

FLAG

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

SEP 23 2009

DEPARTMENT OF REAL ESTATE

By H. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of
ALEJANDRO MIGEL RAMIREZ,
Respondent.

No. H-3198 SD

ORDER GRANTING UNRESTRICTED LICENSE

On September 26, 2005, a Decision was rendered herein denying the Respondent's application for a real estate salesperson license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on November 26, 2005, and Respondent has operated as a restricted licensee since that time.

On May 25, 2007, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

I have considered Respondent's petition and the evidence submitted in support thereof including Respondent's record as a restricted licensee. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate salesperson license and that it would not be against the public interest to issue said license to Respondent.

1 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal of
2 restrictions is granted and that a real estate salesperson license be issued to Respondent subject to
3 the following understanding and conditions:

4 1. The license issued pursuant to this order shall be deemed to be the first
5 renewal of Respondent's real estate salesperson license for the purpose of applying the provisions
6 of Section 10153.4.

7 2. Within twelve (12) months from the date of this order Respondent shall:

8 (a) Submit a completed application and pay the appropriate fee for a real
9 estate salesperson license, and

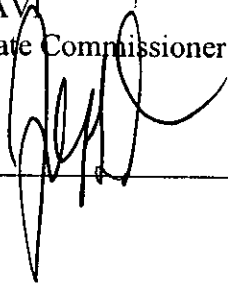
10 (b) Submit evidence of having taken and successfully completed the courses
11 specified in subdivisions (a) (1), (2), (3), (4) and (5) of Section 10170.5 of the
12 Real Estate Law for renewal of a real estate license.

13 3. Upon renewal of the license issued pursuant to this order, Respondent
14 shall submit evidence of having taken and successfully completed the continuing education
15 requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate
16 license.

17 This Order shall become effective immediately.

18 IT IS SO ORDERED 9-9-09

19 JEFF DAVIS
20 Real Estate Commissioner

21 
22 _____
23
24
25
26
27

FILED
OCT 13 2005

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

* * *

By S. Ely

In the Matter of the Application of)
ALEJANDRO MIGEL RAMIREZ,)
Respondent.)

NO. H-3198 SD
OAH No. L-2005071054

DECISION

The Proposed Decision dated September 14, 2005, 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, 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 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 appended hereto.

This Decision shall become effective at 12 o'clock noon
on NOV 02 2005.

IT IS SO ORDERED 9-26- 2005.

JEFF DAVIS
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

ALEJANDRO MIGEL RAMIREZ,

Applicant/Respondent.

Case No. H-3198-SD

OAH No. L2005071054

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 31, 2005, in San Diego, California.

Michael B. Rich, Counsel, represented complainant J. Chris Graves, a Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Monty A. McIntyre, Attorney at Law, represented applicant/respondent Alejandro Migel Ramirez, who was present throughout the administrative hearing.

The matter was submitted on August 31, 2005.

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 26, 2005, complainant J. Chris Graves, a Deputy Real Estate Commissioner, Department of Real Estate (the Department), State of California, signed the Statement of Issues in his official capacity. The Statement of Issues and other required jurisdictional documents were served on applicant/respondent Alejandro Migel Ramirez (Ramirez or respondent).

Ramirez, through counsel, timely filed a Notice of Defense on Application.

On August 31, 2005, the administrative record was opened. Jurisdictional documents were presented. Official notice was taken. An opening statement was given and a hearing brief was filed by respondent. Sworn testimony and documentary evidence was received. Closing arguments were given, the record was closed and the matter was submitted.

The Application for Licensure

2. On March 22, 2004, Ramirez applied to the Department for the issuance of a real estate salesperson's license.

3. The application contained the following statements:

- **Carefully read and provide detailed answers to questions #24-26. You must provide a yes or no response to all questions.**
- "Convicted" as used in Question 25 includes a verdict of guilty by judge or jury, a plea of guilty or of nolo contendere, or a forfeiture of bail in municipal, superior or federal court. All convictions must be disclosed whether or not the plea of verdict was set aside, the conviction against you was dismissed, or expunged or if you have been pardoned. Convictions occurring while you were a minor must be disclosed unless the record of conviction has been sealed under Section 1203.45 of the California Penal Code or Section 781 of the California Welfare and Institutions Code.

