

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
JOHN O. PASTORE COMPLEX  
1511 PONTIAC AVENUE  
CRANSTON, RI 02920**

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**IN THE MATTER OF:**

**Donald Bennett,**

**Respondent.**

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**DBR No.: 08-L-0092**

**DECISION UPON MOTION FOR RECONSIDERATION**

Hearing Officer: Catherine R. Warren, Esquire

Hearing Held: July 13, 2010

Appearances:

For the Department of Business Regulation: Ellen Balasco, Esquire

For Donald Bennett, Respondent: Stephen Germani, Esquire

**I. INTRODUCTION**

On May 28, 2010, a decision (“Decision”) was issued in the above-captioned matter. On June 11, 2010, Donald Bennett (“Respondent”) filed a Motion for Reconsideration (“Motion”). The Department of Business Regulation (“Department”) objected. The undersigned treated said motion as a Motion for Reconsideration filed pursuant to Section 17<sup>1</sup> of *Central Management Regulation 2 – Rules of Practice and*

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<sup>1</sup> Section 17 of CMR2 states as follows:

At any time after the issuance of a final order of the Director, any Party may, for good cause shown, by motion petition the Director to reconsider the final order. The petitioner shall file his/her motion within ten (10) days of the issuance of the final order and shall set forth the grounds upon which he/she relies. The Director may grant the motion for reconsideration within his/her discretion.

*In the Matter of Louis Annarummo*, DBR No. 99-L-0069 (8/5/02) articulates the Department’s requirements for said motion.

*Procedure in Administrative Hearings Before the Department of Business Regulation* (“CMR2”) and in light of *In the Matter of John M. McKone*, DBR No. 03-L-0150 (1/14/04) allowed a further hearing for the purpose of allowing the Respondent to address the prior lack of testimony regarding the nature and circumstances of Respondent’s misconduct and his argument regarding his subsequent conduct and reformation. At rehearing, the Respondent presented testimony solely on these issues.

## II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 5-20.5-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

## III. ISSUE

Whether the suspension of the Respondent’s real estate salesperson’s license (“License”) should be lifted or should the License be revoked pursuant to R.I. Gen. Laws § 5-20.5-1 *et seq.*

## IV. MATERIAL FACTS AND TESTIMONY

The Department’s Decision denied Respondent’s application for License. The Decision found that Respondent’s conviction fell within R.I. Gen. Laws § 5-20.5-14(a)(14).<sup>2</sup> The Decision then applied the criteria enumerated and discussed in *In the*

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The public policy rationale behind this procedure is not to provide the Respondent a new hearing, but to address specific errors in the consideration of factual or legal issues that the Respondent may raise. Factual grounds raised by Respondent may not be general conclusory statements, but must be specifically detailed and cite to the relevant portions of the administrative record. Likewise, legal grounds may not be general conclusory statements, but must cite to specific legal cases or legal principles upon which the Respondent relies. It is also appropriate in many cases for the Respondent to include a memorandum of law.

<sup>2</sup> On February 13, 2009, the Respondent pled *nolo contendere* to the following charges:

1. Felony assault for which he received a full sentence of seven (7) years with one (1) year to serve and six (6) years suspended and probation.
2. Conspiracy/felony for which he received a full sentence of seven (7) years with one (1) year to serve and six (6) years suspended and probation.
3. Eluding the police for which he received a one (1) year suspended sentence and one (1) year probation. See Department’s Exhibit One (1).

*Matter of William J. Stanton*, DBR No. 98-L-0035 (12/15/98) to the issue of whether the Respondent as a convicted felon should be granted a License. The Decision found the Respondent lacked a full and credible explanation for the nature and circumstances of his misconduct and therefore, the Respondent's subsequent conduct and reformation could not be evaluated. The Decision of May 28, 2010 is incorporated by reference herein.

At the hearing on reconsideration, the Respondent further testified and presented more witnesses.

