

**FILED**  
MAR - 2 2006  
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

By Jane B. Allen

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In the Matter of the Application of) No. H-32166 LA  
DUSTIN DANIEL WHEELAN, )  
Respondent. )  
L-2005100394

DECISION

The Proposed Decision dated January 18, 2006, 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.

Pursuant to Section 11517(c)(2)(C) of the Government Code, the following correction is made to the Proposed Decision:

Pg. 5, the date is corrected to read: "January 18, 2006".

**AMENDED**

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 MAR 22 2006.

IT IS SO ORDERED

JEFF DAVI  
Real Estate Commissioner

2/23/06  
[Signature]

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

DUSTIN DANIEL WHEELAN,

Respondent.

Case No. H-32166 LA  
OAH No. L 2005100394

PROPOSED DECISION

Administrative Law Judge N. Gregory Taylor, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on December 20, 2005.

Kelvin K. Lee, Staff Counsel, represented Complainant, Maria Suarez, a Deputy Real Estate Commissioner in the Department of Real Estate, State of California (Department).

Respondent, Dustin Daniel Wheelan, was present throughout the hearing and represented himself.

Oral and documentary evidence was received and the matter argued. The matter was submitted on December 20, 2005.

FACTUAL FINDINGS

1. Complainant, Maria Suarez, a Deputy Real Estate Commissioner in the Department, filed the Statement of Issues in this proceeding in her official capacity.

2. Respondent Dustin Daniel Wheelan made application to the Department for a real estate salesperson license on or about August 9, 2004. In that application, he disclosed that he had two convictions for driving under the influence of alcohol.

3. On October 21, 1998, in the California Superior Court in Napa County, Respondent, upon a plea of no contest, was convicted of violating Penal Code section 23152, subdivision (a), driving a vehicle under the influence of alcohol, a misdemeanor. The court placed Respondent on probation for a period of five years on certain terms and conditions, including enrollment and successfully completing the First Offender Drinking Driver Program and paying a fine and assessments.

4. The facts and circumstances surrounding Respondent's 1998 conviction are that he had been to a party and was giving a friend a ride home when he was stopped by a policeman because the automobile's taillights were not working. The officer smelled liquor on Respondent's breath and determined that he had been drinking. The arresting officer described Respondent's appearance at that time as normal and neat, his speech was correct, and that he was cooperative with fair retention and responses to instructions.

5. Respondent has satisfied all of the terms and conditions imposed by the court in his 1998 conviction.

6. On March 27, 2003, in the California Superior Court in Los Angeles County, Respondent, upon a plea of nolo contendere, was convicted of violating of Penal Code section 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor. The court placed Respondent on summary probation for a period of five years on certain terms and conditions including completing an eighteen-month program of treatment and counseling and paying of a fine and assessments.

7. The facts and circumstances surrounding Respondent's 2003 conviction are that he was celebrating with a friend who just been discharged from the Navy. They had been drinking excessively. Respondent spent the night were they had been celebrating. The next morning he was driving home. He was trying to change a CD while driving the automobile and in the process caused automobile to swerve. A police officer observed the swerving and stopped Respondent. Respondent still had alcohol in his system and failed a breathalyzer test.

8. Respondent has successfully completed all of the courses, counseling, and attendance at Alcoholic Anonymous meetings. He has paid all fines and assessments. His probation will end on March 27, 2008.

9. The crimes of which Respondent was convicted bear a substantial relationship under California Code of Regulations title 10, section 2910, to the qualifications, functions or duties of a real estate licensee in that he had two convictions involving driving and consumption or use of alcohol.

10. Respondent is single. He owns his home in Upland, California. He occasionally attends church.

11. Following graduation from high school, Respondent attended Wyoming Technical College and received an AA degree in Business. He was then selected by Mercedes Benz to be trained by that company to be a certified mechanic. He successfully completed the course and worked several years as a technician for Penske Mercedes Benz and Beverly Hills LTD.

12. Respondent has tired of being an automobile technician and wants a career in real estate. He presently works for Platinum Realty assisting a broker. He also works on remodeling jobs. He has an offer to work for Marco Velasquez, as a sponsoring broker at Global Mortgage. Mr. Velasquez is aware of Respondent's convictions and is willing to supervise him during a restricted license.

13. Respondent acknowledged that he did have a drinking problem but that he has changed his way of life. He completed his attendance at Alcoholic Anonymous meetings having attended meetings twice a week as required by the court. He has been sober since the time of his last conviction three years ago.

