

7299

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

FILED

JUN 26 2009

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. H-34237 LA
)	L-2007100773
CHARLIE FRANK KENNEDY,)
))
Respondent.)
))

ORDER MODIFYING DISCIPLINARY ACTION

PURSUANT TO STIPULATED SETTLEMENT

On October 30, 2008, a Decision After Rejection was rendered herein revoking Respondent's real estate salesperson license.

Subsequent to the rendering of said Decision, Respondent petitioned the Superior Court of the State of California in and for the County of Los Angeles ("Court"), in Case No. BS118270, for a writ of administrative mandamus challenging the penalty imposed by the Decision After Rejection.

1 In consideration for the dismissal with prejudice and
2 in complete settlement of Respondent's said petition for a writ
3 of administrative mandamus, with each party to bear its own
4 costs, the following order is made:

5
6 NOW, THEREFORE, IT IS ORDERED that all licenses and
7 licensing rights of Respondent CHARLIE FRANK KENNEDY, under the
8 Real Estate Law are revoked; provided, however, Respondent
9 shall be entitled to apply for and be issued a restricted real
10 estate salesperson license pursuant to Section 10156.5 of the
11 Business and Professions Code if Respondent makes application
12 therefore, and pays the Department of Real Estate the
13 appropriate fee for said license within 180 days from the
14 effective date of the Order herein. The restricted license
15 issued to Respondent shall be subject to all the provisions of
16 Section 10156.7 of the Business and Professions Code and to the
17 following limitations, conditions, and restrictions imposed
18 under authority of Section 10156.6 of said Code.

19
20
21 1. The restricted license issued to Respondent
22 CHARLIE FRANK KENNEDY may be suspended prior to hearing by
23 Order of the Real Estate Commissioner in the event of
24 Respondent's conviction (including conviction on a plea of
25 nolo contendere) of a crime which is substantially related to
26 Respondent's fitness or capacity as a real estate licensee.

27 2. The restricted license issued to Respondent

1 CHARLIE FRANK KENNEDY may be suspended prior to hearing by
2 Order of the Real Estate Commissioner on evidence satisfactory
3 to the Real Estate Commissioner that Respondent has violated
4 provisions of the California Real Estate Law, the Subdivided
5 Lands Law, Regulations of the Real Estate Commissioner or
6 conditions attaching to the restricted license.
7

8 3. Respondent shall not be eligible to apply for the
9 issuance of unrestricted real estate license nor for the
10 removal of any of the conditions, limitations or restrictions
11 of a restricted license until three (3) years have elapsed from
12 the date of issuance of the restricted license.
13

14 4. Respondent shall submit with any application for
15 license under an employing broker, or any application for
16 transfer to a new employing broker, a statement signed by the
17 prospective employing real estate broker, on a form approved by
18 the Department, which shall certify:

19 (a) That the employing broker has read the Decision
20 of the Commissioner which granted the right to a restricted
21 license; and

22 (b) That the employing broker will exercise close
23 supervision over the performance by the restricted licensee
24 relating to activities for which a real estate salesperson
25 license is required.

26 5. Respondent shall, within nine (9) months from the
27 effective date of this Decision, present evidence satisfactory
to the Commissioner that Respondent has, since the most recent

1 issuance of an original or renewal real estate salesperson
2 license, taken and successfully completed the continuing
3 education requirements of Article 2.5 of Chapter 3 of the Real
4 Estate Law for renewal of a real estate salesperson license. If
5 Respondent fails to satisfy this condition, the Commissioner may
6 order the suspension of the restricted license until Respondent
7 presents such evidence. The Commissioner shall afford
8 Respondent the opportunity for a hearing pursuant to the APA to
9 present such evidence.

10 The foregoing is hereby adopted as my Decision in
11 this matter and shall become effective at 12 o'clock noon on
12 July 16, 2009.

13
14 IT IS SO ORDERED

15 JEFF DAVI
16 Real Estate Commissioner
17
18
19
20
21
22
23
24
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Sack

FILED

DEC 19 2008

DEPARTMENT OF REAL ESTATE
BY: *Alfredy*

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
CHARLIE FRANK KENNEDY,
Respondent.

No. H-34237 LA
OAH No. L-2007100773

ORDER DENYING RECONSIDERATION

On October 30, 2008, a Decision After Rejection was rendered in the above-entitled matter herein which revoked the real estate salesperson license and license rights of Respondent CHARLIE FRANK KENNEDY. Said Decision was to become effective at 12 o'clock noon on November 19, 2008.

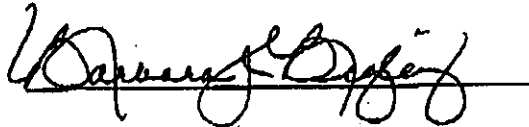
On November 5, 2008, Respondent petitioned for reconsideration of the Decision After Rejection of October 30, 2008. An order staying the effective date was filed on November 7, 2008, staying the effective date until 12 o'clock noon on December 19, 2008. Respondent submitted argument in support of his petition for reconsideration. Written argument has been submitted on behalf of Complainant.

///

1 I have given careful consideration to the record in this case including the written
2 argument offered by Respondent and Complainant. I find no good cause to reconsider
3 the Decision of October 30, 2008, and reconsideration is hereby denied.

4 IT IS SO ORDERED 12-16-08

5 JEFF DAVI
6 Real Estate Commissioner

7 
8

9
10 BY: Barbara J. Bigby
11 Chief Deputy Commissioner
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

NOV 18 2008

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)
CHARLIE FRANK KENNEDY,)
Respondent.)

NO. H-34237 LA

L-2007100773

ORDER NUNC PRO TUNC MODIFYING DECISION AFTER REJECTION

It having been called to the attention of the Real Estate Commissioner that there is an error in the Decision After Rejection dated October 30, 2008, effective November 19, 2008, and good cause appearing therefor, the Decision After Rejection is amended as follows:

Decision After Rejection, page 12, paragraph 16, line 26, through page 13, line 2, the sentence reading "The behavior that led to his last conviction, when coupled with his prior conviction record, does nothing 'to vindicate public confidence'

///

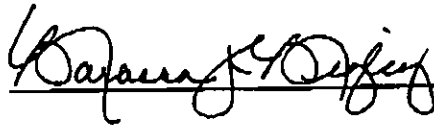
///

///

1 in his continued licensure by the Department." is deleted in its
2 entirety.

