

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of:

CARLTON MANNING DAVENPORT

Respondent.

Case No. H-31085 LA

OAH No. L2004080299

PROPOSED DECISION

The above-captioned matter was heard on November 2, 2004, at Los Angeles, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings, presided. Complainant was represented by Mr. Elliott Mac Lennan, Staff Counsel, Department of Real Estate. Respondent Carlton Manning Davenport appeared in propria persona.

Evidence was received, the case was argued, and the matter submitted for decision on the hearing date. The Administrative Law Judge hereby makes his findings of fact, conclusions of law, and orders, as follows:

FINDINGS OF FACT

1. Complainant Maria Suarez filed the statement of issues in the above-captioned proceeding while acting in her capacity as a Deputy Real Estate Commissioner of the Department of Real Estate ("the Department"), State of California.
2. Respondent Carlton Manning Davenport (Davenport or Respondent) applied to the Department for a license as a real estate broker, on May 29, 2003. He disclosed therein that he had previously been convicted of crimes. The Department denied his application, he then requested a hearing, and this proceeding ensued.
3. Respondent was convicted of two misdemeanors on July 19, 2001, in the Superior Court of California, County of Los Angeles, in case number 1PN01097, *People v. Carlton M. Davenport*. The first conviction was for a violation of Penal Code section 192, subdivision (c)(2), vehicular manslaughter without gross negligence, and the second conviction was for a violation of Vehicle Code section 14601.1, subdivision (a), driving with a suspended license. The convictions followed his pleas of nolo contendere.
4. The court suspended the imposition of sentence and placed Respondent on 36 months informal probation, imposing terms and conditions. Those included the condition

that Respondent serve 33 days in county jail, or in lieu of that, perform 500 hours of community service. He was ordered to pay a restitution fine of approximately \$100.00, make restitution to the victim through a civil proceeding, and ordered not to drive without a valid license or insurance.

5. (A) The facts and circumstances of the crimes are that on April 27, 2000, Respondent drove his car while his license was suspended for failing to appear after receiving traffic tickets. The record indicates that his driver's license was suspended pursuant to section 13365 of the Vehicle Code. (See Exhibit 9.) That statute allows the Department of Motor Vehicles (DMV) to suspend a driver's license in situations where the DMV has received notice from the courts of violations of the promise to appear on a traffic citation. Respondent suffers from epilepsy, and he suffered a seizure while driving his car, although he asserts he was taking his anti-seizure medication at the time of the accident.

(B) In June 1999, Respondent had submitted a driver medical evaluation to the DMV, which included a doctor's evaluation. While Respondent's physician stated that he had advised against driving until the DMV had evaluated the situation, the physician also stated his opinion that the patient's medical condition did not affect safe driving. (Exhibit 10, page 2, at the first line above the physician's hand-written comments.) Where the DMV form asked if the physician would recommend a driving test by DMV, he checked the box "no." (Exhibit 10, page 2, last line.)

6. Under all the facts and circumstances, the crimes were not crimes of moral turpitude.

7. Respondent has previously been licensed as a real estate salesperson, from approximately 1995 to 2003. He is also a credentialed teacher, holding a professional clear multi-subject teaching credential since 1995. There is no evidence of any disciplinary action against Respondent's sales license or teaching credential at any time.

8. Respondent has completed all the terms of his probation, and the probation term. The record indicates that the probation was revoked for a period of time because Respondent had not completed all of his community service, but the Superior Court ultimately reinstated the probation as he systematically worked on his community service obligation. Since his conviction Respondent has been working at a learning center in a primarily administrative role. He contributes to the support of his son.

9. Respondent's father and a friend of many years testified on Respondent's behalf, as to his character. Like Respondent, both were credible in their testimony, in terms of their demeanor while testifying. Both made clear their belief that Respondent is an honest and hard-working individual, suited for a position as a broker. They attested to his increased maturity since the accident and his convictions. Evidence was provided that Respondent is now quite mindful of his need to take his anti-seizure medications, as he had not always been so compliant in his earlier years.

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's application for a salesperson's license pursuant to Business and Professions Code sections 480, subdivision (a)(1), based on Factual Findings 2 through 6.

2. (A) Respondent's conviction for vehicular manslaughter without gross negligence is not substantially related to the duties, qualifications, and functions of a real estate licensee, as that is defined in title 10, section 2910, subdivision (a), based on Factual Findings 3, 4, and 5. However, the conviction for driving on a suspended license is substantially related pursuant to section 2910, subdivision (a)(7).

(B) Section 2910 sets forth various criteria to be used by the Department in determining if a crime is substantially related to the duties, qualifications, and functions of a licensee of the Department; such is required by law. (See Bus. & Prof. Code, § 481.) The crime of vehicular manslaughter did not involve some fraud or forgery, as contemplated by subdivisions (a)(1) and (a)(2) of the regulation, nor was there some failure to comply with tax laws, as set out in subdivision (a)(3) of section 2910. There was no bribery or misrepresentation (subd. (a)(4)), and no sexually-related misconduct (subd. (a)(5)). Respondent did not violate the Business and Professions Code as required by subdivision (a)(6). While he was driving with a suspended license, bringing him within the ambit of subdivision (a)(7), the death was caused when he had a seizure. There is no evidence he had an intent to harm the victim, as would be required under subdivision (a)(8), and the killing of the pedestrian hardly conferred an economic benefit on Respondent. He was not in disobedience of a court order, as the driver's license had been suspended by the DMV, and not the courts. Finally, the misconduct does not rise to the level of a pattern of repeated disregard of the law (subd. (a)(10)).

