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JUL 23 2009

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY: 

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In the Matter of the Application of)
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GAVIN PETER DENNISTON,
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Respondent.
)

No. H-35448 LA
L-2008120254

DECISION

The Proposed Decision dated June 17, 2009, 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.

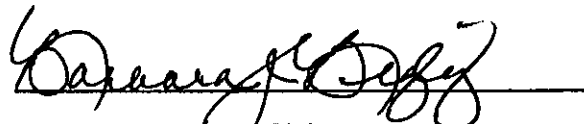
The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a 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 August 12, 2009.

IT IS SO ORDERED 7-21-09

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

GAVIN PETER DENNISTON,

Respondent.

No. H-35448 LA

OAH No. 2008120254

PROPOSED DECISION

On April 9, 2009, Janis S. Rovner, Administrative Law Judge heard this matter at the Office of Administrative Hearings in Los Angeles, California. Cheryl D. Keily, Staff Counsel, represented Robin Trujillo (Complainant). Frank Buda, Attorney at Law, represented Gavin Peter Denniston (Respondent).

Oral and documentary evidence was received and argument was heard. Originally, the record was left open until April 24, 2009, for Respondent's counsel to submit documents showing that he has complied with his criminal probation. Complainant was given until April 27, 2009, to file objections to the documents. However, Respondent's counsel submitted additional documents on April 27, 2009, and the time for closing the record was extended until May 18, 2009, to allow Complainant to submit objections to the Respondent's documents. In addition, the parties agreed that Exhibits 3 and 6 were to be returned to Complainant to redact the name of a minor victim in those exhibits. Exhibits 3 and 6 were so redacted and returned to the undersigned under cover of a transmittal letter from Complainant's counsel identified as Exhibit 10.

After the hearing, documents were submitted and identified for the record, as follows: (1) On April 20, 2009, Respondent submitted a letter from Respondent's probation officer and a letter from his alcohol counseling program, under cover of a transmittal letter, identified collectively as Exhibit L (which includes facsimile copies of the same documents received on April 17, 2009). (2) On April 20, 2009, Complainant submitted a letter identified as Exhibit 11, in which she agreed that the record in this matter would remain open until April 22, 2009,¹ to allow Respondent to file additional documents. (3) On April 22, 2009, Respondent submitted a letter, identified as Exhibit M, stating that he had no further documents to submit. (4) On April 27, 2009, Respondent submitted two additional documents showing he had completed his community service requirements and paid the

¹ As announced at the conclusion of the hearing, the record was originally to remain open for Respondent's documents until April 24, 2009.

monetary fine required pursuant to his criminal probation, under cover of a transmittal letter, identified collectively as Exhibit N (which includes hard copies of the same documents received on April 29, 2009).

No objections having been received, Exhibits L and N were admitted into evidence, and the record was closed on May 18, 2009. The Administrative Law Judge makes the following findings of fact, legal conclusions and order.

FACTUAL FINDINGS

Jurisdiction and Background

1. On November 3, 2008, Complainant filed the Statement of Issues while acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, Department of Real Estate (Department).

2. On December 17, 2007, Respondent submitted his application for a real estate salesperson license to the Department.

Convictions

3. (A) On March 13, 2006, in Case Number 1205624, the Superior Court of California, County of Santa Barbara, Figueroa Division, convicted Respondent, upon his plea of nolo contendere, of violating Penal Code section 415(2) (malicious and willful disturbance of another by loud and unreasonable noise)² and Business and Professions Code section 25658, subdivision (a) (selling or furnishing alcohol to a minor). Both crimes are misdemeanors.

(B) The court suspended imposition of sentence and placed Respondent on supervised probation for three years. Pursuant to the terms and conditions of his probation, Respondent was required to serve 15 days in jail; pay a fine of \$3000 and an administrative fee of \$20; reimburse the victim's restitution fund in the amount of \$125, no later than May 13, 2004; obey all laws; pay restitution to the victim; refrain from contact with the victim; resign from membership in his college fraternity; and complete 120 hours of community service, no later than November 13, 2006. His driving privileges were also restricted for 12 months.