Walter H. Barlow Jr. testified on the Respondent's behalf. He testified that at the time of the Respondent's arrest, he (Barlow) was on the police force (but is now retired) and was the detective commander in charge when the Respondent was arrested. He testified that after the Respondent was arrested, he (Barlow) spoke with the Respondent and several times since then and found him to be credible and cooperative.

The Respondent testified on his behalf. At this hearing, he specifically testified regarding the specifics of the 2008 incident. He testified that prior to the incident he was having financial issues and hadn't had a paycheck in four (4) months. He testified that the incident began when he agreed to give a friend ("F2") of a friend ("F1") a ride for \$300 which sounded too good to be true and he later realized was too good to be true but he was told he would drive F2 to collect a debt. He testified that he met F1 and then followed him to another location where he met F2 who he was to give the ride to. He testified that he knew this wasn't a good situation but felt that he couldn't get out of it because he felt threatened. The Respondent testified that he drove F2 to the victim's ("Victim") business and he didn't know the Victim. He testified that he waited outside and then received a call from F1 informing him that his role had now changed and that he

must accompany F2 into the building to help collect the debt and F2 made further threats to him. The Respondent testified that placing himself in this position was a poor decision and he regretted his mistake. The Respondent testified that he accompanied F2 eventually punching the Victim and knocking him to the ground and scuffling after which F2 ran off. He testified he fled the scene in his car and following a police pursuit was arrested. The Respondent testified to his regret about this situation and recognized that part of the fault for this incident rests on his (Respondent) trust of people he should not trust. He testified that since he was released from jail, he has become a "hermit" so as to avoid any further incidents. He testified that while he was in prison, he tried to help other people. He testified that he was in the nightclub industry for years and never got into fights. He testified that the 2002 incident (a fight) arose from another man destroying his credit and his angry response.

On cross-examination, the Respondent testified that the 2002 incident revolved around his altercation with his allegedly fraudulent property manager for a house he (Respondent) had bought. The Respondent testified that the property manager was a scam artist and was not sending in his (Respondent) mortgage payments, and as a result, Respondent's credit score was ruined. The Respondent testified that when the property manager attempted to induce him into defrauding a client, he (Respondent) made a poor decision and poked the property manager with a 2x4 and demanded the return of his money. He testified that going through this process of buying a house and renting it out and getting into the mortgage business and being ripped off by the property manager made him decide he didn't like the mortgage business and to go into the real estate

business instead where he could really help people. He testified that he explained this in a letter to the Department prior to his initial licensing (see Decision) and was licensed.

The Respondent's girlfriend, Christine D'Ambra, testified on his behalf. She testified that they have lived together for almost twelve (12) years. She testified that at the time of the incident, she felt he wasn't financially carrying his weight. She testified that since the incident, Respondent has repeatedly expressed remorse and that he is not a violent person. He testified she would never stay with a violent person because of her son. She also testified that she believes that the Respondent has good character and the incident was out of character. She testified she considers him a positive role model for her son who was eight (8) years old when they first met and still lives with them.

Newton Link testified on Respondent's behalf. He testified he is a childhood friend of the Respondent and worked as a Correctional Officer at the prison where the Respondent was incarcerated. He testified that the Respondent was attentive and cooperative and had no discipline issues while he was in prison. He also testified that Respondent engaged in several rehabilitation programs while incarcerated.

Linda Palazzo testified on Respondent's behalf. She testified that she is in charge of security at the Narragansett Bay Campus School of Oceanography, is a co-convener for the Center for Nonviolence and Peace Studies at URI, and is a certified non-violence teacher. She testified that in her role as a non-violence teacher, she met the Respondent when she taught a class at the prison which he took. She testified that she was impressed by his acumen in her class, Resolving Conflicts Nonviolently, and that he was a model student. She testified that she hoped that he would choose to become a non-violence

trainer since she was so impressed with him. See Respondent's Exhibits One (1) (letter of recommendation) and Two (2) (certification of course completion).

