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DEPARTMENT OF REAL ESTATE
BY: *Handwritten signature*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of)	NO.	H-34788 LA
)		L-2008050740
KENNETH A. BAKER,)		
)		
Respondent.)		

DECISION AFTER REJECTION

This matter was heard by Mark Harman, Administrative Law Judge ("ALJ") of the Office of Administrative Hearings, on August 11, 2009, in Los Angeles, California.

The Complainant was represented by Shari Sveningson, Counsel for the Department of Real Estate ("Department").

KENNETH A. BAKER ("Respondent") appeared and was represented by Dana M. Cole, Attorney at Law.

Oral and documentary evidence was received, the record was closed and the matter was submitted for decision on August 18, 2009.

On September 23, 2009, ALJ Harman, submitted a Proposed Decision which I declined to adopt as my Decision herein.

1 Pursuant to Section 11517(c) of the Government Code of the State of California,
2 Respondent was served with notice of my determination not to adopt the Proposed Decision of
3 the ALJ along with a copy of said Proposed Decision. Respondent was notified that the case
4 would be decided by me upon the record, the transcript of proceedings held on August 11, 2009,
5 and any written argument offered by Respondent and Complainant.

6 Written argument was not submitted by Respondent. On March 25, 2010, written
7 argument was submitted on behalf of Complainant.

8 I have given careful consideration to the record in this case including the transcript
9 of proceedings of August 11, 2009, I have also considered the argument submitted on behalf of
10 Complainant.

11 The following shall constitute the Decision of the Real Estate Commissioner in
12 this proceeding:

13 FACTUAL FINDINGS

14 1. The Complainant, Maria Suarez, Deputy Real Estate Commissioner of the
15 State of California, filed the Statement of Issues in her official capacity.

16 Application

17 2. In November of 2005, Respondent applied to the Department for a
18 conditional real estate salesperson license. On his application Respondent disclosed the two
19 convictions discussed herein.

20 Convictions

21 3. On April 30, 2001, in Case Number 3:00CR-33-R, in the United States
22 District Court for the Western District of Kentucky, Respondent was convicted of violating
23 Title 18 U.S.C. 371 (Conspiracy to Defraud United States/ Traffic Counterfeit Credit Cards), a
24 felony. Respondent was sentenced to one year in prison, 3 years supervised release, and was
25 held joint and severally liable for restitution in the sum of \$476,904.21. Respondent's
26 sentence was reduced from a prison term of three to five years based on Respondent's
27 cooperation with prosecutors.

1 Respondent has successfully completed his prison sentence and supervised
2 release. Respondent testified that he personally had paid approximately \$5,000 of the total
3 amount ordered during the period of his supervised release from 2002 to 2005. Respondent
4 testified that the remaining amount was then converted to a civil judgment which he no longer
5 feels obligated to pay.

6 4. As to the circumstances underlying his conviction, Respondent testified that
7 he was involved in a ring of about six people that would obtain credit card numbers from hotel
8 and restaurant employees, produce false American Express cards with those numbers, then use
9 the fake credit cards to purchase laptop computers which would then be sold or returned for
10 cash refunds. Respondent testified that he and two other people were ordered to pay the
11 restitution.

12 5. On October 6, 1989, in Case Number 89M01208 in the Superior Court of
13 California, for the County of Los Angeles, Respondent was convicted of violating Penal Code
14 Section 245(a)(1)(Assault with a Deadly Weapon, Not Firearm), a misdemeanor. Imposition of
15 sentence was suspended, and Respondent was placed on 12 months probation, the conditions of
16 which included paying restitution and a fine. Respondent successfully completed his probation.
17 The conviction was expunged on or about May 4, 1996.

18 6. As to the circumstances regarding this conviction, Respondent testified that
19 he was involved in a financial dispute with his sister over a business matter and the dispute
20 became violent. According to Respondent, no weapon was involved. Respondent's testimony
21 was the only evidence offered regarding the circumstances of that crime.