² The conviction for violating Penal Code section 415(2) was pled in the Accusation as a matter in aggravation and not as an independent basis for denying Respondent's application.

(C) Respondent's crimes occurred when he was 19 years old, during the evening of September 21, 2004, and the early morning hours of September 22, 2004. On September 21, 2004, he was moving into his fraternity house upon returning to the University of California at Santa Barbara for his second year as a student at the school. The fraternity house consisted of a complex with multiple suites located around a quad. In the evening hours, Respondent and many other underage students were drinking alcohol and partying at several of the fraternity's suites. After a night of drinking and partying, Respondent had consensual sexual relations with a 17-year old woman who was a first-year student at nearby Westmont College, a small sectarian school. Both Respondent and the young woman were very drunk at the time, having consumed alcohol most of the evening. Before she had sexual relations with Respondent, the young woman had sexual relations with two other male college students at the fraternity party that evening.

(D) Respondent, and the two other men who had sexual relations with the young woman that night, were later arrested and charged with the misdemeanor crimes of violating Penal Code sections 272, subdivision (a)(1) (contributing to the delinquency of a minor) and 261.5, subdivision (a), (unlawful intercourse with a minor who was not more than three years younger than the perpetrators). The court dismissed these charges against Respondent in the interests of justice when he pled nolo contendere to the crimes mentioned in Factual Finding 3(A), above.

4. (A) On May 3, 2007, in Case Number 1216556, the Superior Court of California, County of Santa Barbara, Figueroa Division, convicted Respondent, on his plea of nolo contendere, of violating Penal Code section 242 (battery), a misdemeanor.

(B) The court suspended imposition of sentence and placed Respondent on supervised probation for three years. The court ordered Respondent to comply with the following probationary terms and conditions: serve 1 day in jail, pay fines of \$145, pay restitution as his probation officer directs, remain clean and sober and abstain from use of alcohol and drugs, enter and complete a clean and sober treatment program, obey all laws, submit to random drug and alcohol testing, submit to searches by police or his probation officer at any time, refrain from possessing or using nonprescription drugs, refrain from using alcohol or frequenting establishments where alcohol is used, refrain from any contact with the victims of his crime, and move out of the town of Isla Vista by June 30, 2007.

(C) Respondent's crime occurred on December 3, 2006 at about 1:00 A.M. Respondent was in downtown Santa Barbara at a bar with a date. Another man made some crude remarks to Respondent's date. Later, Respondent encountered the man, with another man, on the street. Respondent became involved in an altercation with both men and threw punches at them. He punched one of the men in the face. According to the police officers who observed at least part of the fight, Respondent was the aggressor. He was striking the men with his fists. Respondent was also hit and pushed to the ground; he got up and proceeded to throw more punches at the men. Respondent instigated the fight and he was

very intoxicated at the time. One of the police officers had to subdue Respondent and throw him to the ground. According to one of the police officers, the other two men did not appear intoxicated and were surprised at the incident. Respondent was immediately arrested at the scene.

(D) Respondent's battery conviction involves moral turpitude by its facts, and is substantially related to the qualifications, functions, and duties of a licensee. Respondent engaged in a fight in which he was the aggressor. He punched and attempted to punch the victims in the face, with the intent or threat of doing substantial injury to them.

Factors in Aggravation

5. (A) On May 3, 2007, in Case Number 121941, the Superior Court of California, County of Santa Barbara, Figueroa Division, convicted Respondent, on his plea of nolo contendere, of violating Penal Code section 647, subdivision (f) (public intoxication), a misdemeanor.

(B) In connection with this crime, the court sentenced Respondent to spend 60 days in jail and pay fines and restitution of \$145.00.

