

FILED
OCT - 5 2007
DEPARTMENT OF REAL ESTATE

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By C. [Signature]

* * *

In the Matter of the Application of)

TIMOTHY JOHN HARDIN,

Respondent.

) No. H-33962 LA

) L-2007060306

DECISION

The Proposed Decision dated August 31, 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.

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 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 appended hereto.

This Decision shall become effective at 12 o'clock noon
on October 25, 2007.

IT IS SO ORDERED

10-4-07
JEFF DAVI
Real Estate Commissioner

[Signature]

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Application of:

TIMOTHY JOHN HARDIN,

Respondent.

No. H-33962 LA

OAH No. L2007060306

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on August 9, 2007, in Los Angeles, California. Complainant was represented by Martha Rosett, Staff Counsel for the Department of Real Estate. Timothy John Hardin (Respondent) appeared and represented himself.

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on August 9, 2007.

FACTUAL FINDINGS

1. On April 24, 2007, Complainant Joseph Aiu filed the Statement of Issues while acting in his official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate (Department), State of California.
2. On August 21, 2006, Respondent submitted to the Department an application for a real estate salesperson license. Any license issued as a result of that application would be subject to the conditions of Business and Professions Code section 10153.4. The Department denied the application, and Respondent requested a hearing.
3. On November 22, 2002, in the Superior Court for the State of California, County of Riverside, Case Number RIF105431, Respondent was convicted of one count of violating Penal Code section 550, subdivision (a)(4) (knowingly presenting a false claim for payment on a loss for theft of a motor vehicle), a felony and a crime involving moral turpitude which is substantially related to the qualifications, functions and duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(4) and (a)(8).¹

¹ The crime of knowingly presenting a false claim for theft reimbursement is a crime of moral turpitude because it evidences a "general readiness to do evil." (*People v. Castro* (1985) 38 Cal.3d 301, 315.)

4. Respondent was placed on three years formal probation and ordered to serve 120 days in county jail and to pay \$310 in fines and fees. Respondent paid all court-ordered fines and fees and completed his probation.

5. On December 21, 2005, pursuant to Penal Code section 17, subdivision (b), the Court ordered Respondent's felony conviction reduced to a misdemeanor. Additionally, Respondent's case was dismissed pursuant to Penal Code section 1203.4. Following the reduction of Respondent's felony to a misdemeanor pursuant to Penal Code section 17, subdivision (b), his crime became a misdemeanor "for all purposes," including license discipline. (*Gebremicael v. California Commission on Teacher Credentialing* (2004) 118 Cal.App.4th 1477.)

6. The facts and circumstances surrounding Respondent's conviction are as follows:

(a). In June 2002, Respondent decided to report his leased truck stolen because he had exceeded the allowed mileage on the lease. After leaving his truck on a friend's property, on June 10, 2002, Respondent reported to the Riverside Police Department (Riverside PD) that his truck had been stolen. On June 11, 2002, he also filed a claim with State Farm Insurance for the loss of his vehicle (valued at \$15,000) and personal property within his vehicle (valued at \$6,000). Respondent submitted to State Farm a signed and notarized statement claiming that the vehicle's mileage totaled 60,000 miles.

(b). On July 1, 2002, the San Luis Obispo County Sheriff's Department recovered Respondent's truck on his friend's property and discovered that Respondent had reported the truck stolen with Riverside PD. On that date, the truck had 120,000 accumulated miles, not the 60,000 miles Respondent reported to State Farm. Additionally, contrary to Respondent's claim with State Farm, the truck did not contain valuable personal property.

7. At the time of his crime, Respondent was "making bad decisions in his entire life" [his words]. When he was arrested, he spent "13 enlightening hours . . . praying," and made some life-changing decisions. He is sorry he committed the crime, but would not change what happened because his arrest and conviction gave him focus and new commitment to his wife and community. He decided to stop being "selfish" and began working to "make a difference in young people's lives." He now appears at speaking engagements for Riverside Community College, informing young people about the "bad decision" he made and mentoring them to develop "character" and to "become what society expects."

8. Respondent is 40 years old and has been married since before his arrest. He has been employed as a forklift driver for about five months. Prior to his current employment, he worked at a block cement company for four months, but had to discontinue his employment when he injured his back while exercising at the gym. At the time of his

arrest, he was employed by Staples as a senior transportation analyst, in charge of Department of Transportation safety and driver training compliance.

9. Respondent is actively involved in his church and its youth ministry. He also owns and operates Spirit of Life Adventures, Inc., a company that helps youth to "get off the street" and to "develop character traits in their lives." Real estate would provide an avenue to finance his company in case he cannot obtain sponsorship for his corporation.

