

FILED

FEB 24 2012

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE  
BY: 

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In the Matter of the Application of	)	No. H-37534 LA
	)	L-2011110035
JAMES BURTON MASAO OTA,	)	
	)	
Respondent.	)	
_____	)	

DECISION

The Proposed Decision dated January 27, 2012, 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.

Condition #4 and #5 of the Order of the Proposed Decision is not adopted and shall not be a part of the Decision.

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to respondent. 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.

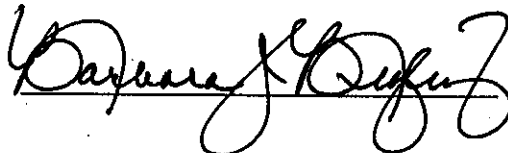
This Decision shall become effective at 12 o'clock noon on

MAR 15 2012

IT IS SO ORDERED

2/21/12

BARBARA J. BIGBY  
Acting Real Estate Commissioner



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

JAMES BURTON MASAO OTA,

Respondent.

File No.: H-37534 LA

OAH No.: 2011110035

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on December 14, 2011.

Julie L. To, Staff Counsel, represented the Complainant.

Respondent appeared in person and represented himself.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued.

The record was held open until January 3, 2012 to supplement the record as follows: Respondent timely filed a character letters including one from a prospective employing broker which were marked and received as Exhibit A in evidence as administrative hearsay. Complainant timely filed a reply thereto which was incorporated into Exhibit 1. The case was deemed submitted on January 4, 2011.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

*Parties*

1. Complainant Maria Suarez, a Deputy Real Estate Commissioner of the State of California, brought the Statement of Issues in her official capacity.

2. On February 28, 2011, James Burton Masao Ota, Respondent herein, made application to the Department of Real Estate of the State of California for a real estate salesperson license.

### *Disclosure*

3. In response to Question 23 of the license application, to wit: "HAVE YOU EVER BEEN CONVICTED OF ANY A MISDEMEANOR OR FELONY: CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE", Respondent marked the box denoted "No", and failed to reveal the conviction described in Finding 4. He relied in good faith but unreasonably on the expungement of the conviction (Finding 9), the remoteness of the misdemeanor and the remoteness of the expungement. His failure to provide full disclosure was the result of negligence and not the result of intent to conceal the conviction from the Department. The negligent failure to disclose, therefore, does not constitute fraud, misrepresentation or deceit but it is a material misstatement of fact. Respondent failed to exercise due care in filling out the application.<sup>1</sup>

### *Criminal Conviction*

4. On or about April 5, 1987 Respondent, as a trucking company owner, purchased a number of stolen items from a truck driver/employee who stored the items at Respondent's trucking yard. Respondent purchased the items to store them in such a way as to avoid the appearance of a junk yard. As a result of said transaction Respondent suffered the conviction set forth in Finding 5.

5. On January 26, 1988, in the Superior Court of the State of California, County of Los Angeles, in Case No. A956104-02, Respondent was convicted of two counts of violating Penal Code section 496.1 (receiving known stolen property), felonies. Respondent was sentenced to three years probation, ordered to perform 150 hours of community service, pay restitution to the victims, and pay court fines.

6. Underlying elements of the crime include the employment of deceit to achieve an end and the doing of an unlawful act of conferring a benefit upon Respondent. Accordingly, the crime bears a substantial relationship to the qualifications, functions or duties of a real estate licensee.<sup>2</sup>

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<sup>1</sup> In this case the failure to fully disclose is not actionable under Business and Professions Code sections 475 or 480 but is actionable under Business and Professions Code section 10177 as is set forth in the Legal Conclusions.

<sup>2</sup> California Code of Regulations, title 10, section 2910, subdivisions (a) (4) and (a) (8).

### *Mitigation*

7. In assessing the minimal sanction of summary probation the court determined that Respondent was a passive participant and concluded:

The present offense represents the first conviction of any magnitude for this defendant. He seems like basically a very hard working industrious sort who was primarily concerned with the development of his own business. In fact, it appears the defendant has spent so much time at this occupation that he has remained naïve of many of the activities going on around him. It definitely appears that the defendant has suffered a great deal simply by being involved in the present offense and going through the court process.

The defendant is eligible and suitable for probation. There is very little question that the defendant should have known and probably did know the activities of the codefendant. For this, he needs to make restitution for the counts in which he is guilty and possibly spend some time in community service. This along with probation would appear to be sufficient for this defendant.