(C) Respondent's crime occurred on March 2, 2007, at about 2:00 a.m. Respondent had taken a taxi home. He and the taxi driver argued about the amount of Respondent's fare. The taxi driver flagged down police officers, who noticed Respondent was very intoxicated. Respondent paid the taxi driver. The police then arrested Respondent for being drunk in public.

6. When considered together, the crimes referenced in Factual Findings 3, 4 and 5, are substantially related to the qualifications, functions, and duties of a real estate licensee. All of his convictions involved the use of alcohol, and they demonstrate a pattern of repeated and willful disregard of the law.

Mitigation, Rehabilitation and Other Factors

7. (A) While in college, Respondent unquestionably abused alcohol. He knows his use of alcohol significantly contributed to his criminal conduct. In relation to his conviction for furnishing alcohol to a minor, Respondent was 19 years old at the time. He had not met the young woman before that evening. He did not know she was a 17-year old minor, about six weeks shy of her eighteenth birthday. Although he did not ask her how old she was, he had spoken to her earlier in the evening, when they were walking to another party near the campus with a group of students. He found out she had gone to high school with one of Respondent's 19-year old fraternity brothers. This led him to conclude that the young woman was the same age as the fraternity brother. Her appearance was consistent with that of a 19-year old and she told him she was a college student at Westmont College.

Respondent did not see her again until later when he returned to the fraternity house. The young woman voluntarily had sexual relations with Respondent. Her sexual relations with Respondent were consensual.³

(B) Respondent pled nolo contendere to the crimes of furnishing alcohol to a minor and disturbing the peace because he wanted to spare his family the emotional distress and embarrassment of a trial on the original charges against him. Respondent asserts that he was not guilty of the charges of unlawful intercourse with a minor and contributing to the delinquency of a minor, which were dismissed as part of his plea bargain (see Factual Finding 3(D)).

(C) At hearing, Respondent expressed concern for the young woman because she dropped out of college after the fraternity party due to her emotional state. In this regard, the criminal court held Respondent and his co-defendants jointly and severally liable for payment of \$50,000 in restitution to the minor for the loss of her college tuition that year.

8. (A) Respondent has complied with all conditions of his criminal probation, though he is still on probation. With reference to the convictions in Factual Finding 3, he completed 120 hours of community service by working as an employee at the Goleta Community Center as a janitor and kitchen worker. He paid all fees and a \$3,000 fine. He and the co-defendants made full restitution to the victim of his crime. He also resigned as a member of his fraternity, and served his jail time in a work release program. Respondent's probation will expire on September 28, 2009.

(B) In compliance with the probationary terms of his battery conviction,⁴ Respondent moved out of Isla Vista, where the university is located. After he moved, he lived in a studio apartment in Goleta. He also called in every day for six months to make himself available for random drug and alcohol testing. The results of all of his tests were negative for the presence of drugs and alcohol. As required, he has also remained clean and sober. He completed an alcohol treatment program to fulfill another condition. He completed the six-month treatment program in November of 2007. Respondent benefited significantly from the alcohol treatment program, attending four days per week, three and one-half hours per day, for two months, two days per week for three months, and one day per week for one month. On July 30, 2007, his supervised probation was converted to unsupervised probation that will end on May 2, 2010.

³ In the police report, some of the minor's hearsay statements to police seem to imply that she did not consent to sexual intercourse with Respondent and others during the evening. Her statements to police were not entirely cogent or credible and are given little weight. Respondent's testimony that the sexual relations were consensual is credited.

⁴ See Factual Finding 4.

(C) As for his public intoxication conviction, Respondent served his 60 days in jail through a work release program. He also paid the fines associated with his sentence.

9. (A) Respondent is now 24 years old. He graduated from the University of California at Santa Barbara with a bachelor's degree in global studies in December of 2007. He returned to his home in Newport Coast, California, where he continues to live with his mother and father. He has turned his life around and become a more responsible person.

(B) He completely agrees that he abused alcohol while he was in college in a manner that hurt him, his family and others. According to him, it was the source of most of his problems. He is now leading a clean and sober life. After learning through his treatment program that alcohol was destroying his life, he is determined to continue his sobriety.

