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DEC 12 2005

DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

By *Anne Mason*

\* \* \*

In the Matter of the Application of )	
ROBERT J. STRANGMAN )	No. H-3224 SD
Respondent. )	OAH NO. 12005070800

DECISION

The Proposed Decision dated November 4, 2005, 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 with the following exceptions:

Conditions "1(a)" through "1(e)" of the Order of the Proposed Decision are not adopted and shall not be a part of the Decision.

AMENDED

The application for a real estate salesperson license is denied, but this right to a restricted real estate salesperson 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 Commission's Criteria of Rehabilitation is attached hereto.

This Decision shall become effective at 12 o'clock noon on January 2, 2006

IT IS SO ORDERED 12-7 2005.

JEFF DAVIS  
Real Estate Commissioner

*[Signature]*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

ROBERT J. STRANGMAN,

Respondent.

Case No. H-3224 SD

OAH No. L2005070800

**PROPOSED DECISION**

Administrative Law Judge Alan R. Alvord, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on September 27, 2005.

Truly Sughrue, Esq., Real Estate Counsel, represented complainant.

Thomas H. Malowney, Esq. represented respondent Robert J. Strangman, who was present throughout the hearing.

The matter was submitted on September 27, 2005.

**FACTUAL FINDINGS**

1. On June 15, 2005, J. Chris Graves Deputy Real Estate Commissioner (complainant), Department of Real Estate (department), signed the Statement of Issues in his official capacity. The Statement of Issues and all required jurisdictional documents were served upon respondent on June 24, 2005.

2. The department has denied respondent's application for a real estate salesperson's license based on respondent's criminal convictions and his failure to disclose one of the convictions on his application. Respondent submitted a timely request for an appeal.

3. On February 5, 1975, respondent pled guilty and was convicted of violating Penal Code section 487.1 – grand theft, a felony. The facts and circumstances of the conviction were that respondent was a truck driver for Western Pacific Foods. On several occasions, he had items on his truck that he did not deliver. Instead, he sold these items for his own personal gain at half price to his girlfriend's father. Respondent paid all fines and

restitution and was placed on three years' summary probation. Respondent erroneously understood the plea agreement to mean the felony would automatically be reduced to a misdemeanor. He therefore did not apply to have the conviction reduced. This conviction involved moral turpitude and was substantially related to the qualifications, functions or duties of a real estate licensee.

4. On June 22, 1995, respondent pled guilty and was convicted of violating California Vehicle Code section 23152, subdivision (a) – driving under the influence. The facts and circumstances of this conviction were that respondent was driving home from a holiday party and made an illegal u-turn. He had been familiar with the intersection and did not see the “no u-turn” sign, which was new. Respondent paid all fines and restitution and completed a required DUI course. This conviction involved moral turpitude and was substantially related to the qualifications, functions or duties of a real estate licensee.

5. On May 25, 2004, respondent submitted an application for a real estate salesperson license. The application form asked respondent to disclose convictions. Respondent disclosed the 1995 DUI conviction but did not disclose the 1975 theft conviction.

6. Respondent states that he forgot about the 1975 theft conviction and that he did not intend to mislead the department. He notes that he held a real estate salesperson license from 1991 to 1994 and did not disclose the 1975 conviction when he applied for that license. Respondent also holds a vehicle salesperson license issued by the Department of Motor Vehicles and did not disclose the conviction when he applied for that license. When he was arrested for the theft, he immediately pled guilty. He realized then that he had made a mistake and attempted to put it behind him. His testimony that he forgot about this conviction is credible, given the passage of time and other life events that have intervened. However, memory lapse is not a defense to the failure to disclose the conviction. A real estate salesperson is required to make reasonable inquiry and disclose important information. Sometimes, the information that must be disclosed is against the licensee's personal or pecuniary interest. If respondent had made reasonable inquiry, he would have remembered or discovered the 1975 conviction.

7. Respondent is now 54 years old. He is a fleet manager for an automobile dealership. He was 24 years old at the time of his theft conviction. Respondent admits that the theft in 1975 was youthful bad judgment. He has presented significant evidence of rehabilitation since his 1975 conviction. He has been involved in his church and community. He has raised a family and, other than the DUI in 1995, has been a law-abiding and productive member of society. Most importantly, he has changed his attitude. The evidence supports the conclusion that respondent should be issued a restricted license.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a)<sup>1</sup> authorizes the department to deny a license application on the ground that the applicant has been convicted of a crime which is substantially related to the qualifications, functions or duties of the licensed profession. Section 480, subdivision (c) authorizes the department to deny a license application if the applicant knowingly made a false statement of fact in the application. Section 10177, subdivision (a) authorizes denial of a license application if the applicant makes a material misstatement of fact in the application. Section 10177 (b) authorizes the department to deny a license if the applicant has been convicted of a felony or a crime involving moral turpitude. The department has established twelve criteria for proving rehabilitation (Cal. Code Regs., tit. 10, § 2912). These criteria include:

(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts 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 licensee.