3 IT IS SO ORDERED 11-17-08.

4
5 JEFF DAVI
Real Estate Commissioner

6
7 

8
9 BY: Barbara J. Bigby
Chief Deputy Commissioner

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

7/20/08

FILED

NOV - 7 2008

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	NO. H-34237 LA
CHARLIE FRANK KENNEDY,)	L-2007100773
Respondent.)	

ORDER STAYING EFFECTIVE DATE

On October 30, 2008, a Decision was rendered in the above-entitled matter to become effective November 19, 2008.

IT IS HEREBY ORDERED that the effective date of the Decision of October 30, 2008, is stayed for a period of thirty (30) days to allow Respondent CHARLIE FRANK KENNEDY to file a petition for reconsideration.

The Decision of October 30, 2008, shall become effective at 12 o'clock noon on December 19, 2008.

DATED: November 6, 2008.

JEFF DAVI
Real Estate Commissioner

By: 

DOLORES WEEKS
Regional Manager

FILED

OCT 30 2008

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

CHARLIE FRANK KENNEDY,

Respondent..

DRE No. H-34237 LA

OAH No. L2007100773

DECISION AFTER REJECTION

This matter came on for hearing before Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, in Los Angeles, California, on March 6, 2008 and April 21, 2008.

Cheryl Keily, Counsel, represented the Complainant. The Respondent, Charlie Frank Kennedy, appeared in person and was represented by Frank Buda, Esq..

Evidence was received, the record was closed, and the matter was submitted.

On May 21, 2008, the Administrative Law Judge rendered a Proposed Decision (hereinafter "the Proposed Decision") which the Real Estate Commissioner declined to adopt as his Decision herein. Pursuant to section 11517 of the Government Code of the State of California, Respondent was served with notice of the Real Estate Commissioner's determination not to adopt the Proposed Decision along with a copy of the Proposed Decision. Respondent was notified that the case would be decided by the Real Estate Commissioner upon

1 the record, the transcript of proceedings held on March 6, 2008 and April 21, 2008, and upon
2 written argument offered by Respondent and Complainant.

3 Written argument was timely submitted by Respondent on August 20, 2008. Written
4 argument has been submitted on behalf of Complainant.

5 I have given careful consideration to the record in this case, including the transcript of
6 proceedings of March 6, 2008 and April 21, 2008 and written argument offered by Respondent
7 and Complainant.

8 The following shall constitute the Decision of the Real Estate Commissioner in these
9 proceedings.

10 FINDINGS OF FACT

11 1. At the start of the hearing on March 6, 2008. Complainant amended the
12 Accusation on page 2, paragraph 3, line 9, to read: "Conduct: Lewd Act) and Penal Code
13 section 647(b) (Disorderly Conduct: Solicitation of Prostitution), both misdemeanors. . . ."
14 In addition, the parties stipulated that Complainant must demonstrate "moral turpitude" in
15 order to establish cause for discipline against Respondent's license pursuant to Business and
16 Professions Code section 10177, subdivision (b). Effective January 1, 2008, Business and
17 Professions Code section 10177, subdivision (b), was amended to replace the phrase "a
18 crime of moral turpitude" with "a crime substantially related to the qualifications, functions
19 or duties of a real estate licensee." However, the parties agreed to apply the version of
20 section 10177, subdivision (b), that was in effect immediately prior to this amendment.

21 2. Respondent is licensed by the Department as a real estate salesperson. He has
22 been licensed by the Department for 10 years.

23 3. (A) On November 16, 2006, in the Superior Court of California, County of
24 Orange, case no. 06HM05318, Respondent was convicted on his plea of guilty of violating
25 Penal code section 647, subdivisions (a) (disorderly conduct-lewd act), and (b) (disorderly
26 conduct-solicitation of prostitution), both misdemeanor offenses.

27 ///

1 (B) Imposition of sentence was suspended. Respondent was placed on
2 informal probation for three years under terms and conditions including, but not limited to,
3 that he pay various fines, fees, and restitution; he perform 30 days of Cal Trans community
4 service; he serve 30 days in jail, which would be stayed pending completion of the Cal Trans
5 community service; and he attend and complete 20 Alcoholics Anonymous meetings.

6 4. The facts and circumstances underlying Respondent's conviction occurred on
7 May 21, 2006, at approximately 12:15 a.m., in Newport Beach, California. Respondent,
8 while driving in his pick-up truck, stopped his vehicle and contacted T.L., a 22 year old
9 female who was riding a bicycle. Respondent's victim is referred to by her initials, T.L., to
10 protect her privacy. Respondent asked her a series of lewd questions regarding his penis, he
11 displayed a rubber vagina that was in his vehicle, and he placed three \$20 bills on the door
12 frame and talked to T.L. about getting his penis hard. Respondent was wearing a T-shirt and
13 shorts. Respondent's shorts were pulled down to his knees, and his penis was exposed to
14 T.L. Respondent placed the rubber vagina on his penis in front of T.L.

15 5. Respondent does not deny his conduct with T.L. Respondent admits he was at
16 fault for the incident with T.L., and that she was an innocent victim. Respondent explained
17 that, earlier in the evening, he was at a restaurant at a friend's birthday party, where he had
18 consumed five or six alcoholic beverages. Respondent admitted he was "intoxicated to the
19 point of stupidity" by the time he left the restaurant. Respondent was also under stress from
20 his business and his daughter's behavioral issues. Respondent claims the rubber vagina was
21 left in his vehicle by a couple he met at the restaurant and had driven to the beach.
22 Respondent explained that he initially denied his conduct to the police because he was
23 scared about his wife and family finding out what he had done. He says he regrets that he
24 lied to the police.

25 6. Respondent says he is embarrassed, ashamed of, and remorseful for his
26 conduct. Respondent believes what he did to T.L. was extreme and wrong, and inexcusable.
27 Respondent testified he would not want his own daughter subjected to a similar incident, and

1 he would be ashamed to have his children find out about his criminal conduct. Respondent's
2 testimony regarding his crime was sincere and forthright, and therefore credible.

3 7. Respondent's victim, T.L., executed a written declaration dated August 18,
4 2006, which was admitted as direct evidence pursuant to Government Code section 11514. In
5 the declaration, T.L. stated that she was not in fear of Respondent during her interaction with
6 him. She also stated: "I initially believed (Respondent) was playing a joke on me, but then I
7 was in shock over his odd behavior."