(C) Driving with a suspended license would bring the Respondent within the ambit of subdivision (a)(7), which speaks to willful violation or failure to comply with a statutory requirement that a license be obtained from a public authority before engaging in a course of conduct. Here Respondent's license was taken before he drove the car, and he failed to reinstate it prior to the events in question.

3. (A) The convictions are not for crimes of moral turpitude, per se, as the elements of those crimes do not disclose some "baseness, vileness or depravity in the private and social duties which man owes to his fellow men, or society in general, contrary to the accepted and customary rule of right and duty between man and man." (*In re Craig* (1938) 12 Cal. 93, 97.)

(B) As pointed out by the Supreme Court in the case *In Re Strick*, (1983) 34 Cal. 3d 891, 902, while first degree murder has been found to be a crime of moral turpitude per se, assault with a deadly weapon had not been so found. In that case the Court would not

find that vehicular manslaughter without gross negligence to be a crime of moral turpitude per se, but did so find the crime to be one of moral turpitude based on the particular facts of the case, as it had in the case of *In re Alkow*, (1966) 64 Cal. 2d 838. In *Strick* an attorney had been convicted of *voluntary* manslaughter and assault with a deadly weapon. He had killed a man who would not leave his apartment after a day of cocaine and alcohol abuse. The Supreme Court found that on the facts of the case, including the fact that the defendant had attempted to mislead the police about the circumstances of the shooting, and his failure to provide aid to the shooting victim, the defendant had committed an act of moral turpitude sufficient to justify action against his law license.

(C) In *Alkow* an elderly attorney had lost his driver's license and could not obtain reinstatement because of his bad vision. For the next three to four years he continued to drive, receiving some 20 citations, including 11 for driving without a license. He was eventually convicted of driving without a license and placed on probation; on another occasion thereafter he was again convicted of driving without a license, and failing to observe a stop sign; his criminal probation was extended. He continued to drive while on probation, and eventually killed a pedestrian while driving, because he could not see her. This fatality led to his conviction of vehicular manslaughter without gross negligence; the same conviction suffered by Respondent herein. On the facts of the case the Supreme Court found an act of moral turpitude, although it did not deem his conviction of vehicular manslaughter to be moral turpitude per se.

(D) Respondent's act did not rise to the level of culpability exhibited by the attorneys in either *Strick* or *Alkow*. His license was not taken from him due to his epilepsy, and he did not drive for a period of years with knowledge that his physical condition had endangered others, as did the attorney in *Alkow*. He had not been placed on criminal probation for driving without a license. The evidence is unrefuted that at the time of the accident he had been taking his medications, though he had not always been compliant prior to the accident. In all the circumstances of this case he can not be found to have committed an act of moral turpitude because he killed someone in an accident, without gross negligence.

4. Notwithstanding Legal Conclusions 1 through 3, Respondent has shown rehabilitation sufficient to justify the issuance of a restricted license, based on all the facts and circumstances of this case and within the meaning of section 2911 of title 10 of the California Code of Regulations, as follows:•

(A) More than two years have passed since the convictions (July 2001), a matter relevant under section 2910, subdivision (a);

(B) Respondent has successfully completed probation, relevant under section 2910, subdivision (e);

(C) Respondent has paid all fines and penalties imposed by the criminal courts, a matter relevant under section 2910, subdivision (g);

(D) Respondent, a single man, has demonstrated stability in his family life by supporting his son, a matter relevant under section 2910, subdivision (h);

(E) Respondent has demonstrated a change in attitude, which is based on both his testimony and that of his character witnesses, matters relevant within the meaning of section 2910, subdivision (n)(1) and (n)(2).

(F) A number of the rehabilitation criteria do not necessarily apply in this case, *i.e.*, Respondent's convictions do not flow from drug or alcohol abuse, or improper business practices.

5. The purposes of proceedings of this type are to protect the public, and not to punish the applicant. (*E.g.*, *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) Based on all the foregoing, and the discussion below, Respondent has shown rehabilitation sufficient to justify the issuance of a restricted salesperson's license, said restriction to be of two years duration, with appropriate conditions.

Discussion and Rationale:¹

In this case the crimes are not closely related to the duties, qualifications and functions of a broker, except to the extent that brokers often drive, and to the extent no one should drive when their license has been suspended. However, the record is clear the license was not suspended due to Respondent's medical condition; the DMV had not found him to be an unsafe driver *per se* prior to the accident. The concerns expressed by Complainant's counsel at the close of the hearing, to the effect that Respondent's physician had recommended he not drive, are not quite borne out when the DMV medical submission is more closely scrutinized.

