

FILED  
AUG 19 2003

BEFORE THE

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By: *Alleen Contreras*

\* \* \*

In the Matter of the Application of )  
  ) NO. H-2862 SD  
      JESUS MADRIGAL,                  )  
  ) L-2003060761  
  ) Respondent. )  
\_\_\_\_\_ )

**DECISION**

The Proposed Decision dated July 18, 2003, 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. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon  
on \_\_\_\_\_ September 8 \_\_\_\_\_, 2003.

IT IS SO ORDERED August 4, 2003.

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

*Paula Reddish Zinnemann*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

JESUS MADRIGAL,

Respondent.

Case No. H-2862 SD

OAH No. L2003060761

**PROPOSED DECISION**

On July 11, 2003, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Larry A. Alamao, Assistant Chief Counsel, represented complainant.

Respondent represented himself.

The matter was submitted on July 11, 2003.

**FACTUAL FINDINGS**

1. J. Chris Graves, Deputy Real Estate Commissioner of the State of California (hereafter, "Department") filed Statement of Issues No. H-2862 SD in his official capacity on April 8, 2003. Respondent filed a Notice of Defense.

2. On July 19, 2002, respondent filed a Salesperson License Application with the Department.

3. On March 15, 2000, in the San Diego County Superior Court, respondent pled guilty and was convicted of one count of violating Penal Code section 594(a)(b)(4), a misdemeanor. The court placed respondent on summary probation for one year and fined him \$200.00, and required him to pay \$100.00 to the State Victim's Restitution Fund. The court further ordered him to perform five days of volunteer work and stay away from the victim.

4. On October 22, 2002, in the San Diego County Superior Court, respondent pled guilty and was convicted of one count of violating Vehicle Code section 23152(b),

driving with a measurable amount of alcohol, a misdemeanor. The court placed respondent on probation for five years and fined him \$1,450.00. The court further required him to take a first conviction drunk driving course and restricted his driver's license for 90 days.

5. The police report supporting the vandalism charge does not contain any information as to the facts and circumstances of the offense. The arresting officer responded to a radio call of a domestic violence incident involving respondent and his live-in girlfriend. The officer arrested respondent for spousal battery. The report contains no statement from the alleged victim. Respondent refused to be interviewed.

At the hearing, respondent testified he became involved in an argument with his girlfriend and he asked her to leave the residence. He packed her things, and in doing so, removed her telephone from the wall. Respondent testified the police told him he vandalized the phone by disconnecting it.

6. Respondent paid the fine and performed the required volunteer work at a senior citizen center. He was not required to pay restitution. On March 6, 2002, the court dismissed the accusation against respondent pursuant to Penal Code sections 1203.4 and 1203.4a.

7. The police report of the DUI offense reveals that on August 16, 2002, at about 10:20 p.m., respondent attempted to drive across the border from Mexico, but an inspector observed symptoms of intoxication. Respondent consented to a blood test; the report does not indicate the level of respondent's intoxication other than it equaled or exceeded 0.08 percent.

8. Respondent completed the required DUI course by attending the MAAC Project program. He attended 45 hours over the course for three months. The program consisted of classes, individual and group sessions, plus attending 12 A.A. meetings between November 2002 and January 2003. Respondent no longer attends them because he testified he no longer drinks. He still owes more than \$1,000.00 of the fine.

9. Respondent attended Southwestern College for two years, but did not receive a degree. His major was accounting, and he now works for a company called Heating and Cooling as an accounting assistant. He wants a real estate license to supplement his income. He wants to sell homes. He has no family.

10. The Department's regulations are contained in Title 10 of the California Code of Regulations. Section 2910 sets forth the criteria of substantial relationship. Subsection (a)(10) provides a crime shall be deemed substantially related to the qualifications, functions, or duties of a real estate licensee if the conduct demonstrates a pattern of repeated and willful disregard of the law. The evidence established respondent was convicted of two criminal offenses in two years. In addition, the DUI conviction is substantially related to the qualifications, functions, and duties of a real estate salesperson because of the considerable driving licensees must do in connection with selling homes, and that includes driving clients when showing them homes.