8 8. Respondent is 41 years old. Respondent and his wife have been married for
9 almost 20 years, and they have two children (ages 14 and 15 years old).

10 9. Respondent complied with the terms of his criminal probation. He performed
11 30 days of Cal Trans community service, completed 20 Alcoholics Anonymous meetings,
12 and paid the court-ordered fines and fees. Respondent is scheduled to remain on probation
13 until November 16, 2009.

14 10. Respondent says he has not consumed an excessive amount of alcohol since
15 the May 21, 2006 incident that led to his conviction. Respondent may drink alcohol when he
16 goes out to dinner with his wife or occasionally have drinks with a client. However, he and
17 his wife do not keep alcohol in their home. Respondent does not currently attend Alcoholics
18 Anonymous meetings.

19 11. Respondent is actively involved in his children's sports and school activities.
20 Respondent and his family attend Saddleback Community Church. Respondent and his wife
21 completed a five-week marriage counseling course through their church. They also
22 completed marriage counseling through their medical provider, Kaiser Permanente.

23 12. Respondent's wife, Tina Kennedy (T.K.), testified at the administrative
24 hearing. T.K. has known Respondent for 22 years. She had never known Respondent to
25 abuse alcohol or engage in lewd conduct prior to his conviction. T.K. testified that, in 2006,
26 she and Respondent were struggling with their marriage and financial matters. They were
27 also dealing with their daughter's behavioral and learning difficulties. T.K. believes that

1 Respondent is extremely embarrassed by his criminal conduct and will not let it happen
2 again. She believes Respondent realizes how his misconduct can affect their family life and
3 his work. T.K.'s testimony was candid and sincere.

4 13. (A) Sharon O'Hara is licensed in California as a Marriage and Family
5 Therapist. Since 1999, she has had a private practice specializing in sexual addiction and
6 offending behaviors. From 1992 to 1999, she was the Program Director of the Sexual
7 Disorders Unit at Del Amo Hospital in Torrance, California. At the administrative hearing,
8 O'Hara testified regarding her opinion and assessment of Respondent.

9 (B) O'Hara met with Respondent for psychological assessment purposes on
10 September 6, 2007, December 21, 2007, and February 14, 2008. O'Hara also reviewed
11 documents regarding Respondent's crime, including the police report, court records, and
12 letters of recommendation. Based on her education, experience, and assessment of
13 Respondent, O'Hara opined that Respondent is "highly unlikely" to repeat his criminal
14 conduct, which she believes was an isolated incident. O'Hara found that Respondent does
15 not exhibit a "sexually compulsive pattern of behavior that might lead to a relapse." She
16 believes the main contributing factor for Respondent's conduct was his excessive
17 consumption of alcohol. Respondent admitted to drinking excessively on the night of the
18 incident, and is cognizant that he engaged in "stupid drunken behavior." O'Hara found that
19 Respondent showed empathy for his victim and remorse for his conduct. O'Hara's opinion is
20 that Respondent has experienced serious negative consequences to his legal, financial, and
21 personal affairs, and he has learned from those negative consequences and is "very
22 motivated" not to repeat any similar behavioral mistakes in the future. By her demeanor,
23 education, and experience, O'Hara's testimony was credible.

24 14. William Hubert Allen, III (Allen), is a licensed real estate broker who has
25 known Respondent since 1990. Allen is Respondent's broker and business partner in
26 Healstone Investment Real Estate. In a letter dated September 29, 2007, Allen wrote, in
27 part: "On the professional side he [Respondent] is a credit to our industry and I support

1 him 100%. You can be assured that if he is allowed to keep his license I will closely
2 supervise all of his licensed activity." Allen also testified at the administrative hearing.
3 Allen stated that he and Respondent "are in business together," and he has "high regard"
4 for Respondent's honesty. Allen is aware of Respondent's conviction. Allen stated
5 unequivocally that he would not agree to be Respondent's supervising broker if he thought
6 Respondent posed a threat to the public or if he [Allen] was unable to adequately supervise
7 Respondent. Allen believes he owes it to his clients to be honest and sincere with them,
8 and he will not do anything to jeopardize his livelihood. Allen's testimony was sincere and
9 forthright.

10 15. Respondent is currently employed by Healstone Investment Real Estate, a
11 business he started in approximately 2004 with Allen. Respondent is President of Healstone,
12 and Allen is Chief Executive Officer. Prior to Healstone, Respondent worked for Sperry Van
13 Ness and was involved in commercial real estate transactions. Respondent continues to take
14 real estate courses and seminars, and attends the courses he arranges for his office.
15 Respondent completed a 2-hour course in sexual harassment prevention and awareness
16 training in January 2008. Respondent has previously written articles on real estate related
17 topics, and has spoken as a panelist at real estate seminars.

18 CONCLUSIONS OF LAW

19 1. Under Business and Professions Code § 10177, the degree of discipline is a
20 matter that is within the discretion of the Real Estate Commissioner. While reasonable minds
21 may differ as to the propriety of penalty given, the degree of penalty is squarely within the
22 Commissioner's discretion. (*Golde v. Fox* [1979] 98 CA3d 167, at 189.) Findings of
23 rehabilitation are conclusions of law, not of fact.

24 2. The propriety of a penalty imposed by an administrative agency is a matter vested
25 in the discretion of the agency and its decision may not be disturbed unless there has been a
26 manifest abuse of discretion. (*Nightengale v. State Personnel Board* [1972] 3 C.3d 507; *Cadilla*
27 *v. Board of Medical* [1972] 26 CA3d, 961, 966.) The California Court of Appeal has held that

1 rehabilitation as a matter of law does not exist. Rehabilitation is a component of penalty, which
2 is vested in the discretion of the Board "subject only to 'manifest abuse. . .'" (*Windham v.*
3 *Board of Medical Quality Assurance* [1980] 104 CA3d 461, 472, 473, quoting *Cadilla v. Board*
4 *of Medical*, cited above, at page 968.)

5 3. Business and Professions Code section 490 applies, with specified
6 exceptions, to all professional licensing boards or commissions governed by the Business
7 and Professions Code. (section 475, 476.) Section 490 states in relevant part: "A board may
8 suspend or revoke a license on the ground that the licensee has been convicted of a crime, if
9 the crime is substantially related to the qualifications, functions, or duties of the business or
10 profession for which the license was issued." (*Petropoulos v. Dept. of Real Estate* (2006)
11 142 CA4th 554, 557.)

