

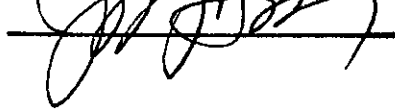
FILED

MAY 19 2010

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY: 

In the Matter of the Application of)	No. H-36095 LA
)	
)	L-2009080007
MARLIN RENEIRE FENTY,)	
)	
Respondent.)	
_____)	

DECISION

The Proposed Decision dated April 12, 2010, 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.

Pursuant to Section 11517(c) (2) of the Government Code, the following corrections are made to the Proposed Decision:

Order, page 8, "Respondent's application for a real estate salesperson license is granted." is changed to read "Respondent's application for a real estate salesperson license is denied.". The wording "The license is immediately revoked" is deleted.

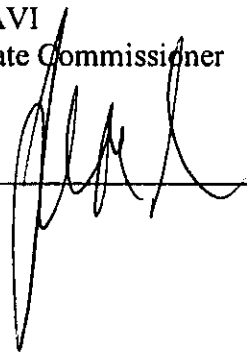
The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a 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
JUN - 8 2010

IT IS SO ORDERED 5/19/2010

JEFF DAVI
Real Estate Commissioner



A handwritten signature in black ink, appearing to read 'Jeff Davi', is written over a horizontal line.

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

**In the Matter of the Application of
MARLIN RENEIRE FENTY,

Respondent.**

**Case No. H-36095 LA
OAH No. L2009080007**

PROPOSED DECISION

This matter came on regularly for hearing on March 18, 2010, at Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Joseph Aiu (Complainant) was represented by Julie L. To, Staff Counsel.

Marlin Reneire Fenty (Respondent) was present and was represented Frank M. Buda, Attorney at Law.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

1. Complainant made the Statement of Issues in his official capacity as a Deputy Real Estate Commissioner of the State of California.
2. On or about September 28, 2007, Respondent submitted an application to the Department of Real Estate (Department) 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 Code section 10153.4. The application was not granted, and this matter ensued.

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3. On November 10, 1987, in a court not disclosed by the evidence, in Case Number 87M01670, Respondent pled nolo contendere and was convicted of violating Penal Code section 459 (burglary), a misdemeanor involving moral turpitude, and a crime substantially related to the qualifications, functions and duties of a real estate licensee.

4. Respondent was sentenced to incarceration for a period of 90 days.

5. The facts and circumstances underlying the conviction are that Respondent and three friends took a car battery that did not belong to any of them after the car in which they had been traveling broke down. All of the individuals involved in the theft, including Respondent, had been consuming alcoholic beverages on the night they committed the crime.

6. On October 16, 1992, in the Municipal Court of Criminal Justice Center Judicial District, County of Los Angeles, State of California, Respondent pled nolo contendere and was convicted of violating Penal Code section 273.5, subdivision (a) (infliction of corporal injury on a current or former spouse or cohabitant), a misdemeanor involving moral turpitude¹, and a crime substantially related to the qualifications, functions and duties of a real estate licensee.

7. Respondent was placed on summary probation for a period of 36 months under various terms and conditions including incarceration in the Los Angeles County Jail for 45 days with credit for five days or, in the alternative, performance of 30 days of CalTrans or AIDS hospice service with credit for five days, and completion of a six-month domestic violence counseling program.

8. The facts and circumstances underlying the conviction are that Respondent committed a battery on the mother of his two children.

9. On August 8, 1993, in a court not disclosed by the evidence, in Case Number 93R12454, Respondent pled nolo contendere and was convicted of violating Penal Code section 273.6, subdivision (a)(1), (failure to obey a restraining order), a misdemeanor substantially related to the qualifications, functions and duties of a real estate licensee².

