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DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By *[Signature]*

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In the Matter of the Application of)	No. H-27373 LA
))
MICHAEL SAULSBY,	L-1997100166
))
))
Respondent.)
))

DECISION

The Proposed Decision dated December 5, 1997, 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 January 28, 1998.

IT IS SO ORDERED

1/6/98
JIM ANTT, JR.
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement)	
of Issues Against:)	Case No. H-27373 LA
)	
MICHAEL SAULSBY)	OAH No. L-1997100166
)	
Respondent.)	
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PROPOSED DECISION

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California on November 18, 1997.

Complainant, Thomas McCrady, was represented by James R. Peel, Staff Counsel.

Respondent, Michael Saulsby ("Respondent") was present and represented himself.

Oral and documentary evidence was received, and the matter was submitted for decision.

FINDINGS OF FACT

The Administrative Law Judge makes the following Findings of Fact:

1. The Statement of Issues was made by Complainant, Thomas McCrady, who is a Deputy Real Estate Commissioner of the State of California, acting in his official capacity.

2. On September 24, 1996, Respondent filed an application for a real estate salesperson's license. Any license issued pursuant to that application was to be subject to certain educational requirements pursuant to Business and Professions Code section 10153.4. The Department of Real Estate ("the Department") denied the application and this matter ensued.

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3. On December 13, 1994, in Municipal Court of California, County of Los Angeles, South Bay Judicial District, in Case No. 94M08787, Respondent was convicted, on his plea of nolo contendere, of violation of Penal Code section 476(a) (Insufficient Funds/Checks), a crime involving moral turpitude and one substantially related to the qualifications, functions, and duties of a real estate licensee.

4. Respondent was placed on summary probation for a period of two (2) years and was ordered to pay fines totalling four hundred fifty dollars (\$450).

5. The facts and circumstances underlying the conviction are that Respondent attempted to purchase a television set for approximately one hundred forty-nine dollars (\$149) using a check from a closed account. At the time of the incident, Respondent had recently been discharged from a hospital, following a two (2) week stay, after being diagnosed with Thrombophlebitis. While in the hospital, he was taking the medication, Heparin, a blood thinner. However, upon discharge, his medication was changed to a different blood thinner, Coumadin. That medication made him "whoosy," "lackadaisical" and somewhat "incoherent."

Respondent, an enthusiastic football fan, wanted to watch a football game on television while he was recuperating. However, both of his television sets were broken and the repairman could not come to the house in time for the game's start time. Respondent went to a Sears department store to purchase an inexpensive television set on which to watch the game. However, in his compromised state from his medication, he took the wrong checkbook from home and did not realize it until he was told by store personnel that the account had been closed.

6. Respondent completed his probation and paid his fines. On September 16, 1997, the charges against him were dismissed pursuant to Penal Code section 1203.4.

7. Respondent holds a bachelor of arts degree with a double major (psychology and electronic music). He also holds an emergency teaching credential. He presently tutors student athletes at the junior college level. Some of those students have been accepted to four-year colleges.

8. Respondent is a member of a church in which his mother is the church organist. He works with the youth of the church and has given drum lessons to a number of church members.

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9. Respondent is the payee for his permanently disabled brother's social security checks, and he ensures his brother receives proper treatment. He also assists his disabled mother.

10. Respondent was credible in his testimony concerning the incident at Sears and that the incident is not characteristic of his lifestyle. He considers himself part of the solution, not part of the problem.

11. The medical condition which resulted in Respondent's hospitalization and prescription for Coumadin is chronic. (He must wear compression socks all day or suffer permanent ankle swelling.) However, his medication has been regulated and he is now able to take it without any side effects.

DETERMINATION OF ISSUES

Pursuant to the foregoing Findings of Fact, the Administrative Law Judge makes the following determination of issues:

1. Cause exists for the denial of respondent's application pursuant to Business and Professions Code section 480(a), as that section interacts with section 10177(b), for conviction of a crime, as set forth in Findings 3, 4, 5 and 6.