12 4. Business and Professions Code section 10177 (prior to January 1, 2008)
13 provided, in pertinent part as follows:

14 "The commissioner may suspend or revoke the license of a real estate
15 licensee, or may deny the issuance of a license to an applicant, who has
16 done any of the following... (b) Entered a plea of guilty or nolo
17 contendere to, or been found guilty of, or been convicted of, a felony,
18 or a misdemeanor involving moral turpitude, substantially related to
19 the qualifications, functions, or duties of a real estate licensee, and the
20 time for appeal has elapsed or the judgment of conviction has been
21 affirmed on appeal, irrespective of an order granting probation
22 following that conviction, suspending the imposition of sentence, or of
23 a subsequent order under Section 1203.4 of the Penal Code allowing
24 that licensee to withdraw his or her plea of guilty and to enter a plea of
25 not guilty, or dismissing the accusation or information."

26 5. Business and Professions Code section 493 provides as follows:

27 "Notwithstanding any other provision of law, in a proceeding conducted
by a board within the department pursuant to law to deny an application
for a license or to suspend or revoke a license or otherwise take
disciplinary action against a person who holds a license, upon the ground
that the applicant or the licensee has been convicted of a crime
substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be
conclusive evidence of the fact that the conviction occurred, but only of-

1 that fact, and the board may inquire into the circumstances surrounding the
2 commission of the crime in order to fix the degree of discipline or to
3 determine if the conviction is substantially related to the qualifications,
4 functions, and duties of the licensee in question."

5 6. Cause exists to revoke or suspend Respondent's real estate salesperson license
6 under Business and Professions Code section 10177, subdivision (b), and section 490 for
7 conviction of crimes involving moral turpitude and substantially related to the qualifications,
8 functions, and duties of a real estate licensee, based on Factual Findings 3 and 4.

9 7. Based on the stipulation of the parties, the Department may revoke
10 Respondent's license pursuant to Business and Professions Code section 10177, subdivision
11 (b), if his misdemeanor offenses are crimes of moral turpitude. Moral turpitude has generally
12 been held to mean "a general 'readiness to do evil'...i.e., an act of baseness, vileness or
13 depravity in the private and social duties which a man owes to his fellowmen, or to society
14 in general, contrary to the accepted and customary rule of right and duty between man and
15 man." (*People v. Mansfield* [1988] 200 Cal. App.3d 82, 87.)

16 8. By reason of the matters in Factual Findings 3 and 4, it was established that
17 Respondent was convicted of violating Penal Code section 647, subdivisions (a) and (b).
18 Penal Code section 647 sets forth several categories of conduct that constitute the crime of
19 disorderly conduct. Under subdivision (a), a person commits disorderly conduct "[w]ho
20 solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place
21 or in any place open to the public or exposed to public view." Under subdivision (b), a
22 person commits disorderly conduct "[w]ho solicits or who agrees to engage in or who
23 engages in any act of prostitution. . . ." As used in subdivision (b), the term "prostitution"
24 includes "any lewd act between persons for money or other consideration." These offenses
25 involve moral depravity because they evidence the lewd desire to corrupt or offend others,
26 which meets the definition of moral turpitude. (Cf. *People v. Ballard* [1993] 13 Cal.App.4th
27 687, 696 [felony indecent exposure is a crime of moral turpitude], *People v. Chandler*
(1997) 56 Cal.App.4th 703, 708-709 [prostitution is a crime of moral turpitude],

1 *McLaughlin v. Board of Medical Examiners* [1973] 35 Cal.App.3d 1010, 1014 [solicitation
2 of lewd act in public place is a crime of moral turpitude].)

3 9. By regulation of the Commissioner, an offense is deemed to be substantially
4 related to the qualifications, functions or duties of a real estate licensee if it involves
5 sexually related conduct affecting a person who is an observer or a consenting participant in
6 the conduct. (Cal. Code Regs., title 10, section 2910, subd. (a)(5).) Respondent engaged in
7 lewd conduct that caused his victim, T.L., to be "in shock over his odd behavior" and to
8 report his conduct to the police. Respondent's offense falls within the definition of section
9 2910, subdivision (a)(5), and thus is substantially related to qualifications, functions or
10 duties of a real estate licensee.

11 10. Respondent contends his conviction is not substantially related because there
12 is no connection between the conviction and his licensed activity, citing *Brewer v. Dept. of*
13 *Motor Vehicles* (1979) 93 Cal.App3d 358. Respondent's reliance on *Brewer* is misplaced, as
14 that case does not involve a real estate license and does not discuss the application of
15 California Code of Regulations, title 10, section 2910, subdivision (a)(5). Respondent also
16 contends that his conviction is not substantially related because Section 2910, subdivision
17 (a)(5), only applies to convictions which require registration as a sex offender under Penal
18 Code section 290. Respondent cited no legal authority for limiting Section 2910, subdivision
19 (a)(5), in that manner.

20 11. The objective of a disciplinary proceeding is to protect the public, the licensed
21 profession or occupation, maintain integrity, high standards, and preserve public confidence
22 in real estate professionals. (*Camacho v. Youde* [1975] 95 Cal.App.3d 161, 165, *Clerici v.*
23 *Dept. of Motor Vehicles* [1990] 224 Cal.App.3d, 1016, 1030-1031.) The purpose of
24 proceedings of this type is not to punish Respondent. In particular, the statutes relating to
25 real estate licenses are designed to protect the public from any potential risk of harm. (*Lopez*
26 *v. McMahon* [1988] 205 Cal.App.3d 1510, 1516, *Arneson v. Fox* [1980] 28 Cal.3d 440.) The
27 law looks with favor upon those who have been properly reformed. (*Reisner v. State Bar* [1967]

1 67 Cal.2d 799, 811.) To that end, Respondent bears the burden to establish his reformation
2 against a history of criminal conduct. (See, *Martin v. Alcoholic Bev. App. Bd.* [1950] 52 Cal.2d
3 259, 265.)

4 12. Respondent's conduct is substantially related to the qualifications, functions and
5 duties of a real estate licensee. The Department has defined substantial relationship pursuant to
6 Business and Professions Code section 481 as set forth in the Commissioner's Regulations
7 (Chapter 6, Title 10, California Code of Regulations) (hereinafter "Regulations") at section
8 2910, to wit:

9 "(a) When considering whether a license should be denied, suspended or revoked on the
10 basis of the conviction of a crime, or on the basis of an act described in section 480(a)(2) or
11 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the
12 qualifications, functions or duties of a licensee of the Department within the meaning of sections
13 480 and 490 of the Code if it involves:

14 "(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property
15 belonging to another person.