### *Rehabilitation and Character*

8. Respondent timely completed all court ordered sanctions and did successfully complete probation. He has suffered no other conviction and has been in conformity to society's norms and rules of civil behavior since the time of the conviction.

9. In 1995 the felony counts were reduced to misdemeanors and Respondent's Petition for Relief under Penal Code section 1203.4 was granted by the court. Accordingly, Respondent's guilty plea was set aside, a plea of not guilty was entered and the case was dismissed.

10. Respondent did take and complete all necessary pre-licensing courses and did take and pass the examination for real estate licensure. He, therefore, has completed training courses for economic self-improvement.

11. Respondent has had a Class A driver's license since 1973 and owns and operates OTA Trucking Company. Save for the conduct set forth in Finding 4 he has operated his business over the years with honesty, trustworthiness and dependability. He carries a US Customs Bond which allows the transportation of containers from piers to bonded warehouses. No claims have ever been made against his bond.

12. Respondent is 65 years of age and the trucking business is physically demanding. Respondent seeks an additional source of income to reduce those physical demands and, thus, his pending application. Respondent's prospective broker, Bridget K. Maley, proffered the following in a written attestation of December 20, 2011.

I am delighted to write this Character Reference on behalf of Mr. James Burton Ota whom I have known for approximately 35 years and consider him one of my dearest friends. He is by far the most honest, hard working and trustworthy person I have the pleasure of knowing.

As a Veteran Realtor who has staffed and managed Real Estate Offices, I would be happy to work with him in a professional capacity. In my opinion, he will make an excellent Real Estate Salesman and will provide excellent service to his clients. Any Real Estate office would be lucky to have him on their staff.

He is generous to a fault and goes above and beyond to help his friends and family. He is likeable and gets along with most people. James is an eternal student, continually motivated and eager to learn and develop new skills. His work ethic is superior and never disappoints. He is persistent and strives to do his best in anything he attempts.

Once again, it is my sincere pleasure to recommend Mr. Ota to you and urge you to consider him for Real Estate Licensing.

13. Respondent proffered recent credible character letters from persons who have known him over the years, including Gordon Higuchi, Lani Donnelly, Aurora Patingan and Juliana Cheng attesting to his present character. Ms. Donnelly's letter of December 16, 2011 is an exemplar of that documentary evidence:

I am sending this letter in support of Mr. James Ota's desire to obtain a real estate license. I understand his character has been questioned due to an accident that occurred in his past that he forgot to report on his real estate application.

I have known Mr. Ota for almost 20 years and feel he would make a good real estate agent. He is honest, loyal and trustworthy. Mr. Ota holds himself to high moral and ethical standards. In the years I have known him, I have found him to be a very reliable and dependable friend.

Mr. Ota is also a person with a very positive attitude who is always trying to improve himself. He is currently a student at California State University Dominguez Hills, pursuing his dream of obtaining a bachelor's degree.

14. Respondent was open, honest and candid in his testimony. He is a mature adult who is professionally and socially responsible.

## LEGAL CONCLUSIONS

### *Applicable Authority*

1. These proceedings are brought under the provisions of section 10100, Division 4 of the Business and Professions Code of the State of California and Government Code section 11500 through 11528.

### *Violations*

2. Cause exists for denial of Respondent's application for a real estate license pursuant to Business and Professions Code section 475, subdivision (a)(2), 480, subdivision (a) and 10177, subdivision (b) by reason of Findings 4 and 5.

3. Cause exists for denial of Respondent's application for a real estate license pursuant to Business and Professions Code section 10177, subdivision (a) by reason of Finding 3 in that the unintended failure to disclose constituted a material misstatement of fact.

4. No cause exists for denial of Respondent's application pursuant to Business and Professions Code sections 475, subdivision (a)(1) or 480, subdivision (c), by reason of Finding 3 in that the failure to disclose did not constitute knowingly making a false statement of material fact or knowingly making a false statement of fact.

### *Licensing Considerations*

5. The objective of a license application proceeding is to protect the public<sup>3</sup>, the licensed profession, maintain integrity, high standards and preserve public confidence in licensees of the Department. The purpose of proceedings of this type is not to punish the Respondent. In particular, the statutes relating to Department licensees are designed to protect the public from any potential risk of harm. The law looks with favor upon those who have been properly rehabilitated.

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<sup>3</sup> *Camacho v. Youde* (1975) 95 Cal. App. 3d, 165; *Clerical v. Department of Motor Vehicles* (1990) 224 Cal. App. 3<sup>rd</sup> 1016, 1030-1031; *Fahmy v. Medical Board of California* (1995) 38 Cal. App. 4<sup>th</sup> 810, 816.