10. (A) Respondent has changed his attitude entirely from that which existed at the time of his crimes. He admits that he acted irresponsibly and immaturely while he was away at college. By his own admission, he was experiencing for the first time the freedom of life away from home. He has now matured. After graduating from college, he became involved in a long-term stable relationship with a woman he has known since he was in middle school. They hope to be married in the future. She has had a positive influence on his life.

(B) Respondent has worked for over a year at DAUM Commercial Real Estate. Steve Pearson, the broker and branch manager of the company, who is also a friend of Respondent's parents, hired him. Respondent worked in a paid intern position for the first six months, copying documents and inputting data. He continues to work at the company in a similar capacity. Respondent is very enthused about the real estate business and hopes to make it his career. Respondent has completed real estate coursework in Real Estate Principles, Real Estate Practice, and Escrow. Respondent's father has headed several residential and commercial real estate development companies. Mr. Pearson is aware of Respondent's convictions; yet he vouches for Respondent's integrity and work ethic.

(C) Respondent regularly attends Community Marines Church in Newport Beach. In the past, he has also donated time to teaching skiing and snow boarding to disabled individuals for a charitable organization in Mammoth, California.

(D) Respondent's family including his grandparents, parents and his three older sisters are very close and spend a significant amount of time together. They provide a stable support network for Respondent. Respondent spends time with this grandfather and occasionally baby sits for his young nephew.

(E) Respondent has been clean and sober since March 2, 2007, when he was arrested for the public intoxication crime. He attended Alcoholics Anonymous (AA), but stopped going about six to nine months ago. He is committed to remaining sober with the help of his family, his girlfriend and his religion.

11. At the hearing, Respondent presented many letters of reference from family, friends, and his broker at DAUM Commercial, attesting to his work ethic, integrity, and good character. Family members and friends who wrote letters on his behalf remarked on the positive changes they have seen in his life since he returned to his home in Orange County from college.

12. (A) Overall, Respondent presented himself as a credible witness at the hearing in both his demeanor and the content of his testimony. As noted below, Respondent made a few inconsistent statements about the details of his crimes, but he was truthful in relating the major aspects.

(B) Respondent at first denied the sexual encounter with the young woman when police initially questioned him about it, although he later admitted it.

(C) Additionally, Respondent was substantially forthcoming in disclosing the facts underlying his crimes on his salesperson application or in additional detailed information he provided to the Department regarding his crimes. He disclosed in his application that he attended a party where underage people were consuming alcohol. He also stated in providing further written details to the Department that "one of the underage drinkers suffered psychological damages and had to drop out of school." He omitted the fact that he had sexual relations with a 17-year old minor. While this is relevant information that he should have disclosed given the original charges against him, Respondent did disclose his convictions. He also testified with candor at the hearing about the events that led to his convictions, including a very detailed explanation of his sexual encounter with the young woman.

(D) With reference to his conviction for battery, Respondent told police when the crime occurred that the "the fight was his fault" and that he was "very intoxicated and started the fight." At hearing, Respondent acknowledged his earlier statements to police, but testified that he did not initiate the fight. In this respect, Respondent's testimony at hearing was not entirely consistent with the police officers' observations or with statements he made right after the crime.

13. Respondent has been convicted on three occasions over the last three years, and the last conviction occurred about two years ago. He continues on criminal probation until May 2, 2010, for the battery conviction. He was on criminal probation for the crime of furnishing alcohol to a minor when he committed his other crimes. Similarly, he was on criminal probation for the crime of battery when he committed his public intoxication offense. All of his convictions involved the use of alcohol and occurred while he was away at college.