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

(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 criminal conviction was attributable in part to the use of a controlled substance or alcohol.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal, conviction or convictions in question.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

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

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<sup>1</sup> All statutory references are to the California Business and Professions Code unless otherwise indicated.

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

(m) Change in attitude from that which existed at the time of the commission of the criminal acts 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 the licensee's previous conduct and with 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, clinical psychologists, sociologists 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.”

2. Respondent has provided sufficient evidence of his change in attitude from the time of his theft conviction. Through the passage of time, respondent has demonstrated stability in his family life, self-improvement and significant conscientious involvement in the community.

3. By reason of Factual Findings 2 through 7 and Legal Conclusions 1 and 2, cause exists to issue respondent a restricted license under sections 480, subdivision (a) and 10177, subdivision (b).

4. By reason of Factual Findings 2 through 7 and Legal Conclusion 1, cause exists to issue respondent a restricted license under sections 480, subdivision (c) and 10177, subdivision (a).

#### ORDER

1. 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 respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of said Code:

NOT ADOPTED

“(a) Respondent shall obey all federal, state and local laws and regulations of the department now or hereafter in effect. If respondent is convicted of a felony or a crime involving moral turpitude, including a conviction after a plea of not guilty or nolo contendere, such conviction shall be a violation of the terms and conditions of any probationary license issued to respondent.

(b) Any license issued to respondent during a period of two (2) years shall be issued as a restricted license and then only if it is determined that respondent has met all qualification requirements and has fully complied with the terms and conditions hereof and that no cause for refusal to issue, suspend or revoke has intervened or exists. Respondent, during the period of restricted license, shall appear in person at interviews/ meetings as directed by the department or its designated representatives.

(c) Should the Commissioner, or designee, at any time during the existence of the restricted license or the renewal thereof, determine upon satisfactory evidence that respondent has violated any of the terms and conditions under which the restricted license was issued, the Commissioner may, after notice and hearing, revoke or suspend the license.

(d) If an Accusation is filed against respondent during the restricted license period, the Commissioner shall have continuing jurisdiction over this matter until the Accusation is resolved and the period of the restricted license shall be extended until such resolution.

(e) Respondent shall permit free and ready access to business records pertaining to the licensed activity at the request of a departmental employee during normal business hours and without prior notice.”

2. 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.”


3. 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.

4. 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: 11/4/2005

  
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ALAN R. ALFORD  
Administrative Law Judge  
Office of Administrative Hearings

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FILED  
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DEPARTMENT OF REAL ESTATE

By J. Sughrue

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Application of )  
12 ROBERT J. STRANGMAN, )  
13 Respondent. )

No. H-3224 SD

STATEMENT OF ISSUES

14  
15 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate  
16 Commissioner of the State of California, for Statement of Issues  
17 against ROBERT J. STRANGMAN (hereinafter "Respondent"), is  
18 informed and alleges as follows:

19 I

20 Respondent made application to the Department of Real  
21 Estate of the State of California for a real estate salesperson  
22 license on or about May 25, 2004.

23 II

24 Complainant, J. CHRIS GRAVES, a Deputy Real Estate  
25 Commissioner of the State of California, makes this Statement of  
26 Issues in his official capacity and not otherwise.

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1 III

2 In response to Question 25 of said application, to wit:  
3 "Have you ever been convicted of any violation of law?",  
4 Respondent answered "Yes" and disclosed the conviction set forth  
5 in Paragraph V below.

6 IV

7 On or about February 5, 1975, in the Superior Court,  
8 County of San Diego, Respondent was convicted of a violation of  
9 Section 487.1 of the California Penal Code (Grand Theft), a crime  
10 involving moral turpitude which bears a substantial relationship  
11 under Section 2910, Title 10, California Code of Regulations, to  
12 the qualifications, functions, or duties of a real estate  
13 licensee.

14 V

15 On or about June 22, 1995, in the Municipal Court,  
16 County of San Diego, Respondent was convicted of a violation of  
17 Section 23152(A) of the California Vehicle Code (Driving Under  
18 the Influence), a crime involving moral turpitude which bears a  
19 substantial relationship under Section 2910, Title 10, California  
20 Code of Regulations, to the qualifications, functions, or duties  
21 of a real estate licensee.

22 VI

23 The crimes of which Respondent was convicted, as  
24 alleged above, constitutes cause for denial of Respondent's  
25 application for a real estate license under Sections 480(a) and  
26 10177(b) of the California Business and Professions Code.

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VII

Respondent's failure to reveal the conviction set forth in Paragraph IV in said application constitutes the procurement of a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said application, which failure is cause for denial of Respondent's application for a real estate license under Sections 480(c) and 10177(a) of the California Business and Professions Code.

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

  
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J. CHRIS GRAVES  
Deputy Real Estate Commissioner

Dated at San Diego, California,  
this 15<sup>th</sup> day of June, 2005.