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FILED

SEP 03 2013

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Application of )

STEWART BAXTER, )

DRE No. H-38376 LA  
OAH No. 2012100345

Respondent. )

DECISION AFTER REJECTION

This matter came on for hearing before Chris Ruiz, Administrative Law Judge (ALJ) of the Office of Administrative Hearings, in Los Angeles, California, on December 4, 2012. Julie To, Counsel, represented Robin Trujillo, Deputy Real Estate Commissioner of the State of California (Complainant). STEWART BAXTER (Respondent) was present at hearing and represented himself. Oral and documentary evidence was received and the matter was submitted for decision on December 4, 2012.

On March 4, 2013, the Administrative Law Judge signed a Proposed Decision,

1 received by the Department<sup>1</sup> on April 26, 2013, which I declined to adopt as my Decision  
2 herein. Pursuant to Section 11517(c) of the Government Code of the State of California,  
3 Respondents were served with notice of my determination not to adopt the Proposed Decision  
4 of the Administrative Law Judge along with a copy of said Proposed Decision. Respondents  
5 were notified that I would decide the case upon the record, the transcript of proceedings held on  
6 December 4, 2012, and upon any written argument offered by Respondent and Complainants.  
7

8 I have given careful consideration to the record in this case including the  
9 transcript of the proceedings of December 4, 2012. The following will be my decision in this  
10 matter.

#### 11 FINDINGS OF FACT

12 The Findings of Fact set forth in the ALJ's Proposed Decision signed on March  
13 4, 2013 and received by the Department<sup>2</sup> on April 26, 2013 are hereby adopted in this Decision  
14 after Rejection.  
15

#### 16 LEGAL CONCLUSIONS

17 The Legal Conclusions and Discussion are not adopted. The following shall be  
18 my Legal Conclusions in this matter:  
19

20 1. Cause exists to deny Respondent's application for a real estate salesperson  
21 license under Business and Professions Code Sections 480 (a), 475 (a)(2) and 10177 (b) due to  
22 his theft convictions and his conviction for driving without a license, crimes which are  
23 substantially related to the qualifications, functions and duties of a real estate licensee.  
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27 <sup>1</sup> Effective July 1, 2013, the Department of Real Estate became the Bureau of Real Estate, Department of Consumer Affairs.

1                   2. Title 10, Chapter 6 of the California Code of Regulations, Regulation 2910,  
2 defines acts deemed to be substantially related to the qualifications, functions and duties of a  
3 real estate licensee.

4                   (a) Theft involves doing an unlawful act with the intent of conferring a financial  
5 benefit upon the perpetrator and is therefore substantially related to the qualifications, functions  
6 and duties of a real estate licensee pursuant to Regulation 2910, subdivision (a)(8).

7                   (b) Driving without a license is substantially related to the qualifications,  
8 functions and duties of a license pursuant to Regulation 2910, subdivision (a) (7).

9                   (c) Respondent's multiple convictions demonstrated a pattern of repeated and  
10 willful disregard of the law, and were substantially related to the qualifications, functions and  
11 duties of a real estate licensee pursuant to Regulation 2910(a) (10).

12                   3. Respondent has met most of the criteria for rehabilitation set forth in  
13 Regulation 2911. For example, seven years have passed since Respondent's most recent  
14 conviction, he has completed his criminal probation, and Respondent has completely changed  
15 his attitude since he became sober in 2006. A properly conditioned restricted salesperson  
16 license would sufficiently protect the health, safety and welfare of the public.

17                   ORDER

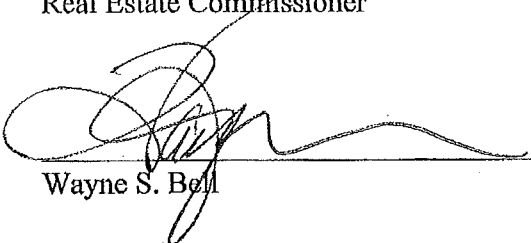
18                   The Order set forth in the ALJ's Proposed Decision shall be my Order in this  
19                   Decision after Rejection.

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

2                    September 23, 2013.

3                    IT IS SO ORDERED 9/3, 2013.

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5                    Real Estate Commissioner

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7                      
8                    Wayne S. Bell

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

STEWART BAXTER,

Respondent.

Case No. H-38376

OAH No. 2012100345

**PROPOSED DECISION**

This matter was heard on December 4, 2012, in Los Angeles, by Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California.

Stewart Baxter (Respondent) was present and represented himself.

Robin Trujillo, Deputy Real Estate Commissioner (Complainant), was represented by Julie To, Counsel for the Department of Real Estate (Department).

Oral and documentary evidence was received and the matter was argued. The matter was submitted on December 4, 2012.