16 "(2) Counterfeiting, forging or altering of an instrument or the uttering of a false
17 statement.

18 "(3) Willfully attempting to derive a personal financial benefit through the nonpayment
19 or underpayment of taxes, assessments or levies duly imposed upon the licensee or applicant by
20 federal, state or local government.

21 "(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve
22 an end.

23 "(5) Sexually related conduct affecting a person who is an observer or non-consenting
24 participant in the conduct or convictions which require registration pursuant to the provisions of
25 Section 290 of the Penal Code.

26 "(6) Willfully violating or failing to comply with a provision of Division 4 of the
27 Business and Professions Code of the State of California.

1 “(7) Willfully violating or failing to comply with a statutory requirement that a license,
2 permit or other entitlement be obtained from a duly constituted public authority before engaging
3 in a business or course of conduct.

4 “(8) Doing of any unlawful act with the intent of conferring a financial or economic
5 benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person
6 or property of another.

7 “(9) Contempt of court or willful failure to comply with a court order.

8 “(10) Conduct which demonstrates a pattern of repeated and willful disregard of law.

9 “(11) Two or more convictions involving the consumption or use of alcohol or drugs
10 when at least one of the convictions involve driving and the use or consumption of alcohol or
11 drugs.

12 “(b) The conviction of a crime constituting an attempt, solicitation or conspiracy to
13 commit any of the above enumerated acts or omissions is also deemed to be substantially related
14 to the qualifications, functions or duties of a licensee of the department.

15 “(c) If the crime or act is substantially related to the qualifications, functions or duties of
16 a licensee of the department, the context in which the crime or act were committed shall go only
17 to the question of the weight to be accorded to the crime or acts in considering the action to be
18 taken with respect to the applicant or licensee.”

19 13. The purpose of discipline under the Real Estate Law is not to punish, but to
20 protect the public. (*Norman v. Dept. of Real Estate* [1979] 93 CA3d 768, 778. Citing *Handeland*
21 *v. Department of Real Estate* [1976] 58 CA3d 513, 517-518.)

22 14. “An agent is a fiduciary. His obligation of diligent and faithful service is the
23 same as that imposed upon a trustee.” (*Twomey v. Mitchum, Jones & Templeton, Inc.* [1968] 262
24 CA2d 690; 709, *In re Estate of Arbuckle* [1950] 98 CA2d 562, 569.) Brokers are subject to a
25 fiduciary duty to exercise skill, care and diligence to protect the best interests of their clients.
26 (*Montoya v. McLeod* [1985] 176 CA3d 57, 65, *Brady v. Carman* [1960] 179 CA2d 63, 68,
27 *Richards Realty Co. v. Real Estate Commissioner* [1956] 144 CA2d 357, 362.)

1 15. Because of the fiduciary responsibilities exercised by real estate licensees, to
2 vindicate public confidence in those licensed by the Department, the Department is obligated to
3 exclude dishonest people from licensure. "Where the occupation is one wherein those following
4 it act as the agents and representatives of others and in a more or less confidential and fiduciary
5 capacity, it certainly can be fairly said that those pursuing it should have in a particular degree
6 the qualifications of honesty, truthfulness and good reputation. The occupation of a real estate
7 agent is of just this sort. He acts for others and in a more or less confidential and fiduciary
8 capacity." (*Golde v. Fox, supra*, at 177.) "The public exposing themselves to a real estate
9 licensee has reason to believe that the licensee must have demonstrated a degree of honesty and
10 integrity in order to have obtained such a license." (*Supra*, at 178.) "The real estate broker is
11 brought by his calling into a relation of trust and confidence. Constant are the opportunities by
12 concealment and collusion to extract illicit gains. We know from our judicial records that the
13 opportunities have not been lost...." (*Cardoza, J. in Roman v. Lobe* 1243 N.Y. 51 [152 N.E. 461,
14 50 A.L.R.1329]), (*Richards Realty Co. v. Real Estate Commissioner* [1956] 144 CA2d 357,
15 362.) "One of the purposes of the Real Estate Act is to ensure, as far as possible, that real estate
16 brokers and salesmen will be honest, truthful and of good reputation." (*Buckley v. Savage* 184
17 Cal. App 2d 18, 31-32 [7 Cal. Rptr. 328], *Riley v. Chambers* 181 Cal. 589, 593 [185 P. 855, 8
18 A.L.R. 418].), (*Brown v. Gordon* [1966] 240 CA2d 659, 667.) "No doubt the word 'honesty' as
19 used in these sections has the broadest possible meaning. It has been defined as 'a fastidious
20 allegiance to the standards of one's profession, calling or position; fairness and
21 straightforwardness of conduct, speech, integrity; truthfulness; freedom from fraud.'"
22 (*Webster's New International Dictionary, Second Edition.*), (*Rhoades v. Savage*, [1963] 219
23 CA2d 294, 299.)

24 16. The conduct that led to Respondent's conviction establishes that he lacks the
25 "good reputation," "integrity," and the exercise of good judgment necessary to serve as a
26 fiduciary. The behavior that led to his last conviction, when coupled with his prior conviction

27 ///

1 record, does nothing "to vindicate public confidence" in his continued licensure by the
2 Department.

3 17. Respondent's behavior has seriously compromised the integrity of his real estate
4 license. Respondent's honesty toward members of the public is not assured. This is the nexus
5 between his conduct, his reputation, and the fiduciary nature of the real estate profession.

6 18. The Department has developed criteria for the purpose of evaluating the
7 rehabilitation of a real estate licensee, which are set forth at California Code of Regulations,
8 title 10, section 2912. Respondent had a burden to establish that he met the rehabilitation
9 criteria set forth in Regulation section 2912. That section, entitled "Criteria of Rehabilitation
10 (Revocation or Suspension)" references the evaluation of "the rehabilitation of a licensee against
11 whom an administrative disciplinary proceeding for revocation or suspension of the license has
12 been initiated on account of a crime committed by the licensee." Applying the criteria,
13 Respondent has satisfied some of the criteria of rehabilitation. He has complied with the
14 terms of his probation and paid the court-ordered fines and fees (section 2912, subds. (e) and
15 (g).) He has a stable family life and is fulfilling his parental and familial responsibilities
16 subsequent to his conviction (section 2912, subd. (j).) He has completed educational courses
17 and seminars for economic self-improvement (section 2912, subd. (k).) He is actively
18 involved in his church and his children's sports and school activities (section 2912, subd.
19 (1).) Most importantly, Respondent demonstrated sincere remorse for his conduct, and has
20 accepted responsibility for his crime. Respondent appears to have learned his lesson, and the
21 negative consequences he has brought on himself and his family are strong motivation for
22 him to avoid similar misconduct in the future.