In such circumstances, Respondent need not show the type of exhaustive rehabilitation case that might be required of someone convicted of fraud or of multiple convictions that were closely related to a broker's duties. What has been shown—a person who has before and after the incident in question lived a law-abiding lifestyle—is sufficient for restricted licensure at this time.

//

¹ The section that follows is within the ambit of Government Code section 11425.50, subdivision (d), and meant to provide a discussion of legal issues raised as well as key evidence, and a rationale for the findings, conclusions, and proposed order. So far as stated, it is intended to augment credibility findings. However, the evidence and authorities referenced are not necessarily the only ones relied on in reaching the decision.

ORDER

Respondent's application for a real estate broker license is denied; provided, however, a restricted real estate broker 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 years have elapsed from the date of issuance of the restricted license to Respondent.

3. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

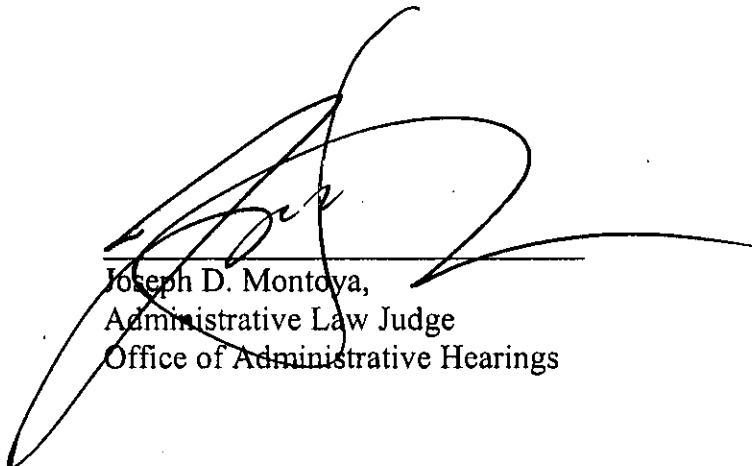
Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which the Respondent engaged during the period covered by the report.

4. Respondent shall comply with the recommendations of his physician for the treatment of his epilepsy, including taking all medications prescribed for him, in the prescribed manner.

//

5. Respondent shall not operate a motor vehicle without a valid driver's license.

December 2, 2004



Joseph D. Montoya,
Administrative Law Judge
Office of Administrative Hearings

Handwritten initials/signature

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

FILED
SEP 15 2004

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

CARLTON MANNING DAVENPORT,

By *K. Mederbo*

Case No. H-31085 LA

OAH No. L-2004080299

Respondent

NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at 320 W. Fourth Street, Ste. 630, Los Angeles, California on November 2, 2004, at the hour of 1:30 p.m., or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: SEP 15 2004

By *EL*
ELLIOTT MAC LENNAN, Counsel

cc: Carlton Manning Davenport
Sacto/OAH/TF

Handwritten initials/signature

1 ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
2 320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

3 Telephone: (213) 576-6911 (direct)
4 -or- (213) 576-6982 (office)

FILED
JUL 19 2004
DEPARTMENT OF REAL ESTATE

By *K. Mederholt*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Application of)
12 CARLTON MANNING DAVENPORT,)
13 Respondent.)

No. H-31085 LA

STATEMENT OF ISSUES

15 The Complainant, Maria Suarez, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against CARLTON MANNING DAVENPORT (respondent) is informed and
18 alleges in her official capacity as follows:

19 1.

20 Respondent made application to the Department of Real
21 Estate of the State of California for a real estate broker
22 license on or about May 29, 2003.

23 ///

24 ///

25 ///

26 ///

27

2.

On July 19, 2001, in the Superior Court of California, County of Los Angeles, State of California, in Case No. 1PN01097, respondent was convicted upon a plea of nolo contendere to one count of Penal Code Section 192(c)(2) (vehicular manslaughter), and to one count of Vehicle Code Section 14601.1 (drive with suspended license), misdemeanor crimes, which by their facts and circumstances, involve moral turpitude and are substantially related under Section 2910, Chapter 6, Title 10 of the California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

3.

These crimes constitutes cause for denial of respondent's application for a real estate license under Sections 480(a) and/or 10177(b) of the California Business and Professions Code.

These proceedings are brought under the provisions of Section 10100, Division 4 of the California Business and Professions Code and Sections 11500 through 11529 of the California Government Code.

///

///

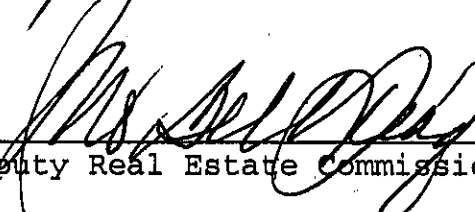
///

///

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

8 Dated at Los Angeles, California

9 this *7th* day of *July* 2004.

10
11 
12 Deputy Real Estate Commissioner
13
14
15
16
17
18
19
20
21
22

23 cc: Carlton Manning Davenport
24 Maria Suarez
25 Sacto
26 TF
27