14. Respondent's two convictions are separated by nearly five years. Both occurred after special events in his life or the life of a friend. While this is not to condone such behavior, it does indicate that these appear to be separate isolated instances. Neither conviction involved an accident or a situation where there was harm to another. Respondent appears to have learned his lesson and changed his ways.

### LEGAL CONCLUSIONS

1. The crimes of which Respondent was convicted are substantially related to the qualifications, functions, or duties of a licensee of the Department, pursuant to the California Code of Regulation, title 10, section 2910, subdivision (a) (11), in that both convictions involved driving and consumption or use of alcohol.

2. Cause exists, pursuant to Business and Professions Code sections 475, subdivision (a) (2), 480, subdivision (a) (1), and/or 10177, subdivision (b), to deny Respondent's application for a real estate salesperson's license in that he has been convicted of the crimes set forth in Paragraphs 3 through 9 of the Factual Findings.

3. Respondent substantially meets the Department's criteria for Rehabilitation set forth in California Code of Regulations, title 10, section 2911.

More than two years have passed since Respondent's last conviction. Respondent has completed all of the terms and conditions imposed by the court in his last conviction (as well as all of those imposed more than eight years ago in his first conviction) with the exception of completing the probationary period. He has refrained from the use of alcohol since his last conviction nearly three years ago. All fines and assessments have been paid by Respondent. He has a stable life style and demonstrated through his testimony that his attitude has changed positively from his past actions.

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 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.

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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

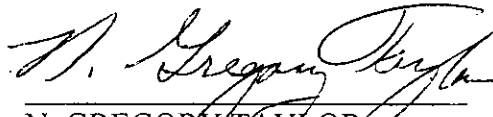
(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent's restricted real estate salesperson 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 10153.2, 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 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 the 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: January 18, 2005.

2006

  
N. GREGORY TAYLOR  
Administrative Law Judge  
Office of Administrative Hearings

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**FILED**  
SEP 2 2005  
DEPARTMENT OF REAL ESTATE

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*By Laure B. Chau*

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of ) No. H-32166 LA  
)  
DUSTIN DANIEL WHEELAN, ) STATEMENT OF ISSUES  
)  
Respondent. )

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Statement of Issues against DUSTIN DANIEL WHEELAN, ("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.

Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about March 9, 2004, with the knowledge and understanding that any license issued as a result of said

1 application would be subject to the conditions of Business and  
2 Professions Code ("Code") Section 10153.4.

3 CRIMINAL CONVICTIONS

4 3.

5 On or about March 27, 2003, in the Superior Court of  
6 California, County of Los Angeles, in Case No. 2MT12249,  
7 Respondent was convicted of one (1) count of violating Section  
8 23152(a) of the California Vehicle, (Driving a Vehicle Under the  
9 Influence of Drugs and/or Alcohol). This crime involves moral  
10 turpitude, and bears a substantial relationship under Section  
11 2910, Title 10, Chapter 6, California Code of Regulations to the  
12 qualifications, functions or duties of a real estate licensee.

13 4.

14 On or about October 21, 1998, in the Napa County  
15 Criminal Courts, in Case No. CR36016, Respondent was convicted  
16 of one (1) count of violating Section 23152(a) of the California  
17 Vehicle Code, (Driving a Vehicle Under the Influence of Drugs  
18 and/or Alcohol). This crime involves moral turpitude, and bears  
19 a substantial relationship under Section 2910, Title 10, Chapter  
20 6, California Code of Regulations to the qualifications,  
21 functions or duties of a real estate licensee.

22 5.

23 The crimes for which Respondent was convicted, as  
24 described in Paragraphs 3 through 4, above, constitute cause for  
25 denial of Respondent's application for a real estate license  
26 under Code Sections 475(a)(2), 480(a)(1) and/or 10177(b).

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1 The Statement of Issues is brought under the  
2 provisions of Section 10100, Division 4 of the Business and  
3 Profession Code of the State of California and Sections 11500  
4 through 11528 of the Government Code.

5 WHEREFORE, Complainant prays that the above entitled  
6 matter be set for hearing and, upon proof of the charges  
7 contained herein, that the Commissioner refuse to authorize the  
8 issuance of, and deny the issuance of, a real estate salesperson  
9 license to Respondent, DUSTIN DANIEL WHEELAN, and for such other  
10 and further relief as may be proper under other provisions of  
11 law.

12 Dated at Los Angeles, California  
13 this 15<sup>th</sup> day of September, 2005.

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16 Maria Suarez  
17 Deputy Real Estate Commissioner  
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23 Dustin Daniel Wheeler  
24 Global Management Inc.  
25 Maria Suarez  
26 Sacto.  
27 MT