4. Question 25 asked:

"HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE."

5. Ramirez marked the "YES" box below that question.

6. In response to Question 27, which asked for detailed explanations related to any convictions, Ramirez represented his criminal history included a 1996 misdemeanor petty theft conviction, a 1997 felony statutory rape conviction, and a 1997 misdemeanor driving on a suspended license conviction. Ramirez provided sufficient information in response to the question to permit the Department to conduct a full investigation.

Ramirez' Convictions

7. On September 30, 1996, Ramirez was convicted on his plea of guilty of violating Penal Code section 484/488 (Petty Theft), a misdemeanor and a crime involving moral turpitude, in the Municipal Court of California, San Diego County, North County Judicial District, in Case No. CN047292 entitled *People of the State of California vs. Alejandro Ramirez*.

On September 30, 1996, imposition of sentence was suspended for a period of one year and Ramirez was placed on summary probation. Terms and conditions of probation

required Ramirez to serve one day in custody (with credit given for being booked and released), to pay fines and fees of approximately \$385, and to violate no laws.

The conviction has not been expunged.

8. On January 14, 1997, Ramirez was convicted on his plea of guilty of violating Penal Code section 261.5, subdivision (b) (Sexual Intercourse with a Minor Not More than Three Years Younger), a misdemeanor and a crime involving moral turpitude, in the Municipal Court of California, San Diego County, North County Judicial District, in Case No. CDF125546 entitled *People of the State of California vs. Alejandro Ramirez*.

On February 13, 1997, imposition of sentence was suspended for a period of one year and Ramirez was placed on probation. Terms and conditions of probation required Ramirez to serve two days in custody (with credit given for time served), to pay fines and fees of approximately \$100, to make restitution to the victim in the amount of \$510.57, and to serve 20 days in a public service program.

The conviction has not been expunged.

9. On April 9, 1997, Ramirez was convicted on his plea of guilty of violating Vehicle Code section 14601.1, subdivision (a) (Driving on a Suspended License), a misdemeanor not involving moral turpitude, in the Municipal Court of California, San Diego County, San Diego Judicial District, in Case No. T180152 entitled *People of the State of California vs. Alejandro Ramirez*.

On April 9, 1997, imposition of sentence was suspended for a period of three years and Ramirez was placed on probation. Terms and conditions of probation required Ramirez to serve two days in custody (with credit given for time served), to pay fines and fees of approximately \$970 and to violate no laws (excluding minor traffic offenses).

The conviction has not been expunged.

Circumstances of the Offenses

10. On August 5, 1996, Ramirez was essentially unemployed and homeless. He decided he needed to look presentable before applying for a job. Ramirez entered a Robinsons-May department store and attempted to steal a shirt. He was cited for petty theft, a misdemeanor offense to which he later pled guilty.

11. On July 12, 1996, Ramirez and several other young men arranged dates with high school coeds. According to Ramirez, he did not know the coed with whom he had sexual intercourse was a minor, although he conceded he did not think about that and certainly did not ask. Ramirez was arrested after the minor's mother found out about the incident. Ramirez pled guilty to having sexual intercourse with a minor who was not more than three years his junior. The misdemeanor conviction was a non-registerable sex offense.

12. Well before March 8, 1997, Ramirez was an irresponsible driver. The Department of Motor Vehicles suspended Ramirez' driver's license as a result of his being determined a negligent operator.¹ Despite having his license driver's license suspended, Ramirez continued to drive. On March 8, 1997, Ramirez was stopped by a San Diego County deputy sheriff for driving over the center divider. During that traffic stop, it was determined Ramirez' driver's license was suspended. Ramirez was cited and he later pled guilty to driving on a suspended license.

Ramirez' Testimony and Other Evidence

13. Ramirez was born on January 22, 1978. He grew up in Escondido, California, graduating from Valley High School, a continuation high school, in June 1997.