¹ Battery has been held not to be a crime of moral turpitude (*People v. Mansfield* (1988) 200 Cal. App. 3d 82, 89.) However, as set forth in Finding 8, the facts underlying the conviction reveal that Respondent committed battery upon the mother of his children. Spousal battery has been held to be a crime of moral turpitude, because marriage, whether or not solemnized by license and ceremony, "is a special relationship for which society rationally demands, and the victim may reasonably expect, stability and safety, and in which the victim, for these reasons among others, may be especially vulnerable. To have joined in, and thus necessarily to be aware of, that special relationship, and then to violate it willfully and with intent to injure, necessarily connotes the general readiness to do evil that has been held to define moral turpitude." (*People v. Rodriguez* (1992) 5 Cal. App. 4th 1398, 1402.)

² Complainant failed to prove that this was a crime involving moral turpitude.

10. Respondent was sentenced to a 90-day period of incarceration.

11. The facts and circumstances underlying the conviction are that Respondent violated a restraining order in effect to protect the victim of the crime that resulted in his 1992 conviction.

12. On November 18, 1994, in a court not disclosed by the evidence, in Case No. BA10330701, Respondent was convicted of violating Penal Code section 484 (theft of property), a misdemeanor involving moral turpitude, and a crime substantially related to the qualifications, functions and duties of a real estate licensee.

13. Respondent was sentenced to a 90-day period of incarceration.

14. The facts and circumstances underlying the conviction were not established by the evidence. Respondent does not recall the incident that resulted in that conviction.

15. On August 4, 1995, in the Superior Court of California, in Case No. KA-027502, Respondent pled guilty and was convicted of violating Vehicle Code section 10851, subdivision (a) (theft or unauthorized use of a vehicle), a felony involving moral turpitude, and a crime substantially related to the qualifications, functions and duties of a real estate licensee.

16. Respondent was placed on probation for a period of 36 months under various terms and conditions including a 180-day period of incarceration.

17. The facts and circumstances underlying the conviction are that Respondent's friend lent him a stolen car to drive a woman home from a party. Respondent suspected the car was stolen, but he did not inquire as to its status.

18. On January 14, 1998, in a court not disclosed by the evidence, in Case No. INM075537, Respondent pled guilty and was convicted of violating Penal Code section 273.5, subdivision (a) (infliction of corporal injury on a current or former spouse or cohabitant), a misdemeanor involving moral turpitude, and a crime substantially related to the qualifications, functions and duties of a real estate licensee.

19. Respondent was placed on probation for a period of 36 months under various terms and conditions.

20. The facts and circumstances underlying the conviction are that, during an altercation, Respondent pushed his girlfriend causing her to impact against a sliding glass door. The glass did not break. Respondent and his girlfriend had been consuming alcoholic beverages at and around the time of the altercation.

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21. On November 9, 1998, in a court not disclosed by the evidence, in Case Number INF030803, Respondent pled guilty and was convicted of violating Penal Code section 182 and Health and Safety Code section 11379, subdivision (a) (conspiring to transport or sell controlled substances), a felony involving moral turpitude, and a crime substantially related to the qualifications, functions and duties of a real estate licensee.

22. Respondent was sentenced to a 24-month period of incarceration.

23. The facts and circumstances underlying the conviction are that Respondent attempted to sell methamphetamine to an undercover police officer.

24. On October 9, 2001, in a court not disclosed by the evidence, in Case No. INM117731, Respondent pled guilty and was convicted of violating Vehicle Code section 23152, subdivision (a) (driving under the influence), a misdemeanor.³

25. Respondent was placed on probation for a period of 36 months under various terms and conditions including completion of a first offender DUI program.

26. The facts and circumstances underlying the conviction are that Respondent drove a motor vehicle after consuming beer in a pub.