10. David Scharlin (Scharlin), a real estate salesman and manager of a Prudential real estate office, testified credibly on Respondent's behalf and recommended Respondent's licensure. Respondent works for Scharlin as a trainee, performing "menial" jobs. According to Scharlin, Prudential would be willing to sponsor Respondent if he obtains a restricted real estate salesperson license.

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's application for a real estate salesperson license, pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b), and California Code of Regulations, title 10, section 2910, subdivisions (a)(4) and (a)(8), for his conviction of a crime involving moral turpitude which is substantially related to the duties, qualifications, and functions of a real estate licensee, as set forth in Factual Findings 3, 4, 5 and 6.

2. Respondent has complied with some of the Department's applicable rehabilitation criteria set forth in California Code of Regulations, title 10, section 2911, as follows: more than two years have lapsed since his conviction (subd. (a)); he has had his conviction expunged (subd. (c).); he has successfully completed his criminal probation (subd. (e)); he has paid all court-ordered fines in his criminal case (subd. (g)); he has a stable family life (subd. (h)); he is involved in his community, church and his privately-funded corporation and works to provide social benefits and to ameliorate social problems (subd. (l)); and Respondent has had a change in attitude from that which existed at the time of his crime (subd. (n).).

3. Respondent's crime appears to be a result of very poor judgment which Respondent later seriously contemplated and chose to reject in favor of lawful conduct and commitment to his family and community. Over five years have lapsed since his crime, and Respondent has continued his law-abiding behavior even after release from the mandates of the criminal justice system in December 2005. Notwithstanding Legal Conclusion Number 1, above, Respondent has demonstrated sufficient rehabilitation following his convictions, such that the public should be adequately protected by the issuance of a restricted real estate salesperson's license to Respondent.

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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 authority of Section 10156.6 of that 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, 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

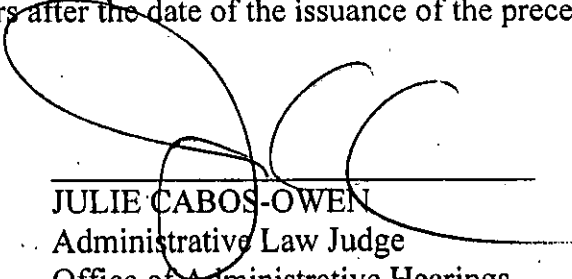
(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

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 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 18 months after the date of its issuance. The 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.

DATED: August 31, 2007



JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

1 MARTHA J. ROSETT, Counsel (SBN 142072)
2 Department of Real Estate
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4 Los Angeles, CA 90013

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6 (213) 620-6430

FILED

MAY 09 2007

DEPARTMENT OF REAL ESTATE
BY: *James B. Allen*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Application of) No. H-33962 LA
12 TIMOTHY JOHN HARDIN,)
13 Respondent.)
14)

STATEMENT OF ISSUES

15 The Complainant, Joseph Aiu, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against TIMOTHY JOHN HARDIN (hereinafter "Respondent"), alleges
18 in his official capacity as follows:

19 1.

20 On or about August 21, 2006, Respondent made
21 application to the Department of Real Estate of the State of
22 California for a real estate salesperson license with the
23 knowledge and understanding that any license issued as a result
24 of said application would be subject to the conditions of Section
25 10153.4 of the Business and Professions Code ("Code").

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2.

On November 22, 2002, in the Superior Court of California, County of Riverside, in Case No. RIF105431, Respondent was convicted of one count of violating Penal Code Section 550(a)(4) (knowingly presenting a false claim for the payments of a loss for theft of a motor vehicle), a felony and crime of moral turpitude which is substantially related to the qualifications, functions and duties of a real estate licensee. Respondent was sentenced to three years formal probation, to include 120 days in jail and payment of fees and fines. On or about December 21, 2005, Respondent's conviction was reduced to a misdemeanor, pursuant to Penal Code Section 17(b), and was set aside and dismissed, pursuant to Penal Code Section 1203.4.

3.

Respondent's conviction, as set forth in Paragraph 2, above, constitutes grounds to deny his application for a real estate license pursuant to Business and Professions Code Sections 480(a) and 10177(b).

These proceedings are 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.

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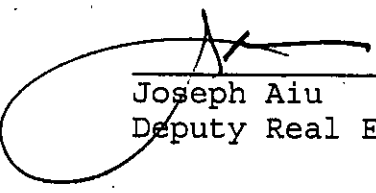
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1 WHEREFORE, the Complainant prays that the above-
2 entitled matter be set for hearing and, upon proof of the charges
3 contained herein, that the Commissioner refuse to authorize the
4 issuance of, and deny the issuance of, a real estate salesperson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

7 Dated at San Diego, California

8 this 24 day of April, 2007.

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12 Joseph Aiu
13 Deputy Real Estate Commissioner
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21 cc: Timothy John Hardin
22 Bruce Mulhearn/Mulhearn Realtors
23 Joseph Aiu
24 Sacto.
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