LEGAL CONCLUSIONS

1. Under Business and Professions Code sections 475, subdivision (a)(2) and 480, subdivision (a)(1), an application for a real estate salesperson license may be denied for conviction of a crime substantially related to the qualifications, functions and duties of a real estate salesperson. A real estate salesperson license may also be denied pursuant to Business and Professions Code section 10177, subdivision (b), for conviction of a crime involving moral turpitude.⁵

2. California Code of Regulations, title 10, section 2910, applies when determining whether a crime is substantially related to the qualifications, functions and duties of a real estate license, as follows:

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

[¶] . . . [¶]

(8) Doing of any unlawful act . . . with the intent or threat of doing substantial injury to the person or property of another.

[¶] . . . [¶]

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

[¶] . . . [¶]

⁵ Effective January 1, 2008, section 10177, subdivision (b), was amended to delete the moral turpitude requirement and to substitute "substantially related to the qualifications, functions, or duties of a real estate licensee." Respondent applied for a salesperson license in August of 2007, before the amendment to section 10177, subdivision (b), took effect. The Statement of Issues identified Respondent's relevant misdemeanor convictions as involving moral turpitude, thus recognizing that the prior version of section 10177 applies here.

3. Moral turpitude has been defined as "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." (*In re Higbie* (1972) 6 Cal.3d 562, 569, citing *In re Craig* (1938) 12 Cal.2d 93, 97.) Acts showing "bad character" and "the general readiness to do evil" involve moral turpitude. (*People v. Castro* (1985) 38 Cal.3d 301, 314.)

Conduct involving moral turpitude has been defined as everything done contrary to justice, honesty, modesty, or good morals. (*In re Hatch* (1937) 10 Cal.2d 147, 150 [citations omitted].) Criminal conduct reveals moral turpitude for the purpose of professional licensure "if it shows a deficiency in any character trait necessary for the practice of [the profession], (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the . . . conduct would be likely to undermine public confidence in and respect for the . . . profession." (*In re Lesansky* (2001) 25 Cal.4th 11, 16 [citations omitted].)

In deciding whether a conviction involves moral turpitude, a court must look to the statutory definition of the particular crime; only if the least adjudicated elements of the crime necessarily involve moral turpitude does the conviction involve moral turpitude. (*People v. Forster* (1994) 29 Cal.App.4th 1746, 1756-7.) However, in disciplinary matters, a prior conviction may involve moral turpitude by the manner of its commission, and a board may look beyond the least adjudicated elements of a misdemeanor offense to determine whether it involved moral turpitude. (*Padilla v. State Personnel Board* (1992) 8 Cal.App.4th 1136, 1141-1142.)

4. Cause does not exist to deny Respondent's application for a real estate salesperson license, pursuant to Business and Professions Code sections 475, subdivision (a)(2); 480, subdivision (a)(1); and 10177, subdivision (b), in that his conviction for the crime of furnishing alcohol to a minor as set forth in Factual Finding 3, was not a crime involving moral turpitude either on its face or based on the circumstances underlying the crime.

Respondent was convicted of violating Business and Professions Code section 25658, subdivision (a), which reads as follows:

[E]very person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

This crime does not involve moral turpitude on its face. (*Lorenz v. Board of Medical Examiners* (46 Cal.2d 684, 686-688.) The facts surrounding Respondent's conviction did not establish the identity of the person who sold, furnished or gave away the alcohol. Respondent, who was under 19-years old at the time of the crime, was consuming alcohol

along with numerous other underage drinkers. It was not shown that Respondent sold, furnished or gave away the alcohol. Respondent did not see the 17-year old minor consume any alcohol. These circumstances do not show that Respondent committed a crime involving moral turpitude.

Complainant asserts that the conduct underlying Respondent's crime involves moral turpitude because he had sexual intercourse and engaged in other sexual activities with a 17-year old minor female as set forth in Factual Finding 3. This conduct does not involve moral turpitude. Respondent was originally charged as provided in Factual Finding 3(D). The two charges were dismissed pursuant to a plea agreement. The crimes that were dismissed of unlawful intercourse with a minor and contributing to the delinquency of a minor, do not necessarily involve moral turpitude per se. (*People v. Flanagan* (1986) 185 Cal.App.3d 764, 772; *In re Duggan* (1976) 17 Cal.3d 416, 422.) Here, the facts surrounding Respondent's conviction do not indicate that he had a criminal or evil intent when he had sexual intercourse with the young woman who was a minor. He had a reasonable belief that she was not a minor by reason of the facts surrounding his conduct (see Factual Findings 3 and 7(A)). Respondent's conduct did not involve moral turpitude; he committed an innocent act when he had sexual relations with a young woman he reasonably believed was not a minor. (See *People v. Hernandez* (1964) 61 Cal.2d 529, 532-535.)

