

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
against:

GUILLERMO ELADIN FLORES,

Respondent.

Case No. H-2859 SD

OAH No. L2003080182

PROPOSED DECISION

On September 3, 2003, in San Diego, California, Greer D. Knopf, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Michael B. Rich, Real Estate Counsel, the Department of Real Estate, appeared on behalf of complainant J. Chris Graves, Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Charles Benninghoff, Professional Advocate, appeared and represented respondent Guillermo Eladin Flores, who was also present at the hearing.

The matter was submitted on September 3, 2003.

FACTUAL FINDINGS

1. Statement of Issues number H-2859 SD, dated May 28, 2003, was filed by complainant, J. Chris Graves on May 29, 2003, in his official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of California against respondent Guillermo Eladin Flores. The statement of issues alleges respondent applied for a license as a real estate salesperson, that he has been convicted of crimes involving moral turpitude that are substantially related to the qualifications, functions, and duties of a licensee and that he failed to fully disclose all of the crimes of which he has been convicted. On June 18, 2003, respondent filed a notice of defense dated June 10, 2003 requesting a hearing in this matter. The proceeding herein followed.

2. On October 12, 2001, respondent submitted an application to the Department of Real Estate (hereinafter referred to as "the Department") for licensure as a real estate salesperson. Respondent signed his application certifying the truth and accuracy under penalty of perjury. In his application, respondent answered "Yes" to the question, "Have you ever been convicted of any violation of law?" Questions 25 and 27 of the application required respondent to disclose details about his convictions, such as the date of the conviction, the type of conviction, the arresting agency, the code name and specific section violated, the disposition of the case and the case number. The application directions clearly instruct the applicant to provide detailed information about each and every conviction except for traffic violations that do not constitute a misdemeanor or felony. Nevertheless, respondent failed to disclose any specific information on his application regarding his convictions. In fact, respondent has been convicted four times of crimes not listed on his application. Respondent failed to specifically disclose the four convictions in his application and thereby falsified his application under penalty of perjury.

Thereafter, the Department asked respondent to submit detailed information about his criminal conviction. In response to the Department's inquiry, respondent only disclosed his July 1999 criminal conviction. Respondent omitted mentioning three of his four criminal convictions and thereby misrepresented his criminal record to the Department.

3. On November 29, 1993, in the Municipal Court, County of San Diego, State of California, respondent was convicted of a violation of Penal Code section 484, theft. This crime was a misdemeanor that involved dishonesty and moral turpitude and is substantially related to the qualifications, functions and duties of a real estate licensee under California Code of Regulations, title 10, section 2910.

On July 16, 1998, in the Superior Court, County of Riverside, State of California, respondent was convicted of a violation of Vehicle Code section 14601.1(a), knowingly driving with a suspended driver's license and Vehicle Code section 40508(a), willful failure to appear in court. There is insufficient evidence to establish that these violations involved moral turpitude, but they are substantially related to the qualifications, functions and duties of a real estate licensee under California Code of Regulations, title 10, section 2910.

On August 13, 1998, in the Superior Court, County of San Diego, State of California, respondent was convicted of a violation of Vehicle Code section 10851(a), taking a vehicle without the owner's consent. This crime was a felony that involved moral turpitude and is substantially related to the qualifications, functions and duties of a real estate licensee under California Code of Regulations, title 10, section 2910.

On July 21, 1999, in the Superior Court, County of San Diego, State of California, respondent was convicted of a violation of Vehicle Code section 10851(a), taking a vehicle without the owner's consent. This crime was a felony that involved moral turpitude and is substantially related to the qualifications, functions and duties of a real estate licensee under California Code of Regulations, title 10, section 2910.

Respondent served three terms of probation as a result of his criminal convictions. He has paid all fines and restitution ordered by the court. On August 12, 2003, respondent completed his last criminal probation.

4. Respondent testified he has turned his life around and will never again commit crimes. He has a lengthy criminal record and has only been out of the criminal system for less than one month. Respondent has not had enough time to establish a track record as a law abiding citizen.

More troubling is respondent's attempt to minimize his criminal record by failing to fully disclose all of his convictions. Respondent testified at the hearing that he did not give details about his convictions on his application because he could not recall all the details being requested on the application. Respondent further claimed that when he later reported only one criminal conviction to the Department he did so because he assumed that it was only necessary to report the most recent conviction. However, this is not an adequate explanation for misrepresenting his criminal record to the Department. Respondent was obligated to disclose all of his convictions. He impresses the court as a smart and articulate individual. It is not believable that he did not understand he needed to list each and every conviction on his record. Respondent's three other convictions should have been disclosed in the application process. The evidence all indicates that respondent knew he had been convicted four times. It was his responsibility to disclose that information in his application under penalty of perjury. The Department must be able to rely on its licensees to be honest and forthcoming. Respondent failed to demonstrate that he can be trusted to disclose all the facts and tell the truth. He should not be entrusted with a real estate license. It is not in the public interest to grant respondent's application for a license as a real estate salesperson at this time.