Several members of the real estate business testified on the Respondent's behalf. Joseph DeChristofaro testified on Respondent's behalf. He testified that he is a fellow broker and heard the Respondent on his radio show and talked to him because of it. He testified that he trusted the Respondent, worked with him, and found him to be exceedingly knowledgeable and professional. He testified that he is aware of the Respondent's prison sentence which surprised him. He testified that the Respondent would stay focused and positive in transaction. Deborah Quirini testified that she was recruited by the Respondent from Re/Max and now works for Respondent's attorney's company (where Respondent would work if licensed). She testified that she changed companies based on the strength of Respondent's character. She testified that he isn't violent but is knowledgeable and can handle difficult deals.

Mary Giordano<sup>3</sup> testified on the Respondent's behalf. She testified that she was the Dean of Students at Hope High School when the Respondent was in high school and has known him for 25 years. She testified that he always reached out to others and she would buy a house through him.

Several of the Respondent's former clients testified on his behalf. Kenneth Ivory testified that the Respondent acted as his buyer's agent for two (2) properties in 2006 and 2007 and he found him to be honest and did what he said he would do. Kevin McKay<sup>4</sup> testified that he used the Respondent for his apartment and then a house in 2008. He

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<sup>3</sup> The parties stipulated that Ms. Giordano holds two (2) doctorates: psychology and education. See emails of August 2, 2010 and August 3, 2010.

<sup>4</sup> The parties stipulated that Mr. McKay is a pastor and works as a youth pastor at Johnson & Wales University. See emails of August 2, 2010 and August 3, 2010.

testified that the Respondent worked very hard and was very helpful in explaining the process to him. He testified that the Respondent disclosed his arrest to him (McKay) when it happened. Audrey Amado testified that she grew up with the Respondent and asked him to be godfather to her daughter. She testified he never was violent. She testified that she used him in 2008-2009 when she was divorcing and he walked her through everything and explained everything to her. See Respondent's Exhibit One (1) (Amado's letter of recommendation). They all testified that they would recommend the Respondent to friends. See also Respondent's Exhibit A (letter of recommendation from a former client who could not appear at the reconsideration hearing).

The Respondent's mother and godmother also testified on the Respondent's behalf. They both testified that the Respondent's conviction was out of character. In addition, the Respondent submitted a letter from the Respondent's current employer indicating his good character and stating that the company hired the Respondent knowing about his felony conviction. See Appellant's Exhibit One (1).

#### **IV. DISCUSSION**

##### **A. Respondent's Convictions Fall Within R.I. Gen. Laws § 5-20.5-14(a)(14)**

See the Decision for the discussion regarding R.I. Gen. Laws § 5-20.5-14(a)<sup>5</sup> and how it applies to the Respondent. In this situation, the Respondent has been convicted<sup>6</sup> of 1) felony assault; and 2) conspiracy/felony.

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<sup>5</sup> R.I. Gen. Laws § 5-20.5-14(a)(14) provides in part as follows:

(a) . . . The director has [the] power to refuse a license for cause . . .

(14) Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses, or pleading guilty or nolo contendere to any such offense or offenses.

See also:

R.I. Gen. Laws § 5-20.5-3(c) states in part as follows:

## **B. Felony Convictions: the Stanton Criteria**

As discussed in the Decision, the Department follows the four (4) criteria set forth in *In the Matter of William J. Stanton*, DBR No. 98-L-0035 (12/15/98) when determining whether to license felons: 1) the nature and circumstances of the misconduct; 2) conduct and reformation; 3) present character; and 4) present qualifications. No one particular factor is dispositive, nor are these four (4) factors the sole factors considered in all cases, but rather, the Hearing Office must consider the totality of the circumstances.

### **1. Nature and Circumstances of the Misconduct**

The first factor is the nature and circumstances of the misconduct. Considerations in this area include: (i) when the misconduct took place; (ii) whether the misconduct was a misdemeanor or a felony; (iii) the type of sentence imposed; (iv) the age of the applicant at the time of the misconduct; (v) the reason(s) given by the applicant for committing the misconduct and the applicant's acknowledgement of responsibility for the crime(s); and (vi) whether the misconduct relates to the license for which applicant has applied. *Stanton*, at 5-6.

