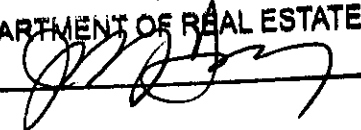


FILED

AUG 25 2008

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: 

* * * * *

In the Matter of the Application of)

No. H-34498 LA

KAREN ELAINE KOPITTKE,

L-2008010357

Respondent.)

DECISION

The Proposed Decision dated July 25, 2008, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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

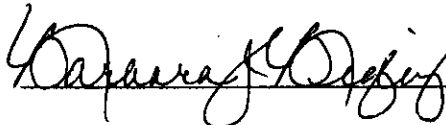
If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria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

This Decision shall become effective at 12 o'clock noon on September 15, 2008.

IT IS SO ORDERED

8-17-08

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

KAREN ELAINE KOPITTKE,

Respondent.

Case No. H-34498 LA

OAH No. 2008010357

PROPOSED DECISION

On June 25, 2008, Janis S. Rovner, Administrative Law Judge of the Office of Administrative Hearings heard this matter in Los Angeles, California. Cheryl Keily, Staff Counsel, represented complainant, Joseph Aiu. Rodney L. Donohoo, Attorney at Law, represented Karen Elaine Kopittke (Respondent), who was present during the hearing.

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on June 25, 2008.

FACTUAL FINDINGS

1. 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 July 25, 2006, Respondent Kopittke submitted her application for a real estate salesperson license to the Department.

The 1998 Nevada State Contractors' Board Discipline

3. On February 14, 1997, the Nevada State Contractors' Board issued a roofing contractor's license (Class C15(A)), License No. 43167, to Respondent Kopittke as owner of Professional Star Construction.

4. On August 25, 1998, in Case No. L9801-104-IR, the Nevada State Contractors' Board (Nevada Board) disciplined Respondent Kopittke's license in the following manner: the Board suspended the license for 30 days, placed a letter of reprimand in Respondent's file for two years, and ordered Respondent to pay a \$2000 fine within 60 days or the license would be suspended.

5. The Nevada Board disciplined Respondent's license in August 1998 (the 1998 discipline) on the following grounds:

(a) Respondent entered into contractual agreements to perform roofing work, re-roofing, and removal and replacement of decking boards on a project in Las Vegas, Nevada. She failed to secure the proper building permits for re-roofing and removal and replacement of decking boards. In this respect, she willfully or deliberately disregarded and violated the building laws, in violation of former Nevada Revised Statutes section 624.3011 1, subdivision (c)(1), renumbered as section 624.3011, subdivision (1)(b)(1). (Stats. 1999, ch. 565, § 30, p. 2964.)

(b) She used the license name Pro Star Construction on the project's documents, proposals, and contracts. Her then husband, Jose Barron, who was an unlicensed person, signed the documents on Respondent's behalf using the name Pro Star Construction. He also performed work on the project for Respondent and she did not obtain verification of his employment. Based on these facts, the Nevada Board found that Respondent (1) aided or abetted an unlicensed person to evade the Nevada law applicable to contractors, (2) combined or conspired with an unlicensed person to perform an unauthorized act, (3) allowed her license to be used by an unlicensed person, and (4) acted as an agent, partner or associate of an unlicensed person, with intent to evade the law, in violation of Nevada Revised Statutes section 624.3014, subdivisions (2)(a), (b), (c) and (d). Respondent also attempted to assign, transfer or otherwise dispose or permit the unauthorized use of her license, in violation of Nevada Revised Statutes section 624.3014, subdivision (3).

The 2002 Nevada State Contractors' Board Discipline

6. On August 3, 1999, the Nevada Board issued a roofing and siding contractor's license (Class C15(A)), License No. 43167A, to Professional Star Construction Inc., with a monetary limit of \$50,000. On December 3, 1999, the Nevada Board issued a general residential and small commercial building contractor's license (Class B-2), License No. 48922, to Professional Star Construction Inc., with a monetary limit of \$50,000. Respondent provided the qualifying experience and was the President of Professional Star Construction Inc. (the corporate licensee) at all relevant times.