22 Mitigation/Aggravation

23 7. In mitigation, Respondents fully acknowledged and admitted his crimes and
24 expressed his remorse for them. Respondent stated that, "Going to prison made me more
25 mature, and it made me recognize the value of freedom, and the ability to help others."

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27 ///

1 8. In aggravation, the ALJ found that Respondent did not offer any testimony, or
2 other evidence, from other persons who have known him in recent years to corroborate his
3 assertions of a changed attitude since his convictions.

4 9. Respondent testified that he did not know about the nature of his first
5 conviction until approximately ten years afterward. He said, "When I discovered that that
6 charge was not a good charge, I went to have it expunged."

7 Rehabilitation

8 10. Respondent testified that he attends three different churches which enables
9 him to, "give back more than if I was just in one place."

10 11. Respondent further testified that he has been married for eleven years and
11 has five children, two of whom attend universities in California. Respondent stated that he was
12 forced to be separated from his family who had moved to Atlanta during the period of his
13 incarceration and, later, supervised release in Los Angeles, but that they are together now. The
14 ALJ noted during the hearing that Respondent's wife and two oldest children were present at
15 the hearing but none of them testified.

16 12. Respondent testified that should he be offered a restricted salesperson
17 license, he knew two family members who would be willing to supervise his real estate
18 activities.

19 13. In aggravation, Respondent appears to be ambivalent about his life goals.
20 According to the record, at the time of his original license application, Respondent had not
21 completed all the education courses necessary for the issuance of a license.

22 Respondent stated that his family had been in the real estate business for 25
23 years, but that he never had any interest in entering the family business. This includes the
24 period during which Respondent engaged in the counterfeiting of credit cards, which
25 Respondent stated he did because he had been unemployed for about a year and a half. We
26 cannot know whether, if given the same choice again, Respondent would choose to engage in
27 lawful real estate activity.

1 It appears from a review of the applicable criteria of rehabilitation that
2 Respondent has not met all the following criteria:

3 Regulation 2911(b) - Respondent has paid part of his court-ordered restitution,
4 but most of it remains unpaid, and Respondent has indicated he does not consider it a debt he
5 needs to pay.

6 Regulation 2911(c) - Respondent's 2001 conviction cannot be expunged.

7 Regulation 2911(g) - Respondent has paid part of his court-ordered restitution,
8 but most of it remains unpaid, and Respondent has indicated he does not consider it a debt he
9 needs to pay.

10 Regulation 2911(i) - Respondent completed some of the educational courses
11 needed for his real estate license, and testified that he studied real estate while he was in prison,
12 but he did not offer evidence of any other training.

13 Regulation 2911(j) - Respondent has paid part of his court-ordered restitution,
14 but over \$470,000 remains unpaid as a civil judgment.

15 Regulation 2911(n) - As noted by the ALJ, Respondent did not provide evidence
16 of a change in attitude from others who are familiar with his previous conduct and subsequent
17 attitudes and behavioral patterns.

18 4. Respondent's crimes were very serious. Respondent has previously chosen to
19 engage in criminal activity, when the opportunity to obtain a real estate license and work in real
20 estate was there in his family. There is often a choice between legal and illegal activity when
21 people are involved in real estate transactions. Because of this we want licensees who are able
22 to abide by the law.

23 5. I disagree with the ALJ's conclusion that it is not necessary to deny
24 Respondent's application in order to protect the public.

25 6. The Real Estate Law and the disciplinary procedures provided for in the Real
26 Estate Law are designed to protect the public and to achieve the maximum protection for the
27 purchasers of real property and those dealing with real estate licensees (Business and

1 Professions Code Section 10050 and Handeland v. Department of Real Estate (1976) 58
2 Cal.App.3d 513.)

3 7. Real estate licensees occupy a unique position of trust and responsibility
4 toward the consuming public. They can function with little supervision. The possession of a
5 real estate license entitles the holder to enter the homes and have access to the property of
6 others without supervision. Such licensees must be trustworthy. See Ring v. Smith (1970)
7 5 Cal.App.3rd 197, 205, Golde v Fox 98 Cal.App.3d, 167, 177.). Harrington v. Department of
8 Real Estate (1989) 214 Cal.App.3d, 394, 402.