It is apparent that the Respondent now realizes that an explanation of the circumstances of his conviction cannot just include a brief explanation of how he made a bad decision but an explanation of why he made such a decision and what actually

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In the case of an applicant for a real estate salesperson's license, he or she must also file a statement under oath from the broker in whose employ the applicant desires to enter that in his or her opinion the applicant is competent and trustworthy and is recommended as a suitable person to be granted a salesperson's license.

R.I. Gen. Laws § 5-20.5-4(b) states in part as follows:

The director, in his or her sole discretion, may require any additional evidence or proof, as to the honesty, trustworthiness, integrity, good reputation, and competency of any applicant.

<sup>6</sup> A plea of *nolo contendere* followed by a prison sentence is a conviction. See R.I. Gen. Laws § 12-18-3.



happened. In this matter, Respondent told the truth on his renewal application regarding his felony convictions and entered into two (2) Consent Agreements with the Department regarding his 2008 charges and subsequent convictions. See Decision. In his first hearing, Respondent acknowledged his responsibility in this matter. However, he failed to adequately address his 2008 actions that led up to his convictions. The Respondent explained this discrepancy by representing that he believed he had already answered the Department's concerns (see Respondent's Motion) as represented by the Department's counsel at the first hearing (see Decision). However, the hearing process is a forum where an applicant must be candid regarding the nature and circumstances of his or her conviction.

While obtaining this explanation from the Respondent necessitated two (2) separate hearings, the Respondent fully disclosed his felony convictions on his initial License application and renewal application. In the first hearing, he acknowledged his errors and accepted responsibility. He is currently employed. In addition, the Respondent's future employer (his attorney) represented that he is willing to take supervisory responsibility for Respondent if Respondent is able to obtain a real estate salesperson's license.

The Respondent served one (1) year probation for the 2002 assault and one (1) year in minimum security prison for the 2008 assault. At the second hearing, the Respondent testified that he participated in the 2008 incident because he was having money difficulties and agreed to help an old acquaintance but he trusted the wrong person which he should have realized and known better. The Respondent expressed regret for his role in both assaults.

Additionally, at the first hearing, the Department represented it felt the Respondent fully explained the nature of his 2008 convictions to the Department. After

the Respondent's first offense, he was licensed without issue. The Respondent admitted his responsibility to all of the charges. He now has explained at hearing the nature and circumstances of all of his convictions.

**2. and 3. Conduct and Reformation; Present Character**

The second and third factors to be considered under *Stanton* are the applicant's subsequent conduct and reformation and his present character. Considerations in this area include: (i) whether the applicant has completed his criminal sentence or administrative sanction; (ii) whether the applicant has acknowledged his wrongdoing and expressed contriteness or remorse and the facts which support such acknowledgement; (iii) whether the applicant has settled his financial and/or other obligations arising from the misconduct and taken responsibility for his misconduct; and (iv) whether the applicant has favorable recommendations from people (other than family members) aware of his past misconduct attesting to his current good character. *Stanton*, at 7-8.

The Respondent has completed the prison term for his second assault but is still on probation. He testified that he regretted putting himself in the situation that gave rise to the 2008 assault and that he has attempted to ameliorate the situation by his subsequent actions. The Respondent presented many witnesses who spoke to his good character. While one would expect an applicant's mother, godmother, and girlfriend to speak on his behalf, they did take the time to speak on his behalf. More importantly, a police officer, a prison teacher, and a high school dean all testified on the Respondent's behalf. Furthermore, prior clients of the Respondent who were aware of the Respondent's actions and convictions testified on his behalf not only to his character but to how well he performed as a real estate salesperson in that he fully explained the process to them.