27. Respondent answered Question No. 25 on the real estate salesperson license application he submitted to the Department in the affirmative. Question No. 27 required Respondent to provide details of each conviction including the court of conviction, the case number, the arresting agency, the date of conviction, the code and code section(s) violated, and the disposition of the case. Respondent did not have all of the required information at the time he submitted his application, and he believed he was under a time constraint in that the law concerning the amount of training required for the license was scheduled to change in the near future. Respondent believed that failure to submit the application before the training requirements changed would render him ineligible for licensure unless he underwent additional training. Therefore, in response to Question No. 27, he wrote: "Section #25 [sic]: I am unable to provide the information at this time as I no longer have any of the documents. A combination of the 'Live Scan' and my request to the CA/DOJ [California Department of Justice] Record Review Unit will contain the information you request." Respondent signed the application under penalty of perjury on September 27, 2007.

28. Respondent received the Department of Justice report four days later, on October 1, 2007. He had difficulty understanding how to read the computer printout of his convictions. He attempted to disclose the details of all of his convictions to the Department, but failed to disclose one of them. That failure was not intentional.

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³ This conviction was not a charging allegation in the Statement of Issues, but was offered as a factor in aggravation.

29. During the time he was in prison, Respondent took a number of computer-related courses, an anger management course, a substance abuse course, and a parenting course. Upon his release from prison in November 1999, he voluntarily entered and completed a 60-day residential alcohol and drug dependence program which also involved attendance at Alcohol Anonymous (AA) and Narcotics Anonymous (NA) meetings. In February 2000, he completed another eight-week parenting class.

30. Respondent is no longer substance-dependent. He completely abstained from alcohol for more than two years after his DUI arrest. He no longer takes recreational drugs, and his present alcohol consumption is limited to an occasional beer.

31. Respondent no longer associates with individuals who were involved in his criminal activities.

32. Respondent enjoys excellent relationships with his parents, his step-parents, his two daughters and his grandson. He remains in frequent contact with his entire family to whom he is very much devoted. He has made amends with the mother of his children.

33. For the past 24 years, Respondent's mother has been the director of the soup kitchen ministry in her church in Alhambra, California. Respondent drives from his home in Desert Hot Springs to his mother's church every Christmas and Easter to assist her in her ministry by cooking, serving food, and cleaning up. Respondent also painted the church's social hall without remuneration. He donated all of the materials for that project.

34. Respondent is a field superintendent with MC Builder Corporation in Palm Springs, California. He has been with the company since 2001. His job duties include managing painting contractor jobs, directing employees, and running a field office. He has access to homes in which valuables are left. He has never had a work-related complaint lodged against him, and he has never been accused of theft. Respondent's employer is aware of his past criminal activity but believes Respondent has learned from his mistakes and has become a "fine outstanding person." Respondent submitted a number of letters from very satisfied customers who lauded his professionalism, judgment, courtesy, expertise and kindness. Some of those customers are aware of Respondent's criminal past.

35. Respondent is deeply remorseful for the criminal acts he has committed. At 43 years of age, he has changed his life since his release from prison, and he now views life differently than he did before. He has learned from his mistakes and now attempts to help young people avoid them.

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LEGAL CONCLUSIONS

Pursuant to the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to deny Respondent's application pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), for conviction of substantially related crimes, as set forth in Findings 3 through 8, and 12 through 23.

2. Cause does not exist to deny Respondent's application pursuant to Business and Professions Code sections 480, subdivision (c) and 10177, subdivision (a), for knowingly making a material misrepresentation on an application for licensure, as set forth in Findings 27 and 28.

3. The term "knowingly" is not defined in the Business and Professions Code. Absent a definition of a term within the code in which the term is found, its definition in Penal Code section 7 may be used. (*Brown v. State Department of Health* (1978) 86 Cal.App.3d 548, 554.) Penal Code section 7, subdivision 5, states:

The word "knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission.

4. At the time Respondent filled out his application for licensure, he was unable to describe each of his convictions in detail. Because he believed he was operating under a tight deadline, he sent for a Department of Justice Report, disclosed on the application that he had done so, and indicated that he would supplement the application with the required information upon his receipt of the report. That response to Question No. 27 on the application was not a material misrepresentation. When Respondent received the report, he kept his word, but he failed to disclose one of the convictions because he was unable to understand how to read the complex Department of Justice computer printout. Therefore, it cannot be said that Respondent acted knowingly in his failure to disclose that conviction.