9 8. Given the serious nature of Respondent's crimes and the fact that Respondent
10 has not met all the criteria of rehabilitation, it has not been shown that issuance of a restricted
11 real estate salesperson license to Respondent would be in the public interest.

12 A restricted license allows licensees to perform the same acts as a non-restricted
13 license including the same access into homes, and access to private financial information, of
14 members of the public and no one can constantly monitor all activity.

15 9. Our most effective means of protecting the public is to refuse to issue a
16 license when there is any doubt about the applicant's rehabilitation.

17 ORDER

18 WHEREFORE, THE FOLLOWING ORDER is hereby made:

19 The application of Respondent KENNETH A. BAKER, for a real estate
20 salesperson license is denied.

21 This Decision shall become effective at 12 o'clock noon on JUN 14 2010.

22 IT IS SO ORDERED 5/21/10

23 JEFF DAVI
24 Real Estate Commissioner

25 
26 By: Barbara J. Bigby
27 Chief Deputy Commissioner

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DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of)	
)	
KENNETH A. BAKER,)	No. H-34788 LA
)	
Respondent.)	L-2008050740

NOTICE

TO: KENNETH A. BAKER, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated September 23, 2009, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated September 23, 2009, 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 August 11, 2009, any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of August 11, 2009, at the Los Angeles

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

KENNETH A. BAKER,

Respondent.

Case No. H-34788 LA

OAH No. 2008050740

PROPOSED DECISION

This matter was heard by Mark E. Harman, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on August 11, 2009.

Maria Suarez (Complainant) was represented by Shari L. Sveningson, Counsel for the Department of Real Estate (the Department).

Kenneth A. Baker (Respondent) was represented by Dana M. Cole, Attorney at Law.

Oral and documentary evidence was received. The record was left open until August 18, 2009, to allow Respondent to submit an additional document. The document was timely received and marked for identification as Exhibit A. There being no objection by Complainant, Exhibit A was admitted, the record was closed, and the matter was deemed submitted for decision on August 18, 2009.

FACTUAL FINDINGS

1. The Statement of Issues was made by Complainant, who is a Deputy Real Estate Commissioner of the State of California, acting in her official capacity, and was filed on April 1, 2008. Respondent requested a hearing on April 22, 2008, and this matter ensued.

2. On or about November 4, 2005, Respondent filed a written application for a real estate salesperson license, on the condition that any license issued as a result of that application would be subject to completion of certain educational requirements as set forth in Business and Professions Code¹ section 10153.4. The application is pending.

¹ All further statutory references are to the Business and Professions Code, unless stated otherwise.

3a. On or about October 6, 1989, in the Superior Court of California, County of Los Angeles, in case no. 89M01208, Respondent was convicted upon his plea of nolo contendere, of violating Penal Code section 245, subdivision (a)(1), assault with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury, a misdemeanor. This crime is substantially related to the qualifications, functions, and duties of a real estate license.

3b. Imposition of sentence was suspended and Respondent was placed on summary probation for a period of 12 months and ordered to make restitution to the victim.

3c. Complainant did not offer evidence regarding the facts and circumstances underlying this conviction; therefore, the following facts are derived from Respondent's testimony only. Respondent was approximately 21 years old, when he was involved in a financial dispute with his older sister over a family business matter. The dispute escalated and became violent. No weapon was involved. His conviction was expunged in 1998.

4a. On April 30, 2001, in the United States District Court, for the Western District of Kentucky, in case no. 3:00-cr-33-TBR-JDM-1, Respondent was convicted of violating Title 18 U.S.C. § 371, conspiracy to traffic in counterfeit credit cards, a felony. This crime is substantially related to the qualifications, functions, and duties of a real estate license.

4b. Prior to sentencing, the U.S. Attorney made a motion for a downward departure from federal sentencing guidelines because Respondent had provided substantial assistance in the investigation and prosecution of other offenders. The court approved the motion and the U.S. Attorney's recommendations, and sentenced Respondent to serve one year and one day in federal prison. Respondent was released from incarceration after 11 and one-half months of incarceration,² and remained on supervised release until it was terminated on April 23, 2005. Respondent was ordered to make restitution, jointly and severally, with six others, in the amount of \$476,904.21. He has paid about \$5,000 of this amount. The remainder was converted to a civil judgment, a debt he believes he no longer must pay.