7. On December 11, 2000, the corporate licensee entered into a written partnership agreement with one person whose Nevada contractor's license was suspended, and with another person who was unlicensed in the State of Nevada, to bid

and perform construction work. Respondent signed the partnership agreement on behalf of the corporate licensee. In January 2001, the unlicensed partner entered into construction contracts in his own name, not on behalf of the partnership, to perform tenant improvements on two dental offices for \$122,948.48 and \$103,487.58, respectively (the dental office projects). At some point, the unlicensed partner produced documentation of the partnership agreement to the two dentists. He also asked Respondent to obtain building permits using the corporate license so that the projects could proceed. The two dentists paid the unlicensed partner about \$9,000 and \$14,000, respectively. He did not complete the projects.

8. On June 18, 2002, the Nevada Board held a hearing in Case No. L-0102-148-IR on charges it filed against the corporate licensee based on the dental office projects. In its decision, the Nevada Board found that the corporate licensee violated Nevada law in the following respects: It (1) aided or abetted an unlicensed person to evade the Nevada law applicable to contractors, (2) combined or conspired with an unlicensed person to perform an unauthorized act, (3) allowed its license to be used by an unlicensed person, and (4) acted as an agent, partner or associate of an unlicensed person, with intent to evade the law, in violation of Nevada Revised Statutes section 624.3014, subdivisions (2)(a), (b), (c) and (d). The corporate licensee also violated Nevada Revised Statutes section 624.305, subdivision (l), by allowing another person to use its license and the corporate license, and it violated Nevada Revised Statutes section 624.3013, subdivision (5), by permitting an unlicensed person to operate its contracting business as set forth in Nevada Administrative Code section 624.650, subdivision (l).

9. On July 2, 2002, the Nevada Board issued its decision and order disciplining the corporate licensee's two licenses in the following manner: the Board suspended the corporate licenses for 30 days during which time the corporate licensee was to make restitution to the two dentists upon proper documentation of actual losses caused by the corporate licensee or its associates' actions. The corporate licenses were to be automatically revoked if the corporate licensee did not make restitution to the dentists within the 30-day suspension period. If the licenses were revoked for failure to pay restitution, the Nevada Board would not consider any future licensure of the corporate licensee or its principals until it paid restitution to the injured parties and reimbursed the Board for its investigative fees and costs in the sum of \$1,875.00.

10. On August 26, 2002, the Nevada Board issued its amended decision and order in Case No. L-01020148-R. The amended decision and order reflected an agreement among the parties regarding restitution: The corporate licensee agreed to pay \$9,000 in restitution to one dentist with \$1,000 as an initial payment and the balance payable within three months, and \$50,000 to the other dentist with an initial payment of \$20,000 and the balance payable in three months. Based on the agreement, the Nevada Board lifted its suspension of the corporate licensee's licenses for six months, contingent upon payment of restitution pursuant to the agreement and reimbursement of \$1,875.00 in investigative fees and costs to the Board. If the

corporate licensee failed to pay restitution pursuant to the agreement or reimburse the Board for its investigative fees and costs, the licenses were to be automatically suspended. The Board would not consider further licensure of the corporate licensee or its principals until restitution was made and the Board's costs and fees were paid.

11. On March 30, 2003, the Nevada Board revoked the corporate licenses for the corporate licensee's failure to make restitution and pay the Board's investigative costs and fees.

Facts in Mitigation

12. Respondent was ultimately responsible for the acts and conduct that led to the Nevada Board's 1998 and 2002 discipline. She was the licensee in 1998 and provided the qualifying experience for the corporate licensee in 2002. But, it was her then husband who was the culpable party. Respondent married Jose Barron in May of 1996, when she was 21-years old. He was twelve years her senior. She moved from her parents' home, where she was raised, to the home she and her husband shared. She describes herself as very young and naïve at the time. She and her husband shared a religion that emphasized the husband's dominance over his wife. Before she married Barron, he began a persistent pattern of physically and verbally abusing her. He exercised total control of her life, from the mail she was allowed to read to the friends and family members she was permitted to see. This pattern of abuse continued throughout their marriage. Respondent was too afraid and embarrassed to tell anyone about it.