Ramirez testified that he associated with troublemakers during high school. He said he "made some poor choices that affected my future." Ramirez was often homeless and unemployed during this period of his life.

14. In 1998, Ramirez took some R.O.P. computer courses through Palomar Community College. Thereafter, he began working for Household Finance Company (HFC) as a loan officer. Ramirez enjoyed working for HFC and soon became one of the company's top producers, receiving numerous awards over the next six years. Ramirez received training in mortgages and loan processing at HFC and he learned enough ultimately to train other HFC employees.

During his employment with HFC, Ramirez met Michael Deery (Deery).

15. A couple of years ago, Deery came to believe that he could establish and operate a profitable mortgage brokerage and lending institution, but he needed help. A little over a year ago, Deery founded Citywide Financial, a mortgage broker/lender with offices in San Diego. Deery hired Ramirez to be Vice President of the company.

The company has met with success. Citywide Financial employs about two dozen people and has offices in San Diego.

Deery described Ramirez as "my right hand man." Deery and Ramirez are "great friends" and Ramirez serves as "a mentor to the kids who work at Citywide." Ramirez has a reputation for being an honest, ethical, hardworking individual.

16. In October 2005, Ramirez became engaged to Brenda Navarro (Navarro). Neither Ramirez nor Navarro had been engaged or married before. Navarro has known

¹ See, California Vehicle Code section 12810.5.

Ramirez for three years. She described Navarro as being very honest, trustworthy, hardworking and helpful to others.

17. Steven Heine (Heine) has known Ramirez since 1995. Since Heine's first meeting with Ramirez, Ramirez has changed "very dramatically." Heine was very impressed "with the way he has turned his life around." According to Heine, Ramirez was irresponsible when he was in high school. However, after Ramirez began working at HFC he became an entirely different person. Heine regularly comes to Ramirez for advice. Heine believed Ramirez was an honest individual.

18. Maria Ramirez, respondent's mother, said when Ramirez was "17-18 years old, he thought he knew everything." Ramirez was not a pleasure to be around and made several mistakes. Respondent's mother said Ramirez learned from his mistakes and "is now a wonderful son" who is hardworking, trustworthy and honest.

19. The pattern and nature of Ramirez' convictions established Ramirez was a thoughtless teenager. He stole, was irresponsible in his personal affairs, violated several probationary orders issued by courts and violated an order of suspension issued by the Department of Motor Vehicles, a state agency.

It was not established that Ramirez was uncooperative in the Department's investigation in this matter or that he willfully failed to appear for an interview with a deputy registrar. Ramirez was candid in disclosing all of his convictions.

Ramirez expressed sincere remorse for his past misconduct.

More than eight years have passed since Ramirez' most recent criminal conviction. Ramirez paid all his fines and made restitution as ordered in all criminal cases. While he was not a model probationer, Ramirez completed probation in all three cases. He is presently in the process of having his criminal convictions expunged.

Ramirez successfully completed vocational training courses after his most recent conviction. Ramirez has held steady employment and recently became engaged to be married. His family life appears to be quite stable. Ramirez and his fiancée are involved in a Catholic group that meets once a week on Tuesday nights. They attend church regularly.

Ramirez has new and different associates from those he had at time he engaged in the misconduct that resulted in his convictions. Ramirez has experienced a change in attitude from that existing at the time of the misconduct in question, which was evidenced by his testimony and the testimony of family, friends and business associates.

The absence of any criminal convictions within the last eight years reflects Ramirez' evident ability to conform his conduct to societal rules when considered in light of his prior misconduct.

Evaluation

20. Ramirez was convicted of a theft-related offense in September 1996, a misdemeanor conviction which involved moral turpitude. He was convicted of statutory rape in January 1997, a misdemeanor conviction which involved moral turpitude. He was convicted of driving on a suspended license in April 1997, a misdemeanor not necessarily involving moral turpitude but certainly establishing Ramirez' willful disregard of lawful authority and a willingness to break the law for his own convenience.

