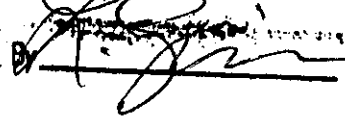


BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAR 16 2012

DEPARTMENT OF REAL ESTATE

By 

In the Matter of the Application of)
)
 WILLIAM ELADIN FLORES,)
)
 Respondent.)
 _____)

NO. H-4239 SD
OAH NO. 2011110582

DECISION

The Proposed Decision dated January 31, 2012, 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.

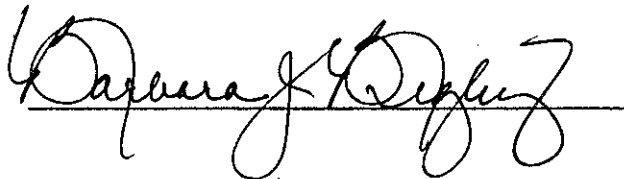
This Decision shall become effective at 12 o'clock noon on

APR - 6 2012

IT IS SO ORDERED

3/12/12

BARBARA J. BIGBY
Acting Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

WILLIAM E. FLORES,

Respondent.

Case No. H-4239 SD

OAH No. 2011110582

PROPOSED DECISION

Agustin F. Lopez II, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 20, 2012, in San Diego, California.

Angela L. Cash, Esq., represented complainant Joseph Aiu, a Deputy Real Estate Commissioner, Department of Real Estate, State of California (Department).

Respondent William E. Flores (Respondent) represented himself and was present throughout the administrative hearing.

Oral and documentary evidence were received on January 20, 2012.

The administrative record was held open until January 27, 2012, to allow respondent to provide documentary evidence supporting the expungement of his convictions. On January 27, 2012, the record was closed and the matter was submitted.

FACTUAL FINDINGS

Procedural Background

1. On December 9, 2009, respondent submitted an application for a real estate salesperson's license.
2. On October 19, 2011, the Department served respondent with its statement of issues denying his application.
3. Respondent had previously applied for a real estate salesperson's license and was denied November 19, 2003.

The Underlying Convictions

4. On November 29, 1993, in the Municipal Court of the State of California, County of San Diego, Case No. S81866, respondent was convicted of a misdemeanor violation of Penal Code section 484 for theft relating to a stolen credit card.

5. On July 16, 1998, in the Superior Court of the State of California, County of Riverside, Case No. COM23108, respondent was convicted of a misdemeanor violation of Vehicle Code section 14601.1, subdivision (a), (driving while license suspended) and section 40508, subdivision (a), (failure to appear in court).

6. On August 13, 1998, in the Superior Court of the State of California, County of San Diego, Case No. SF127479, respondent was convicted of a felony violation of Vehicle Code section 10851, subdivision (a), (taking a vehicle without owner's consent).

7. On July 21, 1999, in Superior Court of the State of California, County of San Diego, Case No. CDF143212, respondent was convicted of a felony violation of Vehicle Code section 10851, subdivision (a), (taking a vehicle without owner's consent).

8. The Department argued respondent's convictions are substantially related to the qualifications, functions, or duties of a real estate licensee in accordance with California Code of Regulations, title 10, section 2910, subdivisions (a)(1), (7), and (8).

Rehabilitation Evidence

9. Respondent did not contest the grounds for the denial of his application. Instead, he argued he is rehabilitated in that he is no longer the same person he was when he was convicted. Respondent also argued the convictions took place while he was immature and in his 20's.

10. Respondent testified and provided documentation he has complied with all the terms of his criminal probations and has since had the convictions dismissed.

On May 22, 2006, the Superior Court of the State of California, County of San Diego, granted respondent's petition for an order dismissing his conviction in Case No CDF143212.

On June 21, 2006, the Superior Court of the State of California, County of San Diego, granted respondent's petition for an order dismissing his conviction in Case Nos. S81866 and SF127479.

On June 20, 2011, the Superior Court of the State of California, County of Riverside, granted respondent's petition for an order dismissing his conviction in Case No. COM23108.

11. Respondent also argued he changed his life around for his family. He testified he "wanted to be a role model for his children."

Respondent testified he has changed his attitude and environment in that he now focuses his energies on his children, family, and community. Respondent has five children that keep him very active. Specifically, respondent volunteers as a youth track coach for six hours a week during track season. He is a volunteer assistant coach for Eastlake youth football for 10 hours a week between the months of July and December. Respondent also coaches youth baseball for his children.