## LEGAL CONCLUSIONS

1. Section 2911 of Title 10 sets forth the Department's criteria of rehabilitation. The applicable criteria show respondent's last criminal act occurred less than a year ago, he remains on probation and has not completed paying the fine, his vandalism conviction was expunged following completion of his sentence, he has completed a DUI course and attended some A.A. meetings, there is no evidence of a stable family life or participation in community activities, and he has completed some classes at the community college level.


Respondent's showing of rehabilitation is minimal. He corroborated his participation in the DUI program and attendance at 12 A.A. meetings, but offered no evidence to inspire the belief he has learned from his mistakes and will not repeat them. No one testified in support of his application and he offered no letters of support. He remains on probation for his DUI conviction, and other than his testimony, there is nothing to corroborate his testimony that he no longer drinks. The evidence relating to the criteria points toward denial of his application.

2. Cause to deny respondent a real estate salesperson license was established pursuant to Business and Professions Code sections 480(a) and 10177(b), conviction of a crime involving moral turpitude and substantially related to the qualifications, functions, and duties of a real estate broker, by reason of Findings 3, 4, 5, and 7, and Legal Conclusion 1.

## ORDER

The application of respondent Jesus Madrigal for a real estate salesperson's license is denied.

DATED: July 18, 2003

  
ALAN S. METH  
Administrative Law Judge  
Office of Administrative Hearings

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

**FILED**  
JUN 25 2003

DEPARTMENT OF REAL ESTATE

By Kathleen Conteras

*In the Matter of the Application of*

JESUS MADRIGAL,

}

Case No. H-2862 SD

OAH No.

\_\_\_\_\_  
*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 **JULY 11, 2003**, at the hour of **1:30 PM**, 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 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: JUNE 25, 2003

By Larry Alamo  
LARRY A. ALAMO, Counsel

1 DEIDRE L. JOHNSON, Counsel  
SBN 66322  
2 Department of Real Estate  
P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4 Telephone: (916) 227-0789

FILED  
MAY 31 2003

DEPARTMENT OF REAL ESTATE

By Kathleen Conteras

8 BEFORE THE  
9 DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Application of )  
13 JESUS MADRIGAL, ) NO. H-2862 SD  
14 Respondent. ) STATEMENT OF ISSUES  
15 )

16 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate  
17 Commissioner of the State of California, for cause of Statement  
18 of Issues against JESUS MADRIGAL, alleges as follows:

19 I

20 JESUS MADRIGAL (hereafter Respondent) made application  
21 to the Department of Real Estate of the State of California  
22 for a real estate salesperson license on or about September 9,  
23 2002.

24 II

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

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III

On or about March 15, 2000, in the Superior Court of the State of California, County of San Diego, Respondent was convicted of violation of Penal Code Section 594(a)(b)(4) (VANDALISM), a crime involving moral turpitude, and/or a crime 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 October 22, 2002, in the Superior Court of the State of California, County of San Diego, Respondent was convicted of violation of Vehicle Code Section 23152(b) (DRIVING WHILE HAVING A MEASURABLE BLOOD ALCOHOL), a crime involving moral turpitude, and/or a crime 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.

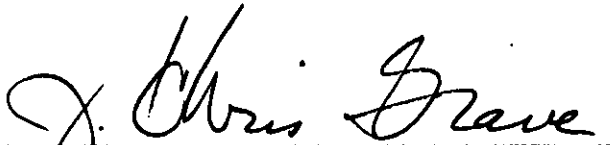
V

The crimes of which Respondent was convicted, as alleged in Paragraphs III and IV above, constitute cause, jointly and severally, for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions 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, and for such other and further relief as may be proper in the premises.

  
\_\_\_\_\_  
J. CHRIS GRAVES  
Deputy Real Estate Commissioner

Dated at San Diego, California  
this 13<sup>th</sup> day of May, 2003.