**FACTUAL FINDINGS**

1. Complainant brought the Statement of Issues in her official capacity.
2. On October 12, 2010, Respondent made an application to the Department for a real estate salesperson license.
3. Respondent has been convicted of the following crimes: Theft (2006); Grand Theft (2005); Petty Theft (2005); and Driving Without a License (2003) .
4. After his most recent conviction, Respondent was sentenced to jail. Upon his release he entered a drug and alcohol rehabilitation program which lasted 22 days. After he completed that program, he entered another similar program which lasted 28 days. Respondent lived in a sober living facility for two years and eventually became the manager of the facility. Respondent is 30 years of age and was married in 2011. He has been sober since January 2006. Respondent is very involved in Alcoholics Anonymous, where he serves as a sponsor, has commitments, and he also has a sponser. Respondent is presently employed as a carpentry technician in the entertainment industry.

5. Respondent began abusing drugs and alcohol at age 13. In 2001, he began using methamphetamine while attending college. His three theft crimes all occurred as a result of his need to support his drug addiction. Respondent presented a number of letters that attest to his good character since he changed his life and became sober in January 2006. While Respondent's past criminal conduct involved crimes of dishonesty, he has been sober now for seven years and he established sufficient rehabilitation to justify a restricted license which will adequately protect the public by allowing the Department to closely monitor Respondent.

### LEGAL CONCLUSIONS AND DISCUSSION

1. Cause does exist to deny Respondent's application for a real estate salesperson license under Business and Professions Code sections 480, subdivision (a), 475, subdivision (a)(2), and 10177, subdivision (b), in that his conviction are substantially related to the qualifications, functions, or duties of a real estate salesperson and involved moral turpitude, as discussed below.

#### Substantial Relationship

California Code of Regulations, title 10, section 2910, defines by regulation instances where acts are deemed to be substantially related to the qualifications, functions, or duties of a licensee. Under subdivision (a)(8), doing an unlawful act with the intent of conferring a financial benefit upon the perpetrator is substantially related to the qualifications, functions, or duties of a licensee. Respondent's convictions for theft are substantially related to the qualifications, functions, or duties of a real estate salesperson under this subdivision because Respondent committed his crime with the intent to benefit himself. Under subdivision (a)(10), all of his convictions are substantially related because they show a pattern of repeated and willful disregard of the law. (Factual Finding 3.)

#### Moral Turpitude

A criminal conviction can form the basis for denial of an application for a real estate salesperson's license if the crime is a felony or a crime involving moral turpitude. (Bus. & Prof. Code, § 10177, subd. (b).) Respondent suffered four misdemeanor convictions, and his three theft crimes are crimes of moral turpitude.

3. Criteria have been developed by the Department, pursuant to Business and Professions Code section 482, subdivision (a), for the purpose of evaluating the rehabilitation of an applicant for licensure in considering whether or not to deny the issuance of a license on account of a crime committed by the applicant. These criteria, found at California Code of Regulations, title 10, section 2911, are summarized as follows:

- Subsection (a) passage of at least two years since the conviction;
- Subsection (b) restitution;
- Subsection (c) expungement of the conviction;

Subsection (d) expungement of the requirement to register as a sex crime offender;  
Subsection (e) completion of the criminal probation;  
Subsection (f) abstinence from drugs or alcohol that contributed to the crime;  
Subsection (g) payment of any criminal fines or penalties;  
Subsection (h) stability of family life;  
Subsection (i) enrollment in or completion of educational or training courses;  
Subsection (j) discharge of debts to others;  
Subsection (k) correction of business practices causing injury;  
Subsection (l) significant involvement in community, church or private programs for social betterment;  
Subsection (m) new and different social and business relationships; and

Subsection (n) change in attitude from the time of conviction to the present, evidenced by testimony of the applicant and others, including family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns.

4. Respondent has addressed, and satisfied, a sufficient number of these criteria of rehabilitation to justify a restricted license. For example, more than two years have passed since Respondent suffered his most recent conviction, Respondent has completed his criminal probation, and Respondent has completely changed his attitude since he became sober in 2006. The following order will sufficiently protect the health, safety and welfare of the public. (Factual Findings 2-5.)

### ORDER

Respondent STEWART BAXTER'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 Business and Professions Code section 10156.5. The restricted license issued to the Respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 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 the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

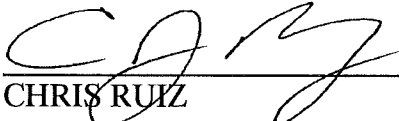
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real  
estate license nor the removal of any of the conditions, limitations or restrictions attaching to  
the restricted license until three years have elapsed from the date of issuance of the restricted  
license to Respondent.

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.

DATED: March 4, 2013

  
CHRIS RUIZ  
Administrative Law Judge  
Office of Administrative Hearings



APR 26 2013

BY:

\* \* \*

OAN No. 2012100345

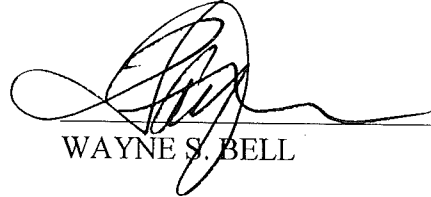
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1 Los Angeles office of the Department of Real Estate unless an extension of the time is granted  
2 for good cause shown.