In considering whether Ramirez' application for a real estate salesperson's license should be denied on the basis of a conviction of a crime, California Code of Regulations, title 10, section 2910 provides a conviction or conduct is deemed to be substantially related to the qualifications, functions or duties of a Department licensee if the crime or conduct involved the employment of fraud or deceit to achieve an end, a willful failure to comply with a court order, willfully failing to obtain a license from a duly constituted public authority before engaging in a course of conduct requiring a license, or conduct demonstrating a pattern of repeated and willful disregard of law. On the basis of the regulatory language and its clear intent, Ramirez' three convictions, taken together, are substantially and adversely related to the qualifications, functions and duties of a real estate licensee.

The issue is then whether Ramirez demonstrated sufficient rehabilitation to hold a real estate salesperson's license.

Ramirez made an excellent showing in rehabilitation. Factual Finding 19 summarizes the evidence establishing rehabilitation.

Under all the circumstances, Ramirez' rehabilitation has progressed to the point where it would not be contrary to the public interest to permit him to hold a real estate salesperson's license on a restricted basis.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show that he or she is qualified to hold the license. The standard of proof is a preponderance of the evidence. See, *California Administrative Hearing Practice* (Second Edition), "The Hearing Process," sections 7.51 and 7.53, pp. 365-367, and the cases cited therein.

Applicable Statutes

2. Business and Professions Code section 480 provides in pertinent part:

“(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

- (1) Been convicted of a crime . . .

...
The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made”

3. Business and Professions Code Section 10177 provides in pertinent part:

“The commissioner . . . may deny the issuance of a license to an applicant, who has done any of the following . . .

- (b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude”

Moral Turpitude/Substantial Relationship

4. Theft and moral turpitude are practically synonymous. In cases such as those involving convictions of forgery, extortion, bribery, perjury, robbery, embezzlement and other forms of theft, no difficulty would attend the determination of the question of moral turpitude from a consideration of the record of conviction alone. *People v. Hunt* (1985)169 Cal.App.3d 668, 675, fn. 5.

5. Business and Professions Code section 10177, subdivision (b), provides that the real estate commissioner may refuse to issue a license to any applicant who has entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude. The concept of “moral turpitude” is an elusive one. However, there is widespread agreement that convictions of crimes involving fraudulent intent and intentional dishonesty for personal gain establish moral turpitude as a matter of law. *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 400-401.

6. The crime of “statutory rape” or “unlawful sexual intercourse” indicates a “general readiness to do evil” and is necessarily a crime involving moral turpitude. *People v. Fulcher* (1987) 194 Cal.App.3d 749, 754.

7. A conviction alone will not support a denial of a license unless the crime substantially relates to the qualifications, functions, or duties of the business or profession in question. Honesty and truthfulness are two qualities deemed by the Legislature to bear on one’s fitness and qualification to be a real estate licensee. If an applicant’s offense reflects

unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson. The Legislature intended to ensure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear. *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.

8. Ramirez' conviction of petty theft and his conviction of statutory rape involved moral turpitude as a matter of law. Taken singly and together, Ramirez' three convictions have a substantial, adverse relationship to the qualifications, functions and duties of a real estate licensee under California Code of Regulations, title 10, section 2910.

This conclusion is based on Factual Findings 6-12 and 20 and on Legal Conclusions 2-7.

Rehabilitation

9. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." *Pacheco v. State Bar* (1987) 43 Cal. 3d 1041, 1058.

10. The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. *Kwasnik v. State Bar* (1990) 50 Cal. 3d 1061, 1070.

11. California Code of Regulations, title 10, section 2911 provides relevant criteria of rehabilitation.

The applicable factors relating to rehabilitation were discussed in Factual Finding 19.

Cause Exists to Permit the Issuance of a Restricted License

12. Cause exists to deny Ramirez's application for an unrestricted real estate salesperson's license under Business and Professions Code section 480, subdivision (a), and under Business and Professions Code section 10177, subdivision (b). Ramirez was convicted of three crimes which were substantially and adversely related to the qualifications, functions and duties of a real estate salesperson; however, Ramirez established sufficient rehabilitation to warrant the issuance of a restricted a real estate salesperson's license.