23 19. Respondent cannot satisfy all the criteria of rehabilitation because his probation
24 is not scheduled to end until November, 2009 (section 2912, subd. (e).) Respondent cannot
25 establish complete rehabilitation because less than two years elapsed between Respondent's
26 conviction and the administrative hearing (section 2912, subd. (a).) Respondent will not be
27 eligible to obtain expungement of his conviction until probation terminates (section 2912, subd.

1 (c)). Although Respondent attributes his conduct leading to his conviction to the consumption of
2 alcohol, Respondent has not abstained from the use of alcohol for the requisite two year period
3 (section 2912, subd. (f).) Respondent attributes his misconduct in part to the stress of his
4 marriage and family life and conditions attending his business, but Respondent has not changed
5 these social or business relationships (section 2912, subd. (i).)

6 20. Most importantly, the Criteria of Rehabilitation can only focus on what a
7 respondent has done since the conduct in question was discovered. Given the seriousness of the
8 conduct and its central relationship to good reputation, good judgment, integrity, and fiduciary
9 duty, a stronger showing of rehabilitation is needed. Section 2912(a) requires the passage of
10 "not less than two years from the most recent criminal conviction." Too little time has elapsed to
11 allow the Department to conclude that Respondent is fully rehabilitated.

12 ORDER

13 All licenses and licensing rights previously issued to Respondent CHARLIE FRANK
14 KENNEDY under the Real Estate Law are revoked.

15 This Decision shall become effective at 12 o'clock noon on November 19, 2008

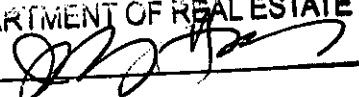
16 IT IS SO ORDERED 10-30-08

17
18 JEFF DAVI
19 Real Estate Commissioner
20
21
22
23
24
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

JUN 20 2008

DEPARTMENT OF REAL ESTATE
BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

) No. H-34237 LA

) CHARLIE FRANK KENNEDY,

) L-2007100773

) Respondent.)

NOTICE

TO: CHARLIE FRANK KENNEDY, Respondent, and FRANK M. BUDA, his
Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated May 21, 2008, of the Administrative Law Judge is not
adopted as the Decision of the Real Estate Commissioner. A copy
of the Proposed Decision dated May 21, 2008, 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 March 6 and

///

1 April 21, 2008 any written argument hereafter submitted on behalf
2 of Respondent and Complainant.

3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of March 6 and April 21, 2008, at the
6 Los Angeles office of the Department of Real Estate unless an
7 extension of the time is granted for good cause shown.

8 Written argument of Complainant to be considered by me
9 must be submitted within 15 days after receipt of the argument of
10 Respondent at the Los Angeles office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: _____

6-11-08

14
15 JEFF DAVIS
Real Estate Commissioner
16
17
18
19
20
21
22
23
24
25
26
27

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

In the Matter of the Accusation Against:

CHARLIE FRANK KENNEDY,

Respondent.

Case No. H-34237 LA

OAH No. L2007100773

PROPOSED DECISION

This matter was heard on March 6, 2008, and April 21, 2008, by Erlinda G. Shrenger, Administrative Law Judge with the Office of Administrative Hearings, in Los Angeles, California.

Cheryl Keily, Staff Counsel, represented Maria Suarez (Complainant), a Deputy Real Estate Commissioner for the Department of Real Estate (Department), State of California.

Frank M. Buda, Attorney at Law, represented Charlie Frank Kennedy (Respondent), who was present.

At the start of the hearing on March 6, 2008, Complainant amended the Accusation on page 2, paragraph 3, line 9, to read: "Conduct: Lewd Act) and Penal Code section 647(b) (Disorderly Conduct: Solicitation of Prostitution), both misdemeanors. . . ." In addition, the parties stipulated that Complainant must demonstrate "moral turpitude" in order to establish cause for discipline against Respondent's license pursuant to Business and Professions Code section 10177, subdivision (b).¹

Oral and documentary evidence was received on March 6 and April 21, 2008, and argument was heard on April 21, 2008. The record was closed and the matter was submitted for decision on April 21, 2008.

¹ Effective January 1, 2008, Business and Professions Code section 10177, subdivision (b), was amended to replace the phrase "a crime of moral turpitude" with "a crime substantially related to the qualifications, functions or duties of a real estate licensee." However, the parties agreed to apply the version of section 10177, subdivision (b), that was in effect immediately prior to this amendment.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity.
2. Respondent is licensed by the Department as a real estate salesperson. He has been licensed by the Department for 10 years.
3. (A) On November 16, 2006, in the Superior Court of California, County of Orange, case no. 06HM05318, Respondent was convicted on his plea of guilty of violating Penal code section 647, subdivisions (a) (disorderly conduct-lewd act), and (b) (disorderly conduct-solicitation of prostitution), both misdemeanor offenses.

(B) Imposition of sentence was suspended. Respondent was placed on informal probation for three years under terms and conditions including, but not limited to, that he pay various fines, fees, and restitution; he perform 30 days of Cal Trans community service; he serve 30 days in jail, which would be stayed pending completion of the Cal Trans community service; and he attend and complete 20 Alcoholics Anonymous meetings.
4. The facts and circumstances underlying Respondent's conviction occurred on May 21, 2006, at approximately 12:15 a.m., in Newport Beach, California. Respondent, while driving in his pick-up truck, stopped his vehicle and contacted T.L., a 22 year old female who was riding a bicycle.² Respondent asked her a series of lewd questions regarding his penis, he displayed a rubber vagina that was in his vehicle, and he placed three \$20 bills on the door frame and talked to T.L. about getting his penis hard. Respondent was wearing a T-shirt and shorts. Respondent's shorts were pulled down to his knees, and his penis was exposed to T.L. Respondent placed the rubber vagina on his penis in front of T.L.
5. Respondent does not deny his conduct with T.L. Respondent admits he was at fault for the incident with T.L., and that she was an innocent victim. Respondent explained that, earlier in the evening, he was at a restaurant at a friend's birthday party, where he had consumed five or six alcoholic beverages. Respondent admitted he was "intoxicated to the point of stupidity" by the time he left the restaurant. Respondent was also under stress from his business and his daughter's behavioral issues. Respondent claims the rubber vagina was left in his vehicle by a couple he met at the restaurant and had driven to the beach. Respondent explained that he initially denied his conduct to the police because he was scared about his wife and family finding out what he had done. He regrets that he lied to the police.
6. Respondent is embarrassed, ashamed of, and remorseful for his conduct. Respondent believes what he did to T.L. was extreme and wrong, and inexcusable. Respondent testified he would not want his own daughter subjected to a similar incident, and he would be ashamed to have his children find out about his criminal conduct. Respondent's testimony regarding his crime was sincere and forthright, and therefore credible.

