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DEPARTMENT OF REAL ESTATE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

BY:

[Signature]

* * * * *

In the Matter of the Application of)
)
)
 MARK ANTHONY AUGUSTUS,)
)
)
)
 Respondent.)
_____)

No. H-33258 LA
L-2006100698

DECISION

The Proposed Decision dated February 4, 2007 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.

Pursuant to Section 11517(c)(2)(c) of the Government Code, the following corrections are made:

Findings of Fact

Page 1, paragraph No. 1, line 1, "September 15, 2006" is amended to read "September 20, 2006".

Page 2, paragraph No. 4, line 1, "December 20, 1983" is amended to read "December 1, 1983".

Page 3, paragraph No. 7, line 1, "January 14, 1998" is amended to read "January 12, 1998".

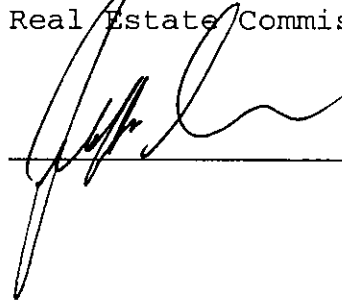
The application for a real estate salesperson license is denied. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by respondent will be considered by the 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 March 29, 2007.

IT IS SO ORDERED

3-5-07

JEFF DAVI
Real Estate Commissioner



BEFORE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

MARK ANTHONY AUGUSTUS,

Respondent.

Case No. H-33258 LA

OAH No. L-2006100698

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on January 8, 2007, in Los Angeles. Complainant was represented by Cheryl D. Keily, Staff Counsel. Respondent Mark Anthony Augustus was present and represented himself.

At the commencement of the hearing, complainant's motion to amend the Statement of Issues was granted as follows: the last sentence in Paragraph 4 was omitted and the phrase, "In aggravation," was added to the beginning of the paragraph. In addition, the reference to Paragraph 4 was stricken from Paragraph 8.

Oral and documentary evidence having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:

FINDINGS OF FACT

1. The Administrative Law Judge takes official notice that, on September 20, 2006, the Statement of Issues, Case No. H-33258 LA, was made and filed by complainant Maria Suarez in her official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of California (hereinafter Department).

2. (A) On or about April 27, 2005, Mark Anthony Augustus, also known as Mark Augustus Tolbert (hereinafter respondent), filed a Salesperson License Application with the Department pursuant to Business and Professions Code section 10153.3 for issuance of a real estate salesperson's license. Respondent filed said application with the understanding that any license issued would be subject to the conditions of Business and Professions Code section 10153.4.

(B) The records of the Department of Real Estate do not show that respondent has successfully completed all of the courses required under Business and Professions Code section 10153.4.

3. (A) On the Salesperson License Application, Question No. 25 asks, "Have you ever been convicted of any violation of law? Convictions expunged under Penal Code Section 1203.4 must be disclosed. However, you may omit minor traffic citations which do not constitute a misdemeanor or felony offense." If an applicant answers "Yes", the application requires that he or she provide a detailed explanation of any convictions, including the court of conviction, arresting agency, date and type of conviction, code violated, and disposition.

(B) In response to Question No. 25, respondent marked the box for the answer "Yes" and provided a detailed explanation of his convictions on his license application.

4. (A) On or about December 20, 1983, before the Superior Court of California, County of Los Angeles, in Case No. A626618, respondent was convicted on his plea of nolo contendere of violating one count of Health and Safety Code section 11378.5 (possession for sale of the unlawful controlled substance phencyclidine or PCP), a felony and crime involving moral turpitude. As a result of his plea and conviction, respondent was sentenced to state prison for three years with credit for 75 days already served.

(B) Respondent's conviction for possession for sale of PCP was for a crime substantially related to the qualifications, functions, or duties of a licensed real estate salesperson.

5. (A) On or about October 17, 1990, before the Superior Court of California, County of Los Angeles, Case No. A475364, respondent was convicted on his plea of guilty of violating one count of Penal Code section 487, subdivision (1), (grand theft of personal property), a felony and crime involving moral turpitude. As result of his plea and conviction, imposition of sentence was suspended and respondent was placed on probation for three years on condition that he serve 60 days in jail.

(B) The facts and circumstances of respondent's conviction were that, on or about August 18, 1987, respondent was involved in the theft of an automobile after an acquaintance had a dispute over the sale of the car with the owner.

(C) Respondent's conviction for grand theft was for a crime substantially related to the qualifications, functions, or duties of a licensed real estate salesperson.

6. (A) On or about July 24, 1991, before the Superior Court of California, County of Los Angeles, in Case No. BA030517, respondent was convicted on his plea of guilty of violating one count of Health and Safety Code section 11379.6 (unlawful

manufacturing of the controlled substance PCP), a felony and crime involving moral turpitude. Following his conviction, respondent was sentenced to state prison for five years. The conviction also constituted a violation of his probation for his grand theft conviction. Respondent served two and one-half years in prison. He was released from prison on parole in 1993.

(B) The facts and circumstances of respondent's conviction were that, on or about December 7, 1990, respondent was involved with others in the illegal manufacturing of PCP at a house belonging to a friend's parents.