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5. Respondent has satisfied the majority of the Department's applicable criteria of rehabilitation as set forth in California Code of Regulations, title 10, section 2911. Specifically, his crimes and convictions are temporally remote. [Criterion (a).] More than the minimum two years is required in this case because of Respondent's extensive criminal history, but he has satisfied this requirement in that his most recent conviction occurred over eight years ago, and that conviction was offered only as a factor in aggravation. His most recent conviction that was a charging allegation in the Statement of Issues occurred more than 12 years ago. Respondent successfully completed all periods of probation and parole. [Criterion (e).] He abstained from alcohol for more than two years after his DUI arrest, and he has not used recreational drugs for many years. [Criterion (f).] Respondent enjoys a very stable family life and enthusiastically fulfills his parental and familial responsibilities. [Criterion (h).] He has taken a number of computer related courses for economic self-improvement. [Criterion (i).] He is very much involved in church activities. [Criterion (l).] He has developed new and different social and business relationships since his release from prison [Criterion (m).] He has greatly changed his attitude from that which existed at the time of his criminal conduct. [Criterion (n).]

6. The advanced age of Respondent's crimes and convictions, his outstanding responsibility, leadership, honesty and integrity, particularly in the face of temptation at work, his devotion to his family and church, and his long-term abstinence from all drugs and almost all alcohol, all evince Respondent's dedication to his rehabilitation, and his determination not to re-offend. Respondent has transformed his life from that of a career criminal to that of a career-minded, law-abiding citizen. The public safety, welfare and interest should be adequately protected if he is granted licensure. However, a brief period of license restriction is warranted to ensure Respondent's continued compliance with all applicable laws.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's application for a real estate salesperson license is ^{denied} granted. ~~The license is immediately revoked;~~ provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of the 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 or the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to Respondent.

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

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

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

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4. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within 18 months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective 18 months after the date of its issuance. The suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.

5. Pursuant to Section 10154, if Respondent has not satisfied the requirements for an unqualified license under Section 10153.4, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

DATED: April 12, 2010


H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

1 JULIE L. TO, Counsel (SBN 219482)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6916

FILED

JUL 03 2009

DEPARTMENT OF REAL ESTATE
BY: 

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of) No. H- 36095 LA
12 MARLIN RENEIRE FENTY,)
13) STATEMENT OF ISSUES
14 Respondent.)

15
16 The Complainant, Joseph Aiu, a Deputy Real Estate
17 Commissioner of the State of California, for Statement of Issues
18 against MARLIN RENEIRE FENTY, a.k.a. Marlin R. Fenty or Marlin
19 Reiner Fenty ("Respondent"), alleges as follows:

20 1.

21 The Complainant, Joseph Aiu, a Deputy Real Estate
22 Commissioner of the State of California, makes this Statement of
23 Issues in her official capacity.

24 2.

25 On or about September 28, 2007, Respondent made
26 application to the Department of Real Estate of the State of
27 California for a real estate salesperson license, with the

1 knowledge and understanding that any license issued as a result
2 of said application would be subject to the conditions of
3 Business and Professions Code Section 10153.4.

4 FIRST CAUSE FOR DENIAL

5 CRIMINAL CONVICTIONS

6 3.

7 On or about November 9, 1998, in Case No. INF030803,
8 Respondent was convicted of violating California Penal Code
9 Section 182 and Health and Safety Code Section 11379(A)
10 (conspire to transport or sell controlled substances), a felony.
11 Respondent was sentenced to 24 months in prison.

12 4.

13 On or about January 14, 1998, in Case No. INM075537,
14 Respondent was convicted of violating California Penal Code
15 Section 273.5(A) (inflict corporal injury on current or former
16 spouse or cohabitant), a misdemeanor. Respondent was sentenced
17 to 36 months probation, and ordered to pay fines.

18 5.