LEGAL CONCLUSIONS

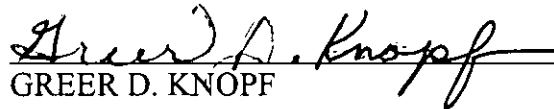
1. Cause exists to deny respondent's application for a license as a real estate salesperson pursuant to Business and Professions Code sections 480 (a) and 10177(b) in that respondent was convicted of a crime that involved moral turpitude and was substantially related to the qualifications, functions and duties of a real estate licensee as set forth in Findings 2, 3, and 4.

2. Cause exists to deny respondent's application for a license as a real estate salesperson pursuant to Business and Professions Code sections 480(c) and 10177(a) in that respondent misrepresented his criminal record in the application process for licensure and he attempted to procure a real estate license through said misrepresentation, as set forth in Findings 2, 3, and 4.

ORDER

The application of Guillermo Eladin Flores for a license as a real estate salesperson is hereby denied.

DATED: 10-1-03



GREER D. KNOPF
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILE
JUL 29 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

GUILLERMO ELADIN FLORES,

}

Case No. H-2859 SD

OAH No.

Shelly Ely

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 THE OFFICE OF ADMINISTRATIVE HEARINGS, 1350 FRONT STREET, ROOM 6022, SAN DIEGO, CALIFORNIA 92101 on WEDNESDAY--SEPTEMBER 3, 2003, at the hour of 9:00 AM, 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 Hearing 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 for 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: JULY 29, 2003

By *Michael B. Rich*
MICHAEL B. RICH, Counsel

File

1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000

FILED

MAY 29 2003

6 Telephone: (916) 227-0789

DEPARTMENT OF REAL ESTATE

By *Jean Arnold*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12)
13 GUILLERMO ELADIN FLORES,)
14 Respondent.)

No. H-2859 SD

STATEMENT OF ISSUES

15 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against GUILLERMO ELADIN FLORES, (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 October 12, 2001, with the knowledge and
23 understanding that any license issued as a result of said
24 application would be subject to the conditions of Section 10153.4
25 of the Business and Professions Code.

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II

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

III

On or about November 29, 1993, in the Municipal Court, County of San Diego, Respondent was convicted of violating Section 484 of the California Penal Code (Theft), a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

IV

On or about July 16, 1998, in the Superior Court, County of Riverside, Respondent was convicted of violating California Vehicle Code Sections 14601.1(a) (Knowingly driving while driver's license suspended) and 40508(a) (Willful failure to appear in court), crimes involving moral turpitude which bear a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

V

On or about August 13, 1998, in the Superior Court, County of San Diego, Respondent was convicted of violating Sections 10851(a) of the California Vehicle Code (Taking vehicle without the consent of owner), a felony involving moral turpitude which bears a substantial relationship under Section 2910, Title

1 10, California Code of Regulations, to the qualifications,
2 functions, or duties of a real estate licensee.

3 VI

4 On or about July 21, 1999, in the Superior Court,
5 County of San Diego, Respondent was convicted of violating
6 Section 10851(a) of the California Vehicle Code (Taking vehicle
7 without the consent of owner) with enhancement pursuant to
8 Section 666.5 of the California Penal Code (Prior conviction of
9 violating Vehicle Code Section 10851(a)), involving moral
10 turpitude which bears a substantial relationship under Section
11 2910, Title 10, California Code of Regulations, to the
12 qualifications, functions, or duties of a real estate licensee.

13 VII

14 In responses to Questions 25 and 27 of the license
15 application, requiring Respondent to reveal the court conviction,
16 arresting agency, date of conviction, type of conviction, code
17 name and section number violated, disposition and case number,
18 for each conviction of any violation of law (other than for
19 convictions of drunk driving, reckless driving, and minor traffic
20 citations not constituting a misdemeanor or felony offense),
21 Respondent concealed and failed to reveal the convictions
22 described in Paragraphs III, IV and V above.

23 VIII

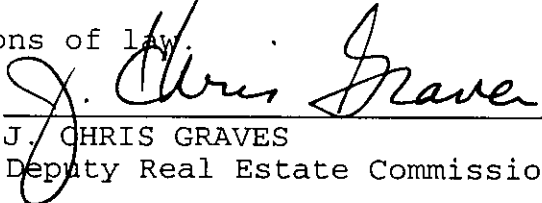
24 Respondent's failure to reveal in the Application the
25 convictions described in Paragraphs III, IV and V above,
26 constitutes an attempt to procure a real estate license by fraud,
27 misrepresentation, or deceit, or by making a material

1 misstatement of fact in the application, which failure is cause
2 for denial of Respondent's license application under Sections
3 480(c) and 10177(a) of the California Business and Professions
4 Code.

5 VII

6 The crimes, of which Respondent was convicted, as
7 alleged in Paragraph III, IV, V and VI, individually and/or
8 collectively, constitute cause for denial of Respondent's
9 application for a real estate license under Sections 480(a) and
10 10177(b) of the California Business and Professions Code.

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

17 
18 J. CHRIS GRAVES
19 Deputy Real Estate Commissioner

20 Dated at San Diego, California,
21 this 28th day of May, 2003.