

1 Department of Real Estate
 2 320 West 4th Street, Suite 350
 3 Los Angeles, CA 90013-1105
 4
 5 Telephone (213) 576-6982

FILED
 JUL 12 2007
 DEPARTMENT OF REAL ESTATE

H. Niederholt

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Application of))	NO. H-33360 LA
12 MICHAEL C. MYERS,)	L-2006120756
13)	
14 Respondent.))	<u>STIPULATION AND WAIVER</u>
15)	<u>AND DECISION AFTER</u>
)	<u>REJECTION</u>

16 It is hereby stipulated by MICHAEL C. MYERS,
 17 (hereinafter "Respondent") and the Complainant, acting by and
 18 through Elliott Mac Lennan, Counsel for the Department of Real
 19 Estate, as follows for the purpose of settling and disposing of
 20 the Statement of Issues filed on October 26, 2006, in this
 21 matter.

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

26 ////
 27 ////

1 Respondent further acknowledge that the Real Estate
2 Commissioner held a hearing on this Statement of Issues on
3 February 6, 2007, before the Office of Administrative Hearings
4 for the purpose of proving the allegations therein. Respondent
5 was present at the hearing. Further, Respondent has had an
6 opportunity to read and review the Proposed Decision of the
7 Administrative Law Judge.

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

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

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1 1. The restricted license issued to Respondent shall
2 not confer any property right in the privileges exercised, and
3 the Real Estate Commissioner may, by appropriate order and prior
4 to a hearing, suspend the right to exercise any privileges
5 granted under this restricted license in the event of:

6 (a) Respondent's conviction (including a plea of
7 nolo contendere) to a crime which is substantially related to
8 Respondent's qualifications, fitness or capacity as a real estate
9 licensee.

10 (b) The receipt of evidence satisfactory to the
11 Commissioner that Respondent has violated provisions of the
12 California Real Estate Law, the Subdivided Lands Law, Regulations
13 of the Real Estate Commissioner, or the conditions attaching to
14 this restricted license.

15 2. Respondent shall not be eligible to apply for the
16 issuance of an unrestricted real estate license nor for the
17 removal of any of the conditions, limitations or restrictions of
18 a restricted license until two (2) years has elapsed from the
19 effective date of this Decision.

20 3. Respondent shall submit with any application for
21 license under an employing broker, or any application for a
22 transfer to a new broker, a statement signed by the prospective
23 employing broker on a form approved by the Department which shall
24 certify:

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27 ///

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

4 (b) That the employing broker will carefully review all
5 transaction documents prepared by the restricted licensee and
6 otherwise exercise close supervision over the licensee's
7 performance of acts for which a license is required.

8 4. Respondent's restricted real estate salesperson
9 license is issued subject to the requirements of Section 10153.4
10 of the Business and Professions Code, to wit: Respondent is
11 required, within (18) months of the issuance of the restricted
12 license, to submit evidence satisfactory to the Commissioner of
13 successful completion, at an accredited institution, of a course
14 in real estate practices and one of the courses listed in Section
15 10153.2, other than real estate principles, advanced legal
16 aspects of real estate, advanced real estate finance, or advanced
17 real estate appraisal. If Respondent fails to timely present the
18 Department satisfactory evidence of successful completion of the
19 two required courses, the restricted license shall be
20 automatically suspended effective eighteen (18) months after the
21 date of its issuance. Said suspension shall not be lifted
22 unless, prior to the expiration of the restricted license,
23 Respondent has submitted the required evidence of course
24 completion and the Commissioner has given written notice to
25 Respondent of the lifting of the suspension.
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I have read the Statement of Issues filed herein, the Proposed Decision of the Administrative Law Judge dated March 5, 2007, 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.

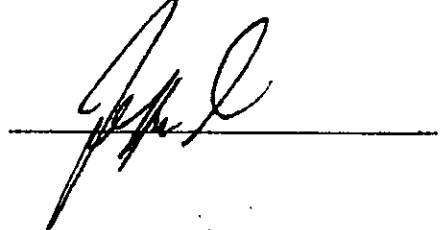
Therefore, IT IS HEREBY ORDERED that the application for real estate salesperson license of Respondent be denied and a restricted real estate salesperson license be issued to Respondent if Respondent has otherwise fulfilled all of the statutory requirements for licensure. The restricted license shall be limited, conditioned and restricted as specified in the foregoing Stipulation and Waiver.

This Order shall become effective on

AUG - 1, 2007.

IT IS SO ORDERED 7-17, 2007.