In addition, this crime is not substantially related to the qualifications, functions and duties of a real estate licensee. Respondent had no intent or threat to harm or injure the young woman. While the evidence established that she suffered some emotional distress that forced her to drop out of college and Respondent was ordered to pay a portion of her college tuition as restitution, the evidence does not support a finding that Respondent's acts caused her emotional distress.

5. Cause exists to deny Respondent's application for a real estate salesperson license, pursuant to Business and Professions Code sections 475, subdivision (a)(2); 480, subdivision (a)(1); and 10177, subdivision (b), based on Factual Finding 4, in that he was convicted of a crime involving moral turpitude that is substantially related to the qualifications, functions and duties of a real estate salesperson.

A simple battery in violation of Penal Code section 242, does not necessarily involve moral turpitude on its face. (*People v. Mansfield* (1988) 200 Cal.App.3d 82, 88-89.) Nonetheless, under the totality of the circumstances, it is concluded that Respondent's conduct involved moral turpitude, based on Factual Finding 4. He was the aggressor in the fight and punched the victim in the face. He continued fighting and punching until the police restrained him. He acted in a manner which could have caused substantial harm to the victim.

Respondent's conviction for battery is substantially related to the qualifications, functions and duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8), based upon Factual Finding 4. Respondent's other convictions as set forth in Factual Findings 3 and 5, when considered with his battery

conviction, are substantially related to the qualifications, functions and duties of a real estate licensee pursuant to California Code of Regulations, section 2910, subdivision (a)(10), as set forth in Factual Finding 6. Respondent suffered multiple misdemeanor convictions, the underlying facts of which involved the use of alcohol. Under those circumstances, the requisite nexus to the practice of real estate has been established. (See *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757; *In re Kelley* (1990) 52 Cal.3d 487.)

6. The Department has adopted the following criteria pursuant to California Code of Regulations, title 10, section 2911, to evaluate whether an applicant is rehabilitated from previous crimes or acts the applicant committed:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

(c) Expungement of criminal convictions resulting from immoral or antisocial acts.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.

(g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.

(i) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

(k) Correction of business practices resulting in injury to others or with the potential to cause such injury.

(l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

(n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

7. Respondent has complied with many of the Department's applicable rehabilitation criteria set forth in California Code of Regulations, title 10, section 2911, based on Factual Findings 7 through 13. He fulfilled many of the conditions of his criminal probation. He has abstained from the use of alcohol for over two years. His attitude has changed; as have his social relationships. He graduated from college and returned to his home town to live with his parents. His parents, extended family, and girl friend provide a stable support system for him. He has re-connected with friends from his home town, who were not a part of his life during the period when his crimes occurred. Respondent regularly attends church. His credible testimony, and other evidence from friends and family

members, lead to the conclusion that he has changed significantly since he committed his crimes (all of which occurred within a two and one-half year period when he was away at college). While he has not always been forthcoming about all of the details of his criminal conduct, he has been truthful in relating the most important aspects of his crimes, and he accepts responsibility for them.