#### 4. Present Qualifications

The fourth factor to consider under *Stanton* is the applicant's present qualifications and competence in the area of the license requested. Considerations in this area include: (i) whether the applicant is currently employed in the industry by another licensee; (ii) whether a current licensee has expressed a willingness to sponsor the applicant; and (iii) whether the applicant is willing to accept a probationary or temporary license.

The Respondent has a job offer as a real estate broker if he regains his License. Additionally, Respondent's counsel and prospective employer, a licensed real estate broker, offered to sign an affidavit of supervision for Respondent. In addition, the Respondent is currently working and provided a letter of reference from his supervisor.

#### **C. Whether the Respondent Should be Licensed**

*Stanton* held that these four (4) factors are not to be given equal weight in determining whether to deny an application. Instead, a combination of these factors provides guidance for deciding whether to grant or deny a license. Similar to *Stanton*, the Respondent in this matter has provided a full explanation of his crimes to the undersigned. The Respondent was convicted of assault and conspiracy to commit assault. These are serious and violent crimes. However, Respondent has served the mandated prison time, and the offered testimony indicates that this was an isolated incident based on an exceedingly stupid and reckless decision. Additionally, he has shown copious evidence of his current good character and already has a job lined up as a salesperson.

The Respondent's conduct since he committed his crime appears from the evidence to be dedicated to rehabilitating himself and avoiding the pitfalls that initially

led him into such a situation. Indeed, his prison non-violent teacher testified on his behalf. Additional evidence was offered from multiple sources with knowledge of his misconduct that Respondent is a positive force within the community. The Respondent has been offered a job as a real estate broker if he is able to reacquire his broker's license. Additionally, a licensed real estate broker is willing to vouch for Respondent.

The Respondent surrendered his License on April 14, 2009 which was the day he began his prison sentence. See Department's Exhibit Three (3). He was released from prison in January, 2010. Thus, there hasn't been that much time since the Respondent's criminal actions, his release from prison, and his application for the License for him to establish his rehabilitation and ensure that he won't be tempted into such actions again.

Based on the *Stanton* criteria and the Respondent's credible explanation at his second hearing regarding his conviction, the Respondent has demonstrated that he has met the criteria for licensing subject to the recommended conditions enumerated below in the Recommendation section.

## **VI. FINDINGS OF FACT**

1. On May 28, 2010, a Decision was issued in the above captioned matter denying the Respondent's application for reinstatement/new License.
2. On June 11, 2010, the Respondent filed a Motion for Reconsideration. The Department objected.
3. A further hearing on July 13, 2010 was allowed for the Respondent to address the prior lack of testimony regarding the nature and circumstances of the Respondent's misconduct and his argument regarding his subsequent conduct and reformation. At rehearing, the Respondent presented testimony solely on those issues.

3. On February 4, 2008 the Respondent was charged with certain felonies.

4. On February 13, 2009, the Respondent pled *nolo contendere* to 1) felony assault for which he received a full sentence of seven (7) years with one (1) year to serve and six (6) years suspended and probation; and 2) conspiracy/felony for which he for which he received a full sentence of seven (7) years with one (1) year to serve and six (6) years suspended and probation.

5. Under the Amended Consent Agreement, the Respondent's License was suspended as of April 14, 2009.

6. The Respondent was incarcerated at the ACI and upon his release from prison sought to have his License suspension lifted resulting in this hearing process.

7. Pursuant to R.I. Gen. Laws § 5-20.5-14(14), the Respondent's felony convictions may be considered in deciding whether to grant Respondent's request to reinstate his License.