JEFF DAVI
Real Estate Commissioner



Handwritten notes:
Docket
File

FILED
APR 10 2007
DEPARTMENT OF REAL ESTATE

By K. Medicholt

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	
)	No. H-33360 LA
)	
MICHAEL C. MYERS,) L-2006120756
)	
Respondent.)
)	

NOTICE

TO: MICHAEL L. MYERS, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated March 5, 2007, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated March 5, 2007, 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 February 6, 2007, and any written argument hereafter submitted on behalf of Respondent and Complainant.

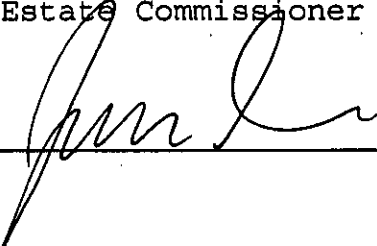
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Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of February 6, 2007, at the Los Angeles office of the Department of Real Estate unless an extension of the time 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: 4-3-07

JEFF DAVI
Real Estate Commissioner



BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

MICHAEL C. MYERS,

Respondent.

Dept. No. H-33360 LA

OAH No. L2006120756

PROPOSED DECISION

This matter was heard on February 6, 2007, in Los Angeles, by Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California.

Michael Myers (Respondent) was present and represented himself.

J. Chris Graves, Deputy Real Estate Commissioner (Complainant), was represented by Elliott MacLennan, Counsel for the Department of Real Estate (Department).

Oral and documentary evidence was received and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant brought the Statement of Issues in her official capacity.
2. On February 17, 2006, Respondent made an application to the Department for a real estate salesperson license.
3. On June 20, 1994, in the Municipal Court of California, County of San Diego, case number CR143491, Respondent was convicted, on his plea, of violating California Health and Safety Code section 11351.5 (possession of cocaine base for sale), a felony. Respondent was approximately 18 years old at the time of his conviction. Respondent was sentenced to four years probation with terms and conditions which included: serve 180 days in jail (with credit for 12 days previously served), stayed, and pay \$750 in fines. Defendant was also ordered to obtain his high school diploma, which he did.
4. On August 9, 1994, Respondent was found to be in violation of his probation due to a positive drug test. He was committed to state prison for 180 days.

5. On January 26, 1996, Respondent was found to be in violation of his probation due to making false statements to the court concerning his association with gang members. He was committed to state prison for 151 days.

6. The underlying events leading to Respondent's conviction were: Respondent was selling crack cocaine to earn money. Respondent testified that he violated his probation by associating with gang members. He spent two years in prison and was then paroled in December 1998. Respondent completed his parole on January 20, 2000.

7. After his parole in 1998, Respondent completely changed his life. He moved from his "rough" neighborhood of East San Diego to Temecula, where he continues to reside. In March 1999, he became a father to twins. Respondent has joint custody of his two children. Respondent is 31 years old and is presently employed, and has been for seven years, as an engineer technician for a medical device manufacturer. In April 2006, Respondent enrolled at the University of Phoenix and is working toward a degree in business management. Respondent was a credible witness on his own behalf. He answered difficult questions regarding his past openly and honestly. Respondent made excellent eye contact with both counsel for the Department and with the ALJ. Respondent expressed sincere remorse for his past criminal conduct. Respondent presented four letters from friends and co-workers which attest to Respondent's good character.

8. Loan Lawa, a licensed real estate broker for four years, is a friend and mentor to Respondent, and testified credibly on his behalf. She has trained Respondent regarding the operation of a mortgage loan business. She is aware of Respondent's criminal past, but she believes that he has completely changed his life since his release from prison. Ms. Lawa is willing to supervise Respondent if he is granted a license.

LEGAL CONCLUSIONS AND DISCUSSION

1. Cause does not exist to deny Respondent's application for a real estate salesperson license pursuant to Business and Professions Code section 480, subdivision (a), based on the holding in *Petropoulos v. Department of Real Estate* (2006) 142 CA4th 554. In *Petropoulos*, supra, the court held that Business and Professions Code section 490 did not provide independent statutory authority for the Department to discipline a licensee based on criminal convictions. This same analysis should apply to Business and Profession Code sections 480 and 475, which are similar to Business and Professions Code section 490, except that they apply to an applicant for licensure, rather than a person who already possesses a license. (Factual Findings 3-6.)

2. Cause exists to deny Respondent's application for a real estate salesperson license pursuant to Business and Professions Code section 10177, subdivision (b), in that his conviction is substantially related to the duties of a real estate salesperson and involves moral turpitude, as discussed below.

Substantial Relationship

California Code of Regulations, title 10, section 2910, defines by regulation instances where acts are deemed to be substantially related to the qualifications, functions, or duties of a licensee. Under subdivision (a)(8), doing an unlawful act with the intent of conferring a financial benefit upon the perpetrator is substantially related to the qualifications, functions, or duties of a licensee. Respondent's conviction is substantially related to the qualifications, functions, or duties of a real estate salesperson under this subdivision because Respondent sold illegal drugs to make money. (Factual Findings 3-6.)

