesirable.

4. During argument, counsel for complainant cited *In re Gossage* (2000) 23 Cal.4th 1080, as support for the department's denial of respondent's application. The case is indeed instructive. In that matter, Mr. Gossage applied to the State Bar for licensure as an attorney with a history of drug addiction and 17 criminal convictions, including the voluntary manslaughter of his sister and numerous forgery and theft-related convictions. After two stretches in state prison, appellant Gossage finished college, went to law school and passed the bar examination. Thereafter, he violated numerous misdemeanor driving laws and failed to appear in court as ordered. One year after his last offense, he submitted an application to the State Bar that omitted mention of 13 of the convictions and was deemed perjurious. Nevertheless, the State Bar Court found Gossage to have rehabilitated himself and recommended that he become licensed as an attorney. The Supreme Court rejected that recommendation, concluding as follows:

Gossage was found guilty of an intentional criminal homicide and other felonies involving moral turpitude. He therefore faced a heavy burden of proving his own rehabilitation – a burden he has not sustained. We are mindful Gossage's recovery from substance abuse, his academic achievements, and his community involvement between July 1984, when he was last discharged from parole, and January 1994, when he applied for a moral character determination with the Committee. However, as evidenced by the Vehicle Code offenses committed between July 1987 and June 1993, and by the misleading Application filed in 1994, Gossage disregarded his legal obligations and the responsibilities he would undertake as a member of the State Bar. In order to safeguard the public and protect the integrity of the profession, we cannot conclude Gossage has established his present good moral character.

5. Respondent likewise has the burden to prove his own rehabilitation, although a single conviction for a non-violent felony is logically more easily overcome than the appellant's record of recidivism in *Gossage*. The Supreme Court found particularly significant Gossage's record of lawlessness following his release from prison and his dishonest attempt to mislead the regulatory agency. In contrast, respondent here has made a

convincing case for a finding of rehabilitation. His case has none of the indicia of habitual and continuing dishonesty found in *Gossage*. Unquestionably, the crime for which respondent was convicted was an exceedingly serious one. But the purpose of an administrative action is not to punish respondent further, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785.) There is a dearth of evidence in this record, other than the fact of the conviction itself, to support a finding that respondent is likely to re-offend. All indications are to the contrary. The granting of a restricted license will suffice to afford the protection to the public that respondent's conduct of 14 years ago requires.

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 10156.5 of the Business and Professions Code. The restricted license issued to respondent shall be subject 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 the authority of section 10156.6 of the Business and Professions Code:

1. 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, 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 the 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:

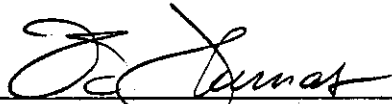
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(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(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.

DATED: October 19, 2006


TIMOTHY S. THOMAS
Administrative Law Judge
Office of Administrative Hearings

5/2/70.
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)
7

FILED
APR 28 2008
DEPARTMENT OF REAL ESTATE

By *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of) No. H-32749 LA
12 EDWARD LEVY, JR.,)
13 Respondent..)
14)

STATEMENT OF ISSUES

15
16 The Complainant, Phillip Ihde, a Deputy Real Estate
17 Commissioner of the State of California, for Statement of Issues
18 against EDWARD LEVY, JR. (Respondent), is informed and alleges in
19 his official capacity as follows:

20 I

21 On or about March 8, 2004, Respondent applied to the
22 Department of Real Estate of the State of California for a real
23 estate salesperson license with the knowledge and understanding
24 that any license issued as a result of that application would be
25 subject to the conditions of Section 10153.4 of the Business and
26 Professions Code.

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2 II

3 On or about June 11, 1993, in the United States
4 District Court for the Eastern District of Michigan, Respondent
5 was convicted of violating 21 USC 848 (conspiracy to possess with
6 intent to distribute over five kilograms of cocaine), a crime
7 involving moral turpitude.

8 III

9 The matter described above in Paragraph II is
10 substantially related to the functions, duties, and
11 responsibilities of a real estate licensee.

12 IV

13 The matter described in Paragraph II constitutes cause
14 for denial of Respondent's application for a real estate
15 salesperson license under Sections 480(a) and 10177(b) of the
16 California Business and Professions Code.

17 The Statement of Issues is brought under the provisions
18 of Section 10100, Division 4 of the Business and Professions Code
19 of the State of California and Sections 11500 through 11528 of
20 the Government Code.

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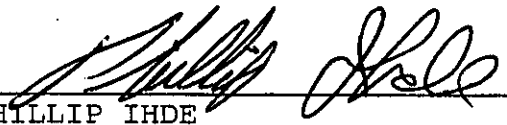
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1 WHEREFORE; the Complainant prays that the above-
2 entitled matter be set for hearing and, upon proof of the charges
3 contained herein, that the Commissioner refuse to authorize the
4 issuance of, and deny the issuance of, a real estate salesperson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

7 Dated at Los Angeles, California,
8 this 28th day of April, 2006.

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12 
13 PHILLIP IHDE
14 Deputy Real Estate Commissioner

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23
24 cc: Edward Levy, Jr.
25 Clyde G. Sparrow
26 Janice A. Waddell
27 Sacto.