13. Shortly before they were married, Respondent learned that her husband, who held a residential and small commercial building contractor's license and a roofing license in Nevada, was having some problems with the Nevada State Contractor's Board. In 1996, the Nevada State Board revoked both of Barron's licenses for failing to complete a project for which he had been paid in full, failing to furnish the Board with a list of his jobs and a current financial statement, and failing to pay a supplier for roofing materials used on a project.

14. Barron then asked Respondent to obtain a license so that he could continue in the contractor's business in Nevada. In order to please her husband, she acceded to his request and received a roofing license in her name. Barron ran the contracting business and hid the details of his work from Respondent. She helped in the office. It was Barron's actions that led to the 1998 discipline. He lent the license to unlicensed persons to perform the work. He appeared before the Nevada Board with Respondent. When she questioned him about the project, he physically abused her.

15. Respondent and Barron obtained the corporate licenses in 1999. Respondent became more involved with the accounting and office work for the business. Barron continued to handle the contracting business. Once again, Barron

contracted with unlicensed persons and loaned the licenses to unlicensed persons. Respondent did not know that the unlicensed person had already contracted for the dental office projects before she applied for the building permits, she did not know that the dentists had already given money to the unlicensed person for the projects, and she did not know that the project prices exceeded the license limit. Neither Respondent nor the corporate licensee derived a financial benefit from these projects. The evidence did not show that Respondent personally engaged in any acts of wrongdoing.

16. Respondent testified on her behalf at the hearing. While one might be inclined to view her testimony at the hearing as self-serving and biased, it was neither. Respondent was clear and credible in her attitude and demeanor. The shame she felt over her ordeal with her husband was genuine. Moreover, her testimony was corroborated by other evidence.

Rehabilitation

17. In 2004, Respondent instituted divorce proceedings against her husband. He continued to stalk her, assaulted her, and made death threats against her. She started her own business and he threatened to ruin it. She obtained a restraining order against him; yet, he drove his truck into the house, almost injuring Respondent. When their divorce was final in 2005, she left Nevada and moved to Riverside, California, to escape him.

18. Respondent is 34-years old. She now attends extension classes at the University of California in Riverside. She is interested in home design and architecture. She has been seeing a psychiatrist regularly since March of 2006, to gain insight into the circumstances that led her to remain in a destructive marriage. She also sees a therapist. She continues to make progress in understanding why she allowed her abusive marital relationship to continue.

19. She has no record of convictions, nor is there evidence that she has had any encounters with the criminal justice system.

20. As required, Respondent disclosed the circumstances of the Nevada State Contractors' Board discipline in her application. She cooperated fully with the Department in providing more detailed information about the Nevada Board's discipline after she submitted her application.

21. Six years have elapsed since the Nevada Board imposed discipline on the corporate licenses. In addition, Respondent has started a new life in California with different social and business relationships. She also exhibits a new attitude from the one that existed at the time of her questioned conduct.

22. Respondent has not made restitution to the dentists involved in the projects referred to in Factual Findings 6 through 11, nor has she reimbursed the Nevada Board for its costs and fees. There are reasons for her failure to do so. The evidence points to Respondent's ex-husband as the culprit in the matters before the Nevada Board. His business practices caused the financial injury and loss in the Nevada disciplinary proceeding. Moreover, the precise amount of restitution was not proven. The dentists testified about their losses, but there appeared to be no documents that corroborated their testimony. In addition, it is the corporate licensee who was the respondent in the 2002 disciplinary matter. Respondent was not individually named in the 2002 Nevada proceeding. Respondent also offered to make restitution based on the agreement referenced in Factual Finding 10, but one of the dentists changed her mind about the agreement and would not accept payment. (Factual Findings 6-11.)

23. Notwithstanding her failure to make restitution, Respondent admits that she was responsible for the 1998 discipline as the licensee and for the 2002 discipline as the person who provided qualifying experience for the corporate licenses.

24. If respondent obtains her salesperson license, she intends to work as a salesperson in a friend's real estate business.