Moral Turpitude

a. A criminal conviction can form the basis for denial of an application for a real estate salesperson's license if the crime is a felony or a crime involving moral turpitude. (Bus. & Prof. Code, § 10177, subd. (b).)

b. Although not amenable to a precise definition, "moral turpitude" connotes a readiness to do evil, an act of baseness, vileness or "depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*People v. Forster* (1994) 29 Cal.App.4th 1746, 1757, quoting from *People v. Mansfield* (1988) 200 Cal.App.3d 82, 87.)

c. Conviction of some crimes, such as murder and fraud, establishes moral turpitude per se. Other crimes do not necessarily establish moral turpitude per se; however, the particular circumstances of the underlying offense must be reviewed to determine if the conviction involved moral turpitude. (*In re Hurwitz* (1976) 17 Cal. 3d 562.) In this case, Respondent's conviction is for a felony crime which also involved moral turpitude. (*People v. Castro* (1985) 38 Cal.3d 301.) (Factual Findings 3-6.)

3. Criteria have been developed by the Department, pursuant to Business and Professions Code section 482, subdivision (a), for the purpose of evaluating the rehabilitation of an applicant for licensure in considering whether or not to deny the issuance of a license on account of a crime committed by the applicant. These criteria, found at California Code of Regulations, title 10, section 2911, are summarized as follows:

- Subsection (a) passage of at least two years since the conviction;
- Subsection (b) restitution;
- Subsection (c) expungement of the conviction;
- Subsection (d) expungement of the requirement to register as an offender;
- Subsection (e) completion of the criminal probation;
- Subsection (f) abstinence from drugs or alcohol that contributed to the crime;
- Subsection (g) payment of any criminal fines or penalties;
- Subsection (h) stability of family life;
- Subsection (i) enrollment in or completion of educational or training courses;
- Subsection (j) discharge of debts to others;

Subsection (k) correction of business practices causing injury;
Subsection (l) significant involvement in community, church or private programs for social betterment;

Subsection (m) new and different social and business relationships; and

Subsection (n) change in attitude from the time of conviction to the present, evidenced by testimony of the applicant and others, including family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns.

4. Respondent has satisfied a sufficient number of these criteria to establish his complete rehabilitation. For example, more than two years have passed (over eight years have passed since Respondent was paroled) since Respondent suffered his conviction, Respondent has completed his criminal parole, he is a responsible father, he has a steady job, members of the community believe he is of good character, and he is remorseful for his past criminal conduct. Ms. Lawa, a licensed real estate broker, believes he is trustworthy and is willing to place her own license at risk by agreeing to supervise Respondent. Respondent was young when he committed his crime and he has completely changed his life. No evidence was presented that Respondent presently poses a risk to the public.

ORDER

Respondent Michael C. Myer's application for a real estate salesperson license is granted.

DATED: March 5, 2007.



CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings

Noted for
approval

Arado Glas

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2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)
6 -or- (213) 576-6982 (office)

FILED
OCT 26 2006
DEPARTMENT OF REAL ESTATE

By *K. Winderholz*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Application of)	No. H- 33360 LA
12	MICHAEL C. MYERS,)	<u>STATEMENT OF ISSUES</u>
13	Respondent.)	
14)	

15 The Complainant, J. Chris Graves, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against MICHAEL C. MYERS (respondent) is informed and alleges in
18 her official capacity as follows:

19 1.

20 Respondent made application to the Department of Real
21 Estate of the State of California for a real estate salesperson
22 license on or about February 17, 2006, with the knowledge and
23 understanding that any license issued as a result of said
24 application would be subject to Section 10153.4(c) under the Real
25 Estate Law (Part 1 of Division 4 of the California Business and
26 Professions Code) (Code).

2.

1 On June 20, 1994, in the Municipal Court of San Diego,
2 San Diego Judicial District, County of San Diego, State of
3 California, respondent was convicted by plea to Health and Safety
4 Code Section 11351.5 (possession of cocaine base for sale), a
5 felony. This crime, by its circumstances, involves moral
6 turpitude and is substantially related under Section 2910(a)(8),
7 Chapter 6, Title 10 of the California Code of Regulations, to the
8 qualifications, functions or duties of a real estate licensee.
9

10 3.

11 This crime constitutes cause for denial of respondent's
12 application for a real estate license under Code Section 480(a)
13 and/or 10177(b).
14

15 IN AGGRAVATION

16 4.

17 On January 26, 1996, respondent violated probation for
18 the above crime.

19 These proceedings are brought under the provisions of
20 Section 10100, Division 4 of the California Business and
21 Professions Code and Sections 11500 through 11529 of the
22 California Government Code.

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