19 On or about August 4, 1995, in Case No. KA-027502,
20 Respondent was convicted of violating California Vehicle Code
21 Section 10851(A) (theft or unauthorized use of vehicle), a
22 felony. Respondent was sentenced to 180 days in jail, 36 months
23 probation, and ordered to pay restitution.

24 6.

25 On or about November 18, 1994, in Case No.
26 BA10330701, Respondent was convicted of violating California
27

1 Penal Code Section 484 (theft of property), a misdemeanor.
2 Respondent was sentenced to 90 days in jail.

3 7.

4 On or about August 23, 1993, in Case No. 93R12454-
5 01, Respondent was convicted of violating Penal Code Section
6 273.6(A)(1) (failure to obey restraining order), a misdemeanor.
7 Respondent was sentenced to 90 days in jail.

8 8.

9 On or about October 16, 1992 in the Municipal Court of
10 Criminal Justice, County of Los Angeles, State of California, in
11 Case No. 92R16323, Respondent was convicted of violating
12 California Penal Code Section 273.5(A) (inflict corporal injury
13 on current or former spouse or cohabitant), a misdemeanor.
14 Respondent was sentenced to 45 days in jail (or 30 days Cal
15 Trans or AIDS Hospice work); 36 months of probation; ordered not
16 to use or threaten to use force or violence against any person
17 or annoy, harass or molest any person or witness involved in the
18 prosecution of the case, especially Rebecca Santa Maria; ordered
19 to stay away from Rebecca Santa Maria; and ordered to enroll and
20 complete a six-month domestic violence counseling program.

21 9.

22 On or about November 10, 1987, in Case No. 87M01670,
23 Respondent was convicted of violating Penal Code Section 459
24 (burglary), a misdemeanor. Respondent was sentenced to 90 days
25 in jail, 36 months probation, and ordered to pay fines.

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10.

In aggravation, on or about October 9, 2001, in Case No. INM117731, Respondent was convicted of violating California Vehicle Code Section 23152(A) (driving under the influence), a misdemeanor. Respondent was sentenced to 36 months probation and ordered to pay fines.

11.

The convictions described in Paragraphs 3 through 9, by their facts and circumstances, are crimes of moral turpitude and bear a substantial relationship under Section 2910, Title 10, Chapter 6, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

12.

The crimes of which Respondent was convicted, as described in Paragraphs 3 through 9, constitute cause for denial of Respondent's application for a real estate license under Business and Professions Code Sections 475(a)(2), 480(a), and 10177(b).

SECOND CAUSE FOR DENIAL

FAILURE TO DISCLOSE

13.

In response to Question 25 of his license application, to wit: "HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATIONS OF LAW? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE" Respondent

1 checked "Yes," but did not reveal all of his convictions on his
2 original license application dated September 27, 2007.

3 14.

4 Respondent's failure to reveal the convictions set
5 forth herein in Paragraphs 3 through 9 above, in his license
6 application, constitutes the attempt to procure a real estate
7 license by fraud, misrepresentation, or deceit, or by making a
8 material misstatement of fact, or knowingly making a false
9 statement of material fact required to be revealed in said
10 application, which is grounds for denial of the issuance of a
11 license under Business and Professions Code Sections 475(a) (1),
12 480(c), and/or 10177(a).

13 These proceedings are brought under the provisions of
14 Section 10100, Division 4 of the Business and Professions Code
15 of the State of California and Sections 11500 through 11528 of
16 the California Government Code.

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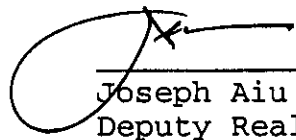
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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Statement of Issues and that upon proof thereof, a decision be rendered imposing disciplinary action against all the licenses and license rights of Respondent, MARLIN RENEIRE FENTY, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California

this 17 day of June, 2009.



Joseph Aiu
Deputy Real Estate Commissioner

cc: MARLIN RENEIRE FENTY
Joseph Aiu
Sacto.