This conclusion is based on all Factual Findings and on Legal Conclusions 1-11.

ORDER

Respondent Alejandro Migel Ramirez' application for an unrestricted real estate salesperson's license is denied.

However, respondent Alejandro Miguel Ramirez shall be entitled to the issuance of a restricted real estate salesperson license, which shall be issued subject to the requirements of Business and Professions Code section 10153.4.

1. Respondent shall within eighteen (18) months of the issuance of the restricted license submit evidence satisfactory to the Commissioner of his 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 satisfactory evidence of his successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. The suspension shall not be vacated unless, before the expiration of the restricted license, respondent has submitted the required evidence of course completion and the Commissioner provides written notice to respondent of vacating of the suspension.

2. Pursuant to Business and Professions Code section 10154, if respondent has not satisfied the requirements for an unqualified license under Business and Professions Code section 10153.4, respondent shall not be entitled to renew the restricted license and he shall not be entitled to the issuance of another license which is subject to Business and Professions Code section 10153.4 until four years after the date of the issuance of the preceding restricted license.

3. The restricted license issued to respondent may be suspended prior to hearing by Order of the Commissioner in the event of respondent's conviction or plea of nolo contendere to a felony, to a crime involving moral turpitude or to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

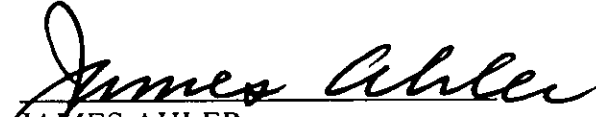
4. The restricted license issued to respondent may be suspended prior to hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

5. Respondent shall submit with any application for a license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which certifies:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

DATED: 9/14/05.


JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007
6 Telephone: (916) 227-0789

FILED
MAY 10 2005

DEPARTMENT OF REAL ESTATE

By S. E. J.

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 ALEJANDRO MIGEL RAMIREZ,) No. H-3198 SD
13 Respondent.) STATEMENT OF ISSUES
14)

15 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against J. CHRIS GRAVES (hereinafter "Respondent"), is informed
18 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 March 22, 2004, 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.

26 ///
27 ///

1 II

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

5 III

6 On or about September 30, 1996, in the Municipal Court,
7 County of San Diego, State of California, Respondent was
8 convicted of a violation of Section 484 and 488 of the California
9 Penal Code (Petty theft), a crime involving moral turpitude
10 and/or a crime which bears a substantial relationship under
11 Section 2910, Title 10, California Code of Regulations, to the
12 qualifications, functions, or duties of a real estate licensee.

13 IV

14 On or about February 13, 1997, in the Municipal Court,
15 County of San Diego, State of California, Respondent was
16 convicted of a violation of Section 261.5 of the California Penal
17 Code (Unlawful sexual intercourse with a minor), a crime
18 involving moral turpitude and/or a crime which bears a
19 substantial relationship under Section 2910, Title 10, California
20 Code of Regulations, to the qualifications, functions, or duties
21 of a real estate licensee.

22 V

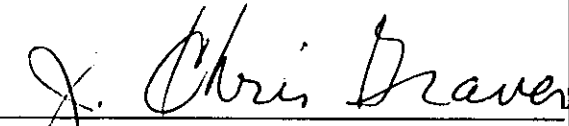
23 On or about April 9, 1997, in the Municipal Court,
24 County of San Diego, State of California, in case number T180152,
25 Respondent was convicted of a violation of Section 14601.1(a) of
26 the California Vehicle Code (Knowingly drive when driving
27 privilege suspended under Section 14601, 14601.2 or 14601.5), a

1 crime involving moral turpitude and/or a crime which bears a
2 substantial relationship under Section 2910, Title 10, California
3 Code of Regulations, to the qualifications, functions, or duties
4 of a real estate licensee.

5 VI

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

11 WHEREFORE, the Complainant prays that the above-
12 entitled matter be set for hearing and, upon proof of the charge
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 
19 J. CHRIS GRAVES
Deputy Real Estate Commissioner

20 Dated at San Diego, California,
21 this 26th day of April, 2005.