² Respondent's victim is referred to by her initials, T.L., to protect her privacy.

7. Respondent's victim, T.L., executed a written declaration dated August 18, 2006, which was admitted as direct evidence pursuant to Government Code section 11514. In the declaration, T.L. stated that she was not in fear of Respondent during her interaction with him. She also stated: "I initially believed [Respondent] was playing a joke on me, but then I was in shock over his odd behavior."

8. Respondent is 41 years old. Respondent and his wife have been married for almost 20 years, and they have two children (ages 14 and 15 years old).

9. Respondent complied with the terms of his criminal probation. He performed 30 days of Cal Trans community service, completed 20 Alcoholics Anonymous meetings, and paid the court-ordered fines and fees. Respondent is scheduled to remain on probation until November 16, 2009.

10. Respondent has not consumed an excessive amount of alcohol since the May 21, 2006 incident that led to his conviction. Respondent may drink alcohol when he goes out to dinner with his wife or occasionally have drinks with a client. However, he and his wife do not keep alcohol in their home. Respondent does not currently attend Alcoholics Anonymous meetings.

11. Respondent is actively involved in his children's sports and school activities. Respondent and his family attend Saddleback Community Church. Respondent and his wife completed a five-week marriage counseling course through their church. They also completed marriage counseling through their medical provider, Kaiser Permanente.

12. Respondent's wife, T.K., testified at the administrative hearing. T.K. has known Respondent for 22 years. She had never known Respondent to abuse alcohol or engage in lewd conduct prior to his conviction. T.K. testified that, in 2006, she and Respondent were struggling with their marriage and financial matters. They were also dealing with their daughter's behavioral and learning difficulties. T.K. believes that Respondent is extremely embarrassed by his criminal conduct and will not let it happen again. She believes Respondent realizes how his misconduct can affect their family life and his work. T.K.'s testimony was candid and sincere.

13. (A) Sharon O'Hara is licensed in California as a Marriage and Family Therapist. Since 1999, she has had a private practice specializing in sexual addiction and offending behaviors. From 1992 to 1999, she was the Program Director of the Sexual Disorders Unit at Del Amo Hospital in Torrance, California. At the administrative hearing, O'Hara testified regarding her opinion and assessment of Respondent.

(B) O'Hara met with Respondent for psychological assessment purposes on September 6, 2007, December 21, 2007, and February 14, 2008. O'Hara also reviewed documents regarding Respondent's crime, including the police report, court records, and letters of recommendation. Based on her education, experience, and assessment of Respondent, O'Hara opined that Respondent is "highly unlikely" to repeat his criminal

conduct, which she believes was an isolated incident. O'Hara found that Respondent does not exhibit a "sexually compulsive pattern of behavior that might lead to a relapse." She believes the main contributing factor for Respondent's conduct was his excessive consumption of alcohol. Respondent admitted to drinking excessively on the night of the incident, and is cognizant that he engaged in "stupid drunken behavior." O'Hara found that Respondent showed empathy for his victim and remorse for his conduct. O'Hara's opinion is that Respondent has experienced serious negative consequences to his legal, financial, and personal affairs, and he has learned from those negative consequences and is "very motivated" not to repeat any similar behavioral mistakes in the future. By her demeanor, education, and experience, O'Hara's testimony was credible. No evidence was presented by Complainant to refute O'Hara's expert opinion.

14. William Hubert Allen, III (Allen), is a licensed real estate broker who has known Respondent since 1990. Allen is Respondent's broker and business partner in Healstone Investment Real Estate. In a letter dated September 29, 2007, Allen wrote, in part: "On the professional side he [Respondent] is a credit to our industry and I support him 100%. You can be assured that if he is allowed to keep his license I will closely supervise all of his licensed activity." Allen also testified at the administrative hearing. Allen stated that he and Respondent "are in business together," and he has "high regard" for Respondent's honesty. Allen is aware of Respondent's conviction. Allen stated unequivocally that he would not agree to be Respondent's supervising broker if he thought Respondent posed a threat to the public or if he [Allen] was unable to adequately supervise Respondent. Allen believes he owes it to his clients to be honest and sincere with them, and he will not do anything to jeopardize his livelihood. Allen's testimony was sincere and forthright.

15. Respondent is currently employed by Healstone Investment Real Estate, a business he started in approximately 2004 with Allen. Respondent is President of Healstone, and Allen is Chief Executive Officer. Prior to Healstone, Respondent worked for Sperry Van Ness and was involved in commercial real estate transactions. Respondent continues to take real estate courses and seminars, and attends the courses he arranges for his office. Respondent completed a 2-hour course in sexual harassment prevention and awareness training in January 2008. Respondent has previously written articles on real estate related topics, and has spoken as a panelist at real estate seminars.

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend Respondent's real estate salesperson license under Business and Professions Code section 10177, subdivision (b), and section 490 for conviction of crimes involving moral turpitude and substantially related to the qualifications, functions, and duties of a real estate licensee, based on Factual Findings 3 and 4.

2. Based on the stipulation of the parties, the Department may revoke Respondent's license pursuant to Business and Professions Code section 10177, subdivision (b), if his misdemeanor offenses are crimes of moral turpitude. Moral turpitude has generally been held to mean a general "readiness to do evil" ... i.e., 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. Mansfield* (1988) 200 Cal. App.3d 82, 87.)