4c. The facts and circumstances underlying this conviction are as follows. Respondent and six other persons engaged in a conspiracy involving the production, distribution, and use of counterfeit American Express Optima credit cards, as well as other credit cards. The conspirators obtained actual account numbers from restaurant employees and others, and manufactured the counterfeit cards. The counterfeit cards were distributed to "runners," who would take the cards to retail stores to purchase equipment, usually laptop computers. The fraudulently-obtained computers were then sold or returned for cash.

² At the administrative hearing, Respondent's counsel suggested that, had Respondent failed to cooperate with the government, he would have been sentenced to serve three to five years in prison.

5. Respondent's involvement in the conspiracy dated back to 1998. In approximately 2000, he was arrested in Los Angeles under a secret government indictment. He immediately recognized he had done wrong, and agreed to cooperate with the U.S. Secret Service. He reached a plea agreement with the U.S. Attorney in July 2000, conditioned upon his full cooperation with the investigation. As a result of his cooperation, he received several death threats, and the U.S. Secret Service offered to protect him and his family. The investigators used him to make several telephone calls, in which the conversations were recorded (pretext telephone calls), and for face-to-face meetings in which in other persons might be willing to reveal information about criminal matters. He identified certain techniques that the other offenders used in the commission of the crime, as well as records used in the criminal activity.

6. Respondent accepted responsibility for his crime. He said a conviction "is like an addiction, something you work with on a daily basis to overcome. I plan to be free for the rest of my life." He said: "Going to prison was a valuable lesson to me. It made me more mature, and it made me recognize the value of freedom and the ability to help others." While in prison, Respondent attended real estate classes and church. He said: "I gave back there."

7. Respondent has been married 11 years. He has five children, ages 19 to 9. He was away from his family for nearly four years, while in custody and while serving in the supervised release program in Los Angeles. His family life is stable now. He is supporting his family on a modest income. His two oldest children are both in college: one daughter attends the University of California, Riverside, and another attends California State University, Northridge. Respondent also tries to help his elderly parents.

8. Becoming a licensed salesperson would be the first step toward realizing Respondent's goal to become a real estate broker. His family has been in the real estate business for 25 years. In college, his expertise was in marketing, and he believes he is a skilled salesperson. Finding work since his conviction has been difficult, because of his conviction. He currently is working for NBG management, advising an entertainment company on marketing. He has disclosed his conviction to his employer.

9. Respondent attends three churches, including West Angeles Temple, and Abundant Living. He said he wants to give back to the community, so by focusing on three churches, he is able to give back more. One of his volunteer activities is the Rights of Passage program of Faithful Central Community Church, which helps young men complete applications for college. He also helps with his son's little league and basketball teams.

10. Respondent does not use drugs, and drinks alcohol only on social occasions.

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's application for a real estate salesperson license pursuant to section 10177, subdivision (b), in conjunction with section 480, subdivision (a), for convictions of crimes, by reason of factual finding numbers 3 and 4. The

crimes of which Respondent has been convicted involve moral turpitude and are substantially related to the qualifications, functions, and duties of a real estate salesperson.

2. The Department has developed criteria under section 482, subdivision (a), for the purpose of evaluating the rehabilitation of an applicant for licensure, in considering whether to deny the license on the basis of convictions or wrongful acts. (Cal. Code Regs., tit. 10, § 2911.) Respondent has satisfied many of the Department's criteria. For example, it has been more than eight years since his most recent conviction (§ 2911, subd. (a)). Respondent made restitution payments on a regular basis, although it appears there is still a balance owing (§ 2911, subd. (b)). His earlier conviction was expunged (§ 2911, subd. (c)). He successfully completed the supervised release program, which was terminated approximately four years ago (§ 2911, subd. (e)). His familial relationships are stable (§ 2911, subd. (h)), and he is committed to aiding his elderly parents. He demonstrated conscientious involvement in giving back to his community (§ 2911, subd. (l)).