6. With regard to the public interest, California Code of Regulations, title 10, section 2911 sets forth criteria of rehabilitation that have been developed by the Department, pursuant to Business and Professions Code section 482, subdivision (a), to evaluate the rehabilitation of an applicant for issuance of a license in considering whether or not to deny the issuance on account of a crime or act committed by the applicant. The conviction is remote and Respondent is rehabilitated from the crime as is referenced in Findings 8 through 14. Accordingly, licensure of Respondent on a restricted status under the close supervision of a real estate broker is consistent with the public interest. Under a two year restriction, Respondent will carefully review all real estate transaction documents to avoid inadvertent mistakes such as the one set forth in Finding 3.

### 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 10153.5 of the Business and Professions Code. The restricted license issued to the Respondent shall be subjected 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
- (b) The receipt of evidence that Respondent has violated provisions of California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two 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:

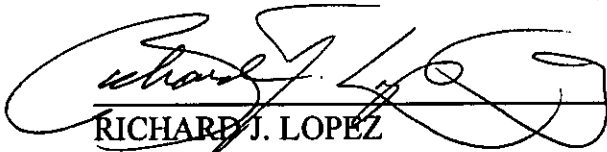
- (a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

- (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's license is issued subject to the requirements of section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (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 10153.5, 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 eighteen (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 10153.5, 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 10153.5 until four years after the date of the issuance of the preceding restricted license.

Dated: January 27, 2012

  
RICHARD J. LOPEZ

Administrative Law Judge  
Office of Administrative Hearings

RJL:ref



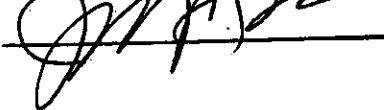
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**FILED**

SEP 15 2011

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of ) NO. H-37534 LA  
)  
JAMES BURTON MASAO OTA, ) STATEMENT OF ISSUES  
)  
Respondent. )

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against JAMES BURTON MASAO OTA ("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.

2.

On or about February 28, 2011, Respondent made an application to the Department of Real Estate of the State of California for a real estate salesperson license.

1 FIRST CAUSE FOR DENIAL

2 (CRIMINAL CONVICTION)

3 3.

4 On or about January 26, 1988, in the Superior Court of  
5 the State of California, County of Los Angeles, in Case No.  
6 A956104-02, Respondent was convicted of two counts of violating  
7 Penal Code Section 496.1 (receiving known stolen property),  
8 felonies. Respondent was sentenced to three years probation,  
9 ordered to: perform 150 hours of community service, pay  
10 restitution to the victims, and pay court fines.

11 4.

12 This crime bears a substantial relationship under  
13 Section 2910, Title 10, Chapter 6, California Code of  
14 Regulations, to the qualifications, functions or duties of a  
15 real estate licensee.

16 5.

17 The crimes of which Respondent was convicted  
18 constitute cause for denial of Respondent's application for a  
19 real estate license under Business and Professions Code Sections  
20 475(a)(2), 480(a), and 10177(b).

21 SECOND CAUSE FOR DENIAL

22 (FAILURE TO DISCLOSE)

23 6.

24 In response to Question 23 of his application, to wit,  
25 "Have you ever been convicted of a misdemeanor or felony?  
26 Convictions expunged under Penal Code Section 1203.4 must be  
27 disclosed. However, you may omit traffic citations which do not

1 constitute a misdemeanor or felony." Respondent answered "No"  
2 and failed to disclose the conviction set forth in Paragraph 3,  
3 above.

4 7.

5 Respondent's failure to disclose the conviction as set  
6 forth in Paragraph 6 above, in his license application  
7 constitutes the attempt to procure a real estate license by  
8 fraud, misrepresentation, or deceit, or by 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 10177(a).

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1           WHEREFORE, the Complainant prays that the above-  
2 entitled matter be set for hearing and, upon proof of the  
3 charges contained herein, that the Commissioner refuse to  
4 authorize the issuance of, and deny the issuance of, a real  
5 estate salesperson license to Respondent, JAMES BURTON MASAO  
6 OTA, and for such other and further relief as may be proper in  
7 the premises.

8 Dated at Los Angeles, California

9 this 12th day of September, 2011.

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11   
12 Maria Suarez  
13 Deputy Real Estate Commissioner  
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23 cc: JAMES BURTON MASAO OTA  
24 Dean Enterprises Incorporated  
25 Maria Suarez  
26 Sacto  
27