8. The facts contained in Sections IV and V are reincorporated by reference herein.

## **VII. CONCLUSIONS OF LAW**

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. § 5-20.5-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

2. The Department has not met its burden in establishing there exists a sufficient basis to deny Respondent's request to for a new/reinstate his License pursuant to R.I. Gen. Laws § 5-20.5-1 *et seq.*, R.I. Gen. Laws § 5-20.5-14(a)(14), and case law assuming certain conditions are imposed

## **VIII. RECOMMENDATION**

Based on the above analysis, the Hearing Officer recommends that Respondent's application for License be granted effective May 1, 2011 and shall be conditioned upon the following:

1. If the Respondent is charged with any criminal offenses between the issuance of this decision and May 1, 2011, that would be grounds for the Department to re-open this matter.
2. If the Department learns of any new facts or information regarding any of the Respondent's prior convictions prior to May 1, 2011 (and subsequent thereto), that will be grounds for the Department to re-open this matter and if necessary bring another administrative action against the Respondent including an emergency suspension.
3. Once licensed, the Respondent shall not handle any money whether cash, check, money order or any other form of money while acting as a Departmental licensee.
4. Once licensed, the Respondent shall inform the Department in writing within ten (10) days of any criminal charges brought against him. Such charges may result in administrative action including an emergency suspension of License.
5. Once licensed, if the Respondent leaves the employ of his attorney's real estate company, Blackstone Ocean Property (See Decision), he shall notify the Department in writing within ten (10) days. At that time the Department may decide either by letter, by hearing, or by consent agreement whether Respondent's License should be revoked or whether other additional conditions shall be placed upon it.
6. The Respondent's attorney (Stephen Germani, the Respondent's to-be supervising broker) shall submit a written affidavit to the Department acknowledging that he

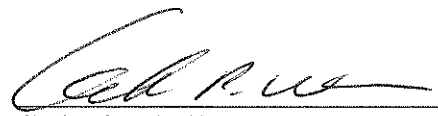
has and will continue to exercise supervisory authority over Respondent and could be held responsible by the Department for any misconduct that Respondent engages in as a real estate licensee. The Department shall not issue the License until such affidavit satisfactory to the Department is submitted.

7. That at such time that the Department receives written notice of a complaint against Respondent regarding his license (once issued), the Department may initiate an action including but not limited to the revocation of the Respondent's real estate license.

8. Assuming no change in the circumstances, once the Respondent is licensed, the Respondent may request that the Department waive these conditions anytime subsequent to one (1) renewal cycle from this decision and prior to the completion of his criminal probation period.<sup>7</sup> At such time, the Department may decide by letter, or by consent agreement, or by hearing to allow the Respondent to renew without condition(s), with the same conditions, or with different condition(s). At the end of the Respondent's criminal probation period and if there are no changes in circumstances, the Respondent has not had any further criminal charges, and he has successfully followed the conditions of this decision, the conditions on his License shall be lifted.

9. The Respondent's application is to be treated as a new application<sup>8</sup> as his License has expired. He must comply with the new licensing requirements prior to May 1, 2011.

Dated: 11/19/10

  
Catherine R. Warren  
Hearing Officer

<sup>7</sup> The Respondent must promptly confirm the date that his probation ends to the Department.

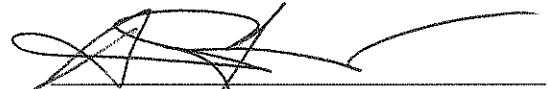
<sup>8</sup> The Respondent's License was suspended April 14, 2009. It then expired April 30, 2010. Under the statute, the Respondent could reinstate the License for up to one (1) year without examination (R.I. Gen. Laws § 5-20.5-11). However, barring any new criminal charges or any other information relating to his convictions, he will be eligible for a new License May 1, 2011 requiring examination and pre-licensing.

**ORDER**

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

ADOPT  
 REJECT  
 MODIFY

Dated: 11-22-2010

  
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A. Michael Marques  
Director

**NOTICE OF APPELLATE RIGHTS**

**THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.**

**CERTIFICATION**

I hereby certify on this 24<sup>th</sup> day of November, 2010 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail, postage prepaid to –

Stephen Germani, Esquire  
931 Jefferson Blvd., Suite 2006  
Warwick, RI 02886

and by electronic-delivery to Ellen Balasco, Esquire, Maria D'Alessandro, Deputy Director, William DeLcua, Administrator, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, Rhode Island.

  
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