Respondent has not satisfied all the Department's rehabilitation requirements. He suffered convictions on three separate occasions and the last one is recent, occurring about two years ago. Although he has matured and gained insight into his problems with alcohol abuse, he no longer regularly attends any alcohol counseling or treatment program, relying instead on the strong support of his family, friends, and religion. Respondent remains on probation and his rehabilitative efforts have taken place during his probation. Since people have a strong incentive to obey the law while under the supervision of the criminal justice system, less weight is generally placed on the fact that an applicant has engaged in good behavior while he is under the supervision of the criminal justice system. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

Given the steps Respondent has taken toward rehabilitating himself, it is concluded that it would not be contrary to the public interest to issue a restricted real estate salesperson license to him. The five-year term is warranted because Respondent's crimes are recent and his rehabilitation is not complete.

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.

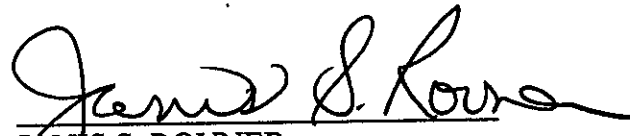
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until five (5) years have elapsed from the date of issuance of the restricted license to Respondent.

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.

DATED: June 17, 2009



JANIS S. ROVNER
Administrative Law Judge
Office of Administrative Hearings

1 CHERYL D. KEILY, Counsel (SBN 94008)
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5 Telephone: (213) 576-6982
6 (Direct) (213) 576-5770

FILED

NOV - 4. 2008

DEPARTMENT OF REAL ESTATE

BY: [Signature]

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9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

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12 In the Matter of the Application of)	NO. H- 35448 LA
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STATEMENT OF ISSUES

16 The Complainant, Robin Trujillo, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Statement
18 of Issues against GAVIN PETER DENNISTON, aka Gavin Denniston,
19 ("Respondent"), is informed and alleges as follows:

20 1.

21 The Complainant, Robin Trujillo, a Deputy Real Estate
22 Commissioner of the State of California, makes this Statement
23 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 December 17, 2007.
4

5 3.

6 (CRIMINAL CONVICTIONS)

7 On or about March 13, 2006, in the California Superior
8 Court, County of Santa Barbara, Figueroa Division, in Case No.
9 1205624, Respondent was convicted of violating California
10 Business and Professions Code Section 25658(a) (Sale of
11 Alcoholic Beverage to a Minor), a misdemeanor. The underlying
12 facts of this criminal conviction involve moral turpitude, and
13 bear a substantial relationship under Title 10, Chapter 6,
14 Section 2910, California Code of Regulations, to the
15 qualifications, functions or duties of a real estate licensee.
16

17 4.

18 In aggravation, on or about March 13, 2006, in the
19 California Superior Court, County of Santa Barbara, Figueroa
20 Division, in Case No. 1205624, Respondent was convicted of
21 violating California Penal Code Section 415(2) (Malicious and
22 Willful Disturbance of Another Person by Loud and Unreasonable
23 Noise), a misdemeanor.

24 5.

25 On or about May 3, 2007, in the California Superior
26 Court, County of Santa Barbara, Figueroa Division, in Case No.
27 1216556, Respondent was convicted of violating California Penal

1 Code Section 242 (Battery), a misdemeanor. The underlying facts
2 of this criminal conviction involve moral turpitude, and bear a
3 substantial relationship under Title 10, Chapter 6, Section
4 2910, California Code of Regulations, to the qualifications,
5 functions or duties of a real estate licensee.

6 6.

7 In aggravation, on or about May 3, 2007, in the
8 California Superior Court, County of Santa Barbara, Figueroa
9 Division, in Case No. 1219411, Respondent was convicted of
10 violating California Penal Code Section 647(F) (Public
11 Intoxication), a misdemeanor.

12 7.

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

17 The Statement of Issues is brought under the
18 provisions of Section 10100, Division 4 of the Business and
19 Professions Code of the State of California and Sections 11500
20 through 11528 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, GAVIN PETER DENNISTON, and for such other
6 and further relief as may be proper under other provisions of
7 law.

8 Dated at Los Angeles, California
9 this 3 day of November, 2008.

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13 _____
14 Robin Trujillo
15 Deputy Real Estate Commissioner
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26 CC: GAVIN PETER DENNISTON
27 Robin Trujillo
Sacto.