3. Through his testimony, Respondent has evidenced a change in attitude since his convictions (§ 2911, subs. (n)(1)). He accepts responsibility for his crimes. Respondent concedes that his rehabilitation process is continuing. He has a strong desire to get back on his feet financially so that he can better provide for his family. He also wants to help others. However, Respondent did not offer any testimony by other persons who have known him in recent years to corroborate his assertions of a changed attitude. Nevertheless, his testimony indicates there are positive signs of rehabilitation.

4. The purpose of these proceedings is for public protection, not to punish Respondent. For purposes of licensure and public protection, there is a sufficient basis for entrusting Respondent with the responsibilities of licensure at this time. The public interest can be adequately protected by the granting of a restricted license for a substantial period, during which Respondent may continue to demonstrate his rehabilitation.

ORDER

The application of Respondent, Kenneth A. Baker, 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 said 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

Not adopted

(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 three years have elapsed from the date of issuance of the restricted license to Respondent.

3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

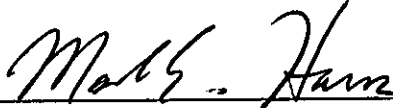
(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

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

4. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within 18 months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective 18 months after the date of its issuance. Said 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.

September 23, 2009


MARK E. HARMAN
Administrative Law Judge
Office of Administrative Hearings

Not adopted

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SHARI SVENINGSON, Counsel (SBN 195298)
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

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DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	NO. H- 34788 LA
)	
KENNETH A. BAKER,)	
)	<u>STATEMENT OF ISSUES</u>
)	
Respondent.)	
)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Statement of Issues against KENNETH A. BAKER, aka Ken Baker, Ken A. Baker ("Respondent"), is informed and alleges as follows:

1.

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

///
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2.

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

8 (CRIMINAL CONVICTIONS)

9 3.

10 On or about April 30, 2001, in the United States
11 District Court Western District of Kentucky, in Case no.
12 3:00CR-33-R, Respondent was convicted of violating Title 18
13 U.S.C. 371 (Conspiracy to Defraud United States/Produce, Use and
14 Traffic in Counterfeit Credit Cards), a felony. The underlying
15 facts of this criminal conviction involves moral turpitude,
16 which bears a substantial relationship under Title 10, Chapter
17 6, Section 2910, California Code of Regulations, to the
18 qualifications, functions or duties of a real estate licensee.
19

20 4.

21 On or about October 6, 1989, in the California
22 Superior Court, County of Los Angeles, in Case no. 89MO1208,
23 Respondent was convicted of violating Penal Code
24 245(a)(1) (Assault With Deadly Weapon not Firearm, Great Bodily
25 Injury Likely), a misdemeanor. The underlying facts of this
26 criminal conviction involves moral turpitude, which bears a
27 substantial relationship under Title 10, Chapter 6, Section

1 2910, California Code of Regulations, to the qualifications,
2 functions or duties of a real estate licensee.

3 5.

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

9
10 The Statement of Issues is brought under the
11 provisions of Section 10100, Division 4 of the Business and
12 Professions Code of the State of California and Sections 11500
13 and 11529 of the Government Code.

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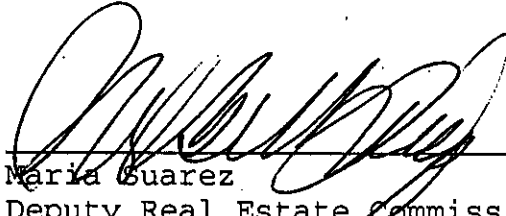
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WHEREFORE, Complainant prays that the above entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate salesperson license to Respondent, KENNETH A. BAKER, and for such other and further relief as may be proper in the premises.

Dated at Los Angeles, California

This 27th day of March 2008.



Maria Suarez
Deputy Real Estate Commissioner

Cc: KENNETH A. BAKER
Camilla Ann Lyle-Blair
Maria Suarez
Sacto.