LEGAL CONCLUSIONS

Applicable Law

1. Business and Professions Code section 10177, subdivision (f), provides that the Real Estate Commissioner may deny the issuance of a license to an applicant, who has done any of the following:

(f) Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or has either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of

the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative procedure Act ... and only upon an express finding of a violation of law by the agency or entity.

2. The Nevada Board imposed discipline only after giving Respondent fair notice of the charges against her, an opportunity for a hearing, and other due process protections comparable to the California Administrative Procedure Act (Gov. Code, §§ 11340-11529), and only upon the Nevada Board's express finding that Respondent violated the law. (Nev. Rev. Stat., § 233B.121 et seq.)

3. Business and Professions Code sections 475, subdivision (a)(4), and 480, subdivision (a)(3), permit the Real Estate Commissioner to deny an application for commission of an act, which, if done by a licensed real estate salesperson, would be grounds for suspension or revocation of a license. Section 480 also requires that the act must be substantially related to the qualifications, functions or duties of the business or profession for which the application is made

Violations

4. Cause exists to deny Respondent's application for a real estate salesperson license pursuant to Business and Professions Code section 10177, subdivision (f), in that Respondent had a license issued by another agency of another state revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, and the action of revocation or suspension by the other agency was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act ... and only upon an express finding of a violation of law by the agency or entity, based on Factual Findings 3 through 11 and Legal Conclusions 1 through 3, 7 and 8.

5. Cause exists to deny Respondent's application for a real estate salesperson license pursuant to Business and Professions Code section 10177, subdivision (f), in that Respondent acted or conducted herself in a manner that would have warranted the denial of her application for a real estate license, based on Factual Findings 3 through 11 and Legal Conclusions 1 through 3, 7 and 8.

6. Cause exists to deny Respondent's application for a real estate salesperson license pursuant to Business and Professions Code sections 475, subdivision (a)(4), and 480, subdivision (a)(3), for commission of an act, which, if done by a licensed real estate salesperson, would be grounds for suspension or revocation of a license, based on Factual Findings 3 through 11 and Legal Conclusions 1 through 3, 7 and 8.

7. While Respondent did not personally commit the acts that led to the 1998 or 2002 license discipline, she had responsibility to oversee the licensed activities that led to the 1998 discipline and she supplied the qualifying experience for the corporate licensee when an unlicensed person engaged in the conduct that led to the 2002 discipline. Her acts would have warranted denial of an application for a real estate license, or the suspension or revocation of a license, under the Real Estate law pursuant to Business and Professions Code section 10177, subdivision (h), for failure to properly supervise licensed activities.

Substantial Relationship/Rehabilitation Criteria

8. California Code of Regulations, title 10, section 2910, applies when considering whether a license should be denied on the basis of conduct described in Business and Professions Code section 480, subdivision (a)(3). An act is substantially related to the qualifications, functions and duties of a real estate license, if it involves:

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

Respondent's conduct is substantially related to the qualifications, functions and duties of a real estate licensee. Although she did not commit the acts referred to in Factual Findings 3 through 11, she was responsible as the licensee, and later, as the qualifier on the corporate license.

9. Respondent has complied with most of the Department's applicable rehabilitation criteria set forth in California Code of Regulations, title 10, section 2911, as follows:

(1) Six years have elapsed since the acts that form the basis for of this proceeding occurred (subdivision (a));

(2) While she has not made restitution, there are significant extenuating circumstances that negate this factor pursuant to Factual Findings 12 through 24 (subdivision (b));

(3) She now has a more stable life (subdivision (h));

(4) She has different social and business relationships from those that existed at the time of her crime (subdivision (m)); and

(5) Her attitude has changed from that which existed at the time of her crime (subdivision (n)).

Of additional significance are the extenuating circumstances in this case involving her prior marital relationship. Respondent has taken affirmative steps to change her life, moving to California to start over again and seeking the help of mental health professionals to assist her in understanding her past conduct. Notwithstanding Legal Conclusions 1 through 8, she has demonstrated sufficient rehabilitation from the acts that gave rise to this proceeding that the public should be adequately protected by the issuance of a restricted real estate salesperson license to Respondent.