3. By reason of the matters in Factual Findings 3 and 4, it was established that Respondent was convicted of violating Penal Code section 647, subdivisions (a) and (b). Penal Code section 647 sets forth several categories of conduct that constitute the crime of disorderly conduct. Under subdivision (a), a person commits disorderly conduct "[w]ho solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view." Under subdivision (b), a person commits disorderly conduct "[w]ho solicits or who agrees to engage in or who engages in any act of prostitution. . . ." As used in subdivision (b), the term "prostitution" includes "any lewd act between persons for money or other consideration." These offenses involve moral depravity because they evidence the lewd desire to corrupt or offend others, which meets the definition of moral turpitude. (Cf. *People v. Ballard* (1993) 13 Cal.App.4th 687, 696 [felony indecent exposure is a crime of moral turpitude]; *People v. Chandler* (1997) 56 Cal.App.4th 703, 708-709 [prostitution is a crime of moral turpitude]; *McLaughlin v. Board of Medical Examiners* (1973) 35 Cal.App.3d 1010, 1014 [solicitation of lewd act in public place is crime of moral turpitude].)

4. By regulation of the Commissioner, an offense is deemed to be substantially related to the qualifications, functions or duties of a real estate licensee if it involves sexually related conduct affecting a person who is an observer or a consenting participant in the conduct. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(5).) Respondent engaged in lewd conduct that caused his victim, T.L., to be "in shock over his odd behavior" and to report his conduct to the police. Respondent's offense falls within the definition of section 2910, subdivision (a)(5), and thus is substantially related to qualifications, functions or duties of a real estate licensee.

5. Respondent contends his conviction is not substantially related because there is no connection between the conviction and his licensed activity, citing *Brewer v. Dept. of Motor Vehicles* (1979) 93 Cal.App.3d 358. Respondent's reliance on *Brewer* is misplaced, as that case does not involve a real estate license and does not discuss the application of California Code of Regulations, title 10, section 2910, subdivision (a)(5). Respondent also contends that his conviction is not substantially related because Section 2910, subdivision (a)(5), only applies to convictions which require registration as a sex offender under Penal Code section 290. Respondent cited no legal authority for limiting Section 2910, subdivision (a)(5), in that manner.

6. The objective of a disciplinary proceeding is to protect the public, the licensed profession or occupation, maintain integrity, high standards, and preserve public confidence in real estate professionals. (*Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Clerici v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d, 1016, 1030-1031.) The purpose of proceedings of this type is not to punish Respondent. In particular, the statutes relating to real estate licenses are designed to protect the public from any potential risk of harm. (*Lopez*

v. McMahon (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.) The law looks with favor upon those who have been properly reformed. (*Reisner v. State Bar* (1967) 67 Cal.2d 799, 811.) To that end, Respondent bears the burden to establish his reformation against a history of criminal conduct. (See, *Martin v. Alcoholic Bev. App. Bd.* (1950) 52 Cal.2d 259, 265.)

7. The Department has developed criteria for the purpose of evaluating the rehabilitation of a real estate licensee, which are set forth at California Code of Regulations, title 10, section 2912. Applying the criteria, Respondent has satisfied some of the criteria of rehabilitation. He has complied with the terms of his probation and paid the court-ordered fines and fees (§ 2912, subds. (e) and (g).) He has a stable family life and is fulfilling his parental and familial responsibilities subsequent to his conviction (§ 2912, subd. (j).) He has completed educational courses and seminars for economic self-improvement (§ 2912, subd. (k).) He is actively involved in his church and his children's sports and school activities. (§ 2912, subd. (l).) Most importantly, Respondent has demonstrated a change in attitude from that which existed at the time of his criminal acts. (§ 2912, subd. (n).) Respondent demonstrated sincere remorse for his conduct, and has accepted responsibility for his crime. The evidence established Respondent's crime was an isolated incident. Respondent appears to have learned his lesson, and the negative consequences he has brought on himself and his family are strong motivation for him to avoid similar misconduct in the future.

8. Respondent cannot establish complete rehabilitation because his criminal probation is not scheduled to end until November 2009. (§ 2912, subd. (e).) However, Respondent has established sufficient rehabilitation to warrant a restricted license. William Allen testified credibly that he is willing and able to adequately supervise Respondent under his broker license if Respondent is given a restricted license.

9. Based on consideration of all factors, the Order below should protect the public from any potential risk of harm in allowing Respondent to retain his license on a restricted basis.

ORDER

All licenses and licensing rights of Respondent Charlie Frank Kennedy under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. 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 restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of

not adopted

nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.

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


4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine (9) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: May 21, 2008


ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings

CHERYL D. KEILY, Counsel (SBN 94008)
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982
(Direct) (213) 576-5770

FILED

AUG 27 2007

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-34237 LA
CHARLIE FRANK KENNEDY,)	<u>A C C U S A T I O N</u>
Respondent.)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against CHARLIE FRANK KENNEDY, aka Charles Frank Kennedy, ("Respondent") alleges as follows:

1.

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

2.

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the

1 California Business and Professions Code ("Code"), as a real
2 estate salesperson.

3 3.

4 (CRIMINAL CONVICTION)

5 On or about November 16, 2006, in the Superior Court
6 for the State of California, County of Orange, Harbor Justice
7 Center, in Case No. 06HM05318, Respondent was convicted of
8 violating California Penal Code Section 647(a) (Disorderly
9 Conduct: Lewd Act), a misdemeanor. The underlying facts of this
10 crime involve moral turpitude, and bear a substantial
11 relationship under Section 2910, Title 10, Chapter 6, California
12 Code of Regulations to the qualifications, functions or duties
13 of a real estate licensee.

14 4.

15 The crime of which Respondent was convicted, as
16 described in Paragraph 3, above, constitutes cause under
17 Sections 490 and 10177(b) of the Code for the suspension or
18 revocation of the license and license rights of Respondent under
19 the Real Estate Law.
20

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all the licenses and license rights of
5 Respondent, CHARLIE FRANK KENNEDY, under the Real Estate Law
6 (Part 1 of Division 4 of the Business and Professions Code) and
7 for such other and further relief as may be proper under other
8 applicable provisions of law.

9 Dated at Los Angeles, California

10 this 16th day of August, 2007.

11
12
13
14 
15 Maria Suarez
16 Deputy Real Estate Commissioner
17
18
19
20
21
22
23
24

25 cc: CHARLIE FRANK KENNEDY
26 Healstone Investment Real Estate Inc.
27 Maria Suarez
Sacto.