3 Written argument of Complainant to be considered by me must be submitted  
4 within 15 days after receipt of the argument of Respondent at the Los Angeles office of the  
5 Department of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 4/28/2013  
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8 REAL ESTATE COMMISSIONER

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10 WAYNE S. BELL  
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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

STEWART BAXTER,

Respondent.

Case No. H-38376

OAH No. 2012100345

**PROPOSED DECISION**

This matter was heard on December 4, 2012, in Los Angeles, by Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California.

Stewart Baxter (Respondent) was present and represented himself.

Robin Trujillo, Deputy Real Estate Commissioner (Complainant), was represented by Julie To, Counsel for the Department of Real Estate (Department).

Oral and documentary evidence was received and the matter was argued. The matter was submitted on December 4, 2012.

**FACTUAL FINDINGS**

1. Complainant brought the Statement of Issues in her official capacity.
2. On October 12, 2010, Respondent made an application to the Department for a real estate salesperson license.
3. Respondent has been convicted of the following crimes: Theft (2006); Grand Theft (2005); Petty Theft (2005); and Driving Without a License (2003).
4. After his most recent conviction, Respondent was sentenced to jail. Upon his release he entered a drug and alcohol rehabilitation program which lasted 22 days. After he completed that program, he entered another similar program which lasted 28 days. Respondent lived in a sober living facility for two years and eventually became the manager of the facility. Respondent is 30 years of age and was married in 2011. He has been sober since January 2006. Respondent is very involved in Alcoholics Anonymous, where he serves as a sponsor, has commitments, and he also has a sponsor. Respondent is presently employed as a carpentry technician in the entertainment industry.

5. Respondent began abusing drugs and alcohol at age 13. In 2001, he began using methamphetamine while attending college. His three theft crimes all occurred as a result of his need to support his drug addiction. Respondent presented a number of letters that attest to his good character since he changed his life and became sober in January 2006. While Respondent's past criminal conduct involved crimes of dishonesty, he has been sober now for seven years and he established sufficient rehabilitation to justify a restricted license which will adequately protect the public by allowing the Department to closely monitor Respondent.

### LEGAL CONCLUSIONS AND DISCUSSION

1. Cause does exist to deny Respondent's application for a real estate salesperson license under Business and Professions Code sections 480, subdivision (a), 475, subdivision (a)(2), and 10177, subdivision (b), in that his conviction are substantially related to the qualifications, functions, or duties of a real estate salesperson and involved moral turpitude, as discussed below.

#### Substantial Relationship

California Code of Regulations, title 10, section 2910, defines by regulation instances where acts are deemed to be substantially related to the qualifications, functions, or duties of a licensee. Under subdivision (a)(8), doing an unlawful act with the intent of conferring a financial benefit upon the perpetrator is substantially related to the qualifications, functions, or duties of a licensee. Respondent's convictions for theft are substantially related to the qualifications, functions, or duties of a real estate salesperson under this subdivision because Respondent committed his crime with the intent to benefit himself. Under subdivision (a)(10), all of his convictions are substantially related because they show a pattern of repeated and willful disregard of the law. (Factual Finding 3.)

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3. Criteria have been developed by the Department, pursuant to Business and Professions Code section 482, subdivision (a), for the purpose of evaluating the rehabilitation of an applicant for licensure in considering whether or not to deny the issuance of a license on account of a crime committed by the applicant. These criteria, found at California Code of Regulations, title 10, section 2911, are summarized as follows:

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Subsection (g) payment of any criminal fines or penalties;  
Subsection (h) stability of family life;  
Subsection (i) enrollment in or completion of educational or training courses;  
Subsection (j) discharge of debts to others;  
Subsection (k) correction of business practices causing injury;  
Subsection (l) significant involvement in community, church or private programs for social betterment;

Subsection (m) new and different social and business relationships; and

Subsection (n) change in attitude from the time of conviction to the present, evidenced by testimony of the applicant and others, including family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns.

4. Respondent has addressed, and satisfied, a sufficient number of these criteria of rehabilitation to justify a restricted license. For example, more than two years have passed since Respondent suffered his most recent conviction, Respondent has completed his criminal probation, and Respondent has completely changed his attitude since he became sober in 2006. The following order will sufficiently protect the health, safety and welfare of the public. (Factual Findings 2-5.)

#### ORDER

Respondent STEWART BAXTER'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 Business and Professions Code section 10156.5. The restricted license issued to the Respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 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 the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

Not Adopted

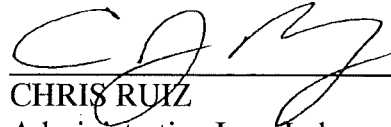
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until three years have elapsed from the date of issuance of the restricted license to Respondent.

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.

DATED: March 4, 2013

  
CHRIS RUIZ  
Administrative Law Judge  
Office of Administrative Hearings