Respondent is also active in his church in that he attends services regularly and volunteers with his family in the Church's Feeding America Program one to two times a year.

12. Respondent's wife, Tanya Cruz-Flores, testified that respondent's character is "completely different" from that which he displayed at the time of his convictions. She testified she's known him since 1997 and has witnessed the change in his attitude and priorities. In Mrs. Cruz-Flores' opinion, respondent would not go back to his old ways because he has "grown up" and "has his children to live for."

13. Respondent also argued that he has been issued a license by the Insurance Commissioner to sell life insurance. He testified he disclosed his convictions when applying for his Insurance license and as evidence of his fitness to be a licensee he argues the Insurance Commissioner issued him a license despite his criminal history.

14. Respondent further argued that he has a potential supervising broker who is willing to supervise him in the event he is issued a restricted license.

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. (*California Administrative Hearing Practice* (Cont.Ed.Bar 2d ed. 2009), The Hearing Process, §§ 7.51-7.53, pp. 376-378.)

Applicable Statutes

2. The Department may deny an applicant a license on the grounds that the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which application is made; or done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another. (Bus. & Prof. Code, §§480, subd. (a); see also 10177, subd. (b).)

3. A determination that a licensee's conviction justifies discipline cannot rest on the moral reprehensibility of the underlying conduct, but requires a reasoned determination

that the conduct was in fact substantially related to the licensee's fitness to engage in the profession. (*Gromis v. Medical Board* (1992) 8 Cal.App.4th 589, 598.)

4. Licensing authorities do not enjoy unfettered discretion to determine on a case-by-case basis whether a given conviction is substantially related to the relevant professional qualifications. Business and Professions Code section 481 requires each licensing agency to "develop criteria to aid it . . . to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates." In response to this directive the Department adopted section 2910 of Title 10 of the California Code of Regulations. (*Donaldson v. Department of Real Estate* (2005) 134 Cal.App.4th 948, 955-956.)

5. Section 2910, subdivision (a), enumerates 11 distinct criteria for determining whether a conviction is "substantially related." Section 2910 states as follows.

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

...

(7) Willfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct.

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

...

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

Rehabilitation

6. California Code of Regulations, title 10, section 2911 reads as follows.

The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

(c) Expungement of criminal convictions resulting from immoral or antisocial acts.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.

(g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.

(i) Completion of, or sustained enrollment in, formal education

or vocational training courses for economic self-improvement.

(j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

(k) Correction of business practices resulting in injury to others or with the potential to cause such injury.

(l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

(n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question. . .

7. 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.) 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.)

8. Cases authorizing admission on the basis of rehabilitation commonly involve a *substantial* period of exemplary conduct following the applicant's misdeeds. (*In re Eben*

Gossage (2000) 23 Cal.4th 1080, 1096 (emphasis added.) The more serious the misconduct and the bad character evidence, the stronger the applicant's showing of rehabilitation must be. (*Id.*) Since persons under the direct supervision of judicial or correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or continue inappropriate behavior while under supervision. (*Id.* at 1099.)

Evaluation

9. In this instance, the Department established good grounds for denying respondent's application in that his prior convictions are substantially related to the qualifications, functions, or duties of a real estate salesperson. Three of respondent's convictions were directly related to theft and consequently have a direct bearing on his honesty. It goes without saying that honesty is an essential character trait of a real estate salesperson. Moreover, all four convictions demonstrate a disregard for law and order that is likewise substantially related to being a real estate salesperson.

10. Notwithstanding, respondent demonstrated he is rehabilitated to the degree where he poses no danger to the public if he were issued a restricted license. Respondent demonstrated he is rehabilitated through his stable family life, his contribution to his community, his activities and his law-abiding lifestyle.

11. Respondent's most recent conviction was 13 years ago—a significantly long period of time. Since then, respondent demonstrated he has contributed positively to his community by volunteering to coach, regularly attending church, volunteering with his family through his church, and is focused on providing a positive "role model" for his children. Quite simply, respondent has much to lose should he revert back to his former habits. Moreover, he has not demonstrated a propensity to revert back to those habits in the last 13 years. Accordingly, respondent demonstrated convincingly that he is an honest, responsible individual who contributes positively to the community and as a result is the kind of person who is worthy of a restricted real estate salesperson's license.