(C) Respondent's conviction for the illegal manufacturing of PCP was for a crime substantially related to the qualifications, functions, or duties of a licensed real estate salesperson.

7. (A) On or about January 1~~7~~², 1998, before United States District Court, Central District of California, in Case No. CR 95-871-WMB, respondent was convicted on his plea of guilty of violating United States Code, title 21, section 841, subdivision (a)(1) (manufacturing of PCP), a felony and crime involving moral turpitude.

(B) As result of his plea, respondent was adjudged convicted and sentenced to federal prison for 96 months. Upon his release from imprisonment, the court ordered that he be placed on supervised release for five years on condition, in part, that he obey standard conditions of probation and submit to narcotic testing at the direction and supervision of the probation officer. The court also recommended that respondent be placed in drug and alcohol counseling.

(C) The facts and circumstances of respondent's federal drug conviction were that, on September 16, 1994, respondent and others manufactured in Riverside County a least one kilogram of a mixture or substance containing a detectable amount of PCP.

(D) Respondent's conviction for manufacturing PCP was for a crime substantially related to the qualifications, functions, or duties of a licensed real estate salesperson. Honesty and integrity are qualities expected of a real estate licensee.

8. Based on Findings 4 – 7 above, respondent has been convicted on four occasions of crimes involving moral turpitude and substantially related to the qualifications, functions, and duties of a licensed real estate salesperson.

9. (A) On or about May 19, 1986, before the Superior Court of California, County of Los Angeles, in Case No. 31362905, respondent was convicted of battery upon his ex-girl friend in violation of Penal Code section 242, a misdemeanor and crime not necessarily involving moral turpitude.

(B) It was not established that respondent's 1986 conviction for battery was a factor in aggravation as alleged in the amended Statement of Issues. This conviction occurred over 20 years ago and predates respondent's subsequent convictions for grand theft in 1990 and manufacturing of PCP in 1991 and 1998.

10. Respondent admits his record of convictions. He states that he still does not understand the basis for his grand theft conviction because he was only a passenger in the subject vehicle.

11. Respondent's last conviction was eight years ago in 1998 when he was convicted in federal court of manufacturing of PCP and sentenced to federal prison for 96 months. After about four years of imprisonment, respondent was released in 2002 and placed on supervised release under the direction of a probation officer. He is still on supervised release and will remain so until in or about July 2007.

12. While he admits his convictions, respondent was not candid or forthcoming about the facts and circumstances of his crimes. Regarding his conviction for grand theft of an automobile, he testified that he was only a passenger in the subject car and someone else was charged with taking the vehicle. For his state conviction for manufacturing PCP, he testified only that a friend had chemicals in a house. For his federal conviction for manufacturing PCP, respondent testified that acquaintances were stranded in the desert where they apparently made PCP and he gave them a ride home to Los Angeles. Respondent indicated that he is not defined as a person by just his past convictions.

13. While the federal court recommended and respondent participated in drug counseling while imprisoned for his last conviction, respondent indicates that he did not use drugs. It was not established that respondent is participating in any substance abuse counseling at the present time.

14. Respondent is now 45 years old. He has been married for four years and he and his wife have four children who range in age from 3 to 18 years. Respondent has been working as a loan processor for the past four years. He is currently employed by First Global Diversified Financial Services company in Beverly Hills. His wife works as an underwriter for a mortgage loan company. Respondent did not submit any letters of reference.

15. When he was younger, respondent served three years in the U.S. Army. Subsequently, in or about 1980, respondent completed two years of community college through a correspondence program. Recently, he has taken classes in loan processing and origination in connection with his employment as a loan processor. He attends church and PTA meetings at his children's schools.

* * * * *

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

CONCLUSIONS OF LAW

1. Grounds exist to deny respondent's application for a real estate salesperson's license under Business and Professions Code section 10177, subdivision (b), and section 480, subdivision (a)(1), for convictions of felonies and crimes involving moral turpitude and substantially related to the qualifications, functions, and duties of a real estate license, based on Findings nos. 4 – 8 above.

2. Rehabilitation—Based on Findings 3 – 15 above, it was not established that respondent is rehabilitated from his history of convictions under the criteria set forth in California Code of Regulations, title 10, section 2911. His last conviction occurred eight years ago in 1998 but he then spent four years in prison and was released from prison on supervised release in 2002. He remains on supervised release and will not be discharged from supervision until later this year. None of his convictions has been expunged. Due to his four felony convictions from 1983 until 1998, three of which involved the possession or manufacturing for sale of PCP, and the fact that he is still on supervised release, a longer period of time since his last conviction is necessary to demonstrate respondent's rehabilitation. Still, he has made an excellent start in his rehabilitation process by becoming gainfully employed as a loan processor and having a seemingly stable marriage and family life. Due to his criminal history, it behooves respondent to show significant involvement in community or church activities, new and different social and business relationships, and a change in attitude as may be attested to by family and friends. Evidence of his non-use of drugs and employment status would be helpful to his cause as well.