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 the 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 (2) 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:

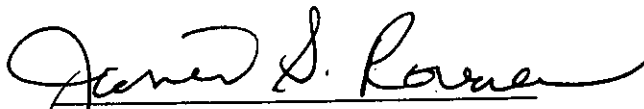
(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(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 Real Estate 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: July 25, 2008

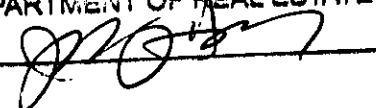

JANIS S. ROVNER
Administrative Law Judge
Office of Administrative Hearings

ALVARO MEJIA, Counsel (SBN 216956)
Department of Real Estate
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FILED

NOV 15 2007

DEPARTMENT OF REAL ESTATE
BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	NO. H- 34498 LA
)	
KAREN ELAINE KOPITKE,)	
)	<u>STATEMENT OF ISSUES</u>
)	
Respondent.)	

The Complainant, Joseph Aiu, a Deputy Real Estate Commissioner of the State of California, for cause of Statement of Issues against KAREN ELAINE KOPITKE, ("Respondent"), is informed and alleges as follows:

1.

The Complainant, Joseph Aiu, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues against Respondent in his official capacity.

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2.

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

3.

STATE CONTRACTORS BOARD DISCIPLINE

On or about August 25, 1998, in Case No. L9801-104-IR, the Nevada State Contractors Board found that Respondent KAREN ELAINE KOPITKE had violated Nevada Revised Statute Sections 624.3014(2,3) (misuse of license; evasion of law with intent; aiding or abetting unlicensed person to evade licensing requirements; conspiring with unlicensed person to perform unauthorized act; allowing license to be used by unlicensed person; acting as agent, partner or associate of unlicensed person; attempt to dispose of license or permit its unauthorized use) and 624.3011(1,c,1) (disregard of plans, specifications, laws or regulations; willful or deliberate disregard and violation of building laws). Based on these findings, Respondent's contractor license was suspended for thirty (30) days; a Letter of Reprimand was placed into Respondent's file for a period of two (2) years; and Respondent was fined \$2,000, to be paid within sixty (60) days, or Respondent's license would be suspended.

On or about July 2, 2002, in Case No. L-0102-148-IR, the Nevada State Contractors Board found that Respondent KAREN ELAINE KOPITKE had violated Nevada Revised Statute Sections 624.3014(2)(a), (b), (c) and (d) (aiding or abetting unlicensed person to evade licensing requirements; conspiracy with unlicensed person to perform unauthorized act; allowing license to be used by unlicensed person; acting as agent, partner or associate of unlicensed person), 624.305(1) (allowing another person to use license) and 624.3013(5) (permitting contracting business to be operated by unlicensed or unqualified person). Based on these findings, Respondent's two (2) contractor licenses were suspended for thirty (30) days and Respondent was ordered to pay restitution, provided that if such restitution were not paid within this time period, Respondent's licenses would be revoked.

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5.

On or about August 26, 2002, in Case No. L-0102-148-IR, the Decision and order set forth in paragraph four (4) above was amended to provide that the license suspensions of Respondent KAREN ELAINE KOPITKE were lifted for a period of six (6) months, upon certain terms and conditions, including the payment of restitution. On or about March 30, 2003, as a result of said order and Respondent's failure to pay restitution, Respondent's contractor licenses were revoked.

6.

The allegations contained in Paragraphs 3, 4, and 5, above, constitute cause for denial of Respondent's application for a real estate license under Business and Professions Code Sections 475(a)(4); 480(a)(3); and/or 10177(f).

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

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1 WHEREFORE, Complainant prays that the above entitled
2 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, KAREN ELAINE KOPITKE, and for such other
6 and further relief as may be proper in the premises.

7 Dated at San Diego, California

8 this 9 day of November, 2007.

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12 Joseph Aiu
13 Deputy Real Estate Commissioner
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26 Cc: KAREN ELAINE KOPITKE
27 Joseph Aiu
Sacto.