2. The conviction appears to have resulted from an error in judgment caused by side effects from a prescribed medication. Nonetheless, Respondent's plea of nolo contendere constitutes an admission of every element of the crime with which he was charged. (Arneson v. Fox (1980) 28 Cal.3d 440.)

3. Respondent has satisfied a substantial number of the criteria for rehabilitation set forth in Title 10, California Code of Regulations, Section 2911. Specifically, more than two (2) years have passed since the conviction. He has completed his probation and paid his fines. The charges have been dismissed pursuant to Penal Code section 1203.4. Respondent has a stable family life. He has strong community ties as evidenced by his commitment to the students he tutors and his fellow church members whom he assists in a variety of ways. In light of his strides toward complete rehabilitation, it would not be contrary to the public interest to grant Respondent a properly-conditioned restricted license, so as to protect the public welfare.

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ORDER

WHEREFORE, THE FOLLOWING ORDER IS HEREBY MADE:

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 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 two (2) 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 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 shall, within eighteen (18) months of the issuance of the restricted license, under the provisions of Section 10153.4 of the Business and Professions Code, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two 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 satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after issuance of the restricted license. Said suspension shall not be lifted until 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: December 5, 1997



H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

SACTO

FILED
OCT 23 1997
DEPARTMENT OF REAL ESTATE

196-1024-001
BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)
MICHAEL SAULSBY,)
Respondent.)

By James R. Peel
LA

H-27373
L-199 7100 166

) NOTICE OF HEARING ON ACCUSATION

To the above-named Respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 107 South Broadway, 2nd. Floor, Los Angeles, California 90012 on **NOVEMBER 18, 1997 at 1:30 p.m.** or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

Dated: October 23, 1997

DEPARTMENT OF REAL ESTATE

By: James R. Peel
JAMES R. PEEL
DRE, Counsel

cc: Michael Saulsby
RW, OAH & SACTO
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MARJORIE P. MERSEL, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

FILED
SEP 22 1997
DEPARTMENT OF REAL ESTATE

By *K. Knicker*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Application of)	No. H-27373 LA
MICHAEL SAULSBY,)	<u>STATEMENT OF ISSUES</u>
Respondent.)	

The Complainant Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against MICHAEL SAULSBY, aka Michael Felton Saulsby, aka Michael Felton, aka Michael Fenton Saulsby, (herein "Respondent") alleges as follows:

I

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity.

II

Respondent, pursuant to the provisions of Section 10153.3 of the Business and Professions Code, made application to the Department of Real Estate of the State of California for a

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1 real estate salesperson license on or about September 24, 1996,
2 with the knowledge and understanding that any license issued as a
3 result of said application would be subject to the conditions of
4 Section 10153.4 of the California Business and Professions Code.

5 III

6 On or about December 13, 1994, in the Municipal Court of
7 South Bay Judicial District, County of Los Angeles, State of
8 California, was convicted of violating Penal Code Section 476(a)
9 (Non Sufficient Funds/Checks), a crime involving moral turpitude,
10 which crime bears a substantial relationship under Section 2910,
11 Title 10, California Code of Regulations to the qualifications,
12 functions or duties of a real estate licensee.

13 IV

14 The crime of which Respondent was convicted, as alleged
15 in Paragraph III above, constitutes cause for denial of
16 Respondent's application for a real estate license under Sections
17 480(a) and 10177(b) of the California Business and Professions
18 Code.

19 These proceedings are brought under the provisions of
20 Section 10100, Division 4 of the Business and Professions Code of
21 the State of California and Sections 11500 through 11528 of the
22 Government Code.

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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 MICHAEL SAULSBY, and for such other and further relief as may be proper in the premises.

Dated at Los Angeles California
this 22nd day of September, 1997.

THOMAS MC CRADY

Deputy Real Estate Commissioner

cc: Michael Saulsby
Sacto.
BSV