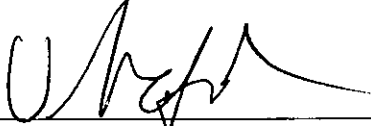
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Wherefore, the following Order is hereby made:

ORDER

The application of respondent Mark Anthony Augustus for issuance of a real estate salesperson's license shall be denied, based on Conclusions of Laws Nos. 1 - 2 above, jointly and for all. The Statement of Issues, Case No. H-33258 LA, is sustained.

Dated: Feb. 4, 2007



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

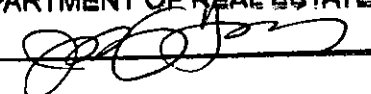
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DEPARTMENT OF REAL ESTATE
BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	NO. H- 33258 LA
)	
MARK ANTHONY AUGUSTUS,)	
)	<u>STATEMENT OF ISSUES</u>
)	
Respondent.)	
)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Statement of Issues against MARK ANTHONY AUGUSTUS aka Mark A. Augustus, aka Mark A. Tobert, aka Mark Augustus Tolbert, aka Mark Augustua Tolbert, aka Marcus Anthony Allen Tolbert, ("Respondent"), is informed and alleges as follows:

1.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues against Respondent in her official capacity.

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2.

1 Respondent made application to the Department of Real
2 Estate of the State of California for a real estate salesperson
3 license on or about April 27, 2005, with the knowledge and
4 understanding that any license issued as a result of said
5 application would be subject to the conditions of Business and
6 Professions Code ("Code") Section 10153.4.
7

8 3.

9 (CRIMINAL CONVICTIONS)

10 On or about December 1, 1983, in the Superior Court of
11 California, County of Los Angeles, in Case No. A626618,
12 Respondent was convicted of violating California Health and
13 Safety Code Section 11378.5 (Possession of PCP for Sale), a
14 felony. The underlying facts of this criminal conviction
15 involve moral turpitude, which bears a substantial relationship
16 under Title 10, Chapter 6, Section 2910, California Code of
17 Regulations, to the qualifications, functions or duties of a
18 real estate licensee.
19

20 4.

21 On or about May 19, 1986, in the Superior Court of
22 California, County of Los Angeles, in Case No. 31362905,
23 Respondent was convicted of violating California Penal Code
24 Section 242 (Battery), a misdemeanor. The underlying facts of
25 this criminal conviction involve moral turpitude, which bears a
26 substantial relationship under Title 10, Chapter 6, Section
27 2910, California Code of Regulations, to the qualifications,

1 functions or duties of a real estate licensee.

2 5.

3 On or about October 17, 1990, in the Superior Court of
4 California, County of Los Angeles, in Case No. A475364,
5 Respondent was convicted of violating California Penal Code
6 Section 487(1) (Grand Theft), a felony. The underlying facts of
7 this criminal conviction involve moral turpitude, which bears a
8 substantial relationship under Title 10, Chapter 6, Section
9 2910, California Code of Regulations, to the qualifications,
10 functions or duties of a real estate licensee.

11 6.

12 On or about July 24, 1991, in the Superior Court of
13 California, County of Los Angeles, in Case No. BA030517,
14 Respondent was convicted of violating California Health & Safety
15 Code Section 11379.6 (Manufacture of PCP), a felony. The
16 underlying facts of this criminal conviction involve moral
17 turpitude, which bears a substantial relationship under Title
18 10, Chapter 6, Section 2910, California Code of Regulations, to
19 the qualifications, functions or duties of a real estate
20 licensee.

21 7.

22 On or about January 12, 1998, in the United States
23 District Court for the Central District of California, in Case
24 No. 95-871, Respondent was convicted of violating 21 U.S.C.
25 Section 841(a) (1) (Manufacture of PCP), a felony. The underlying
26 facts of this criminal conviction involve moral turpitude, which
27

1 bears a substantial relationship under Title 10, Chapter 6,
2 Section 2910, California Code of Regulations, to the
3 qualifications, functions or duties of a real estate licensee.

4 8.

5 The crimes, of which Respondent was convicted as
6 alleged herein above in Paragraphs 3, 4, 5, 6 and 7 constitute
7 cause for denial of Respondent's application for a real estate
8 license under Code Sections 475(a)(2); 480(a)(1) and/or
9 10177(b).

10 The Statement of Issues is brought under the
11 provisions of Section 10100, Division 4 of the Business and
12 Professions Code of the State of California and Sections 11500
13 and 11529 of the Government Code.

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2 WHEREFORE, Complainant prays that the above entitled
3 matter be set for hearing and, upon proof of the charges
4 contained herein, that the Commissioner refuse to authorize the
5 issuance of, and deny the issuance of, a real estate salesperson
6 license to Respondent, MARK ANTHONY AUGUSTUS, and for such other
7 and further relief as may be proper under other provisions of
8 law.

9 Dated at Los Angeles, California

10 this 15th day of September, 2006.

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14 Maria Suarez
15 Deputy Real Estate Commissioner
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24

25 cc: MARK ANTHONY AUGUSTUS
26 Edward L. Goodson
27 Maria Suarez
Sacto.