12. Therefore, after weighing the number and nature of respondent's convictions against the substantial evidence of rehabilitation it is in the public's best interest that respondent be issued a restricted real estate salesperson's license.

ORDER

The application for an unrestricted real estate salesperson's license filed by William E. Flores, with the Department of Real Estate on October 29, 2009, 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 if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and

Professions Code and shall be to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. Respondent shall obey all laws of the United States and the State of California, including the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or conditions attaching to the restricted license.

2. Respondent shall, within 72 hours of any arrest or citation, notify in writing the Real Estate Commissioner at the Department of Real Estate's headquarters, 2201 Broadway, Sacramento, CA 95818-2500, of the date of his arrest or citation, the identity and address of the law enforcement agency responsible for making the arrest or issuing citation, the nature of the charges for which he was arrested or cited, the date of any court appearances and the address of the court where such court appearances are scheduled to occur. Respondent's failure to notify the Real Estate Commissioner of any arrest or citation shall constitute a violation of the conditions under which the restricted license is issued.

3. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere 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 before hearing by Order of the Real Estate 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 not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

6. Respondent shall submit with any application for 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 shall certify:

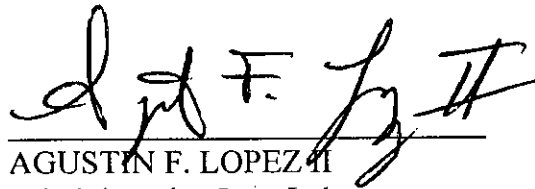
(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(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.

7. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully

completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: January 31, 2012



AGUSTIN F. LOPEZ II
Administrative Law Judge
Office of Administrative Hearings

1 ANNETTE E. FERRANTE, Counsel (SBN 258842)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-0789
6 -or- (916) 227-0788 (Direct)

FILED

OCT 19 2011

DEPARTMENT OF REAL ESTATE
By R. MAJ

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

11 * * *

12 In the Matter of the Application of)
13 WILLIAM ELADIN FLORES,) NO. H-4239 SD
14 Respondent.) STATEMENT OF ISSUES
15)

16 The Complainant, JOSEPH AIU, in his official capacity as a Deputy Real Estate
17 Commissioner of the State of California, for this Statement of Issues against WILLIAM
18 ELADIN FLORES, also known as "Guillermo Eladin Flores" (hereinafter "Respondent"), is
19 informed and alleges as follows:

20 1

21 On or about December 14, 2009, Respondent made application to the Department
22 of Real Estate (hereinafter "Department") of the State of California for a real estate salesperson
23 license.

24 2

25 On or about November 29, 1993, in the Municipal Court of the State of
26 California, County of San Diego, in Case No. S81866, Respondent was convicted of violating
27 Section 484 of the California Penal Code (Theft), a misdemeanor, and a crime which bears a

1 substantial relationship under Section 2910, Title 10, of the California Code of Regulations
2 (hereinafter "the Regulations"), to the qualifications, functions or duties of a real estate licensee.

3 3

4 On or about July 16, 1998, in the Superior Court of the State of California,
5 County of Riverside, in Case No. COM23108, Respondent was convicted of violating Section
6 14601.1(a) of the California Vehicle Code (Driving While License Suspended), and Section
7 40508(a) of the California Vehicle Code (Failure to Appear in Court), both misdemeanors,
8 crimes which bear a substantial relationship under Section 2910 of the Regulations, to the
9 qualifications, functions or duties of a real estate licensee.

10 4

11 On or about August 13, 1998, in the Superior Court of the State of California,
12 County of San Diego, in Case No. SF127479, Respondent was convicted of violating
13 Section 10851(a) of the California Vehicle Code (Taking Vehicle Without Owner's Consent), a
14 felony, and a crime which bears a substantial relationship under Section 2910 of the
15 Regulations, to the qualifications, functions or duties of a real estate licensee.

16 5

17 On or about July 21, 1999, in the Superior Court of the State of California,
18 County of San Diego, in Case No. CDF143212, Respondent was convicted of violating Section
19 10851(a) of the California Vehicle Code (Taking Vehicle Without Owner's Consent), a felony,
20 and a crime which bears a substantial relationship under Section 2910 of the Regulations, to the
21 qualifications, functions or duties of a real estate licensee.

22 PREVIOUS ADMINISTRATIVE PROCEEDINGS

23 6

24 Effective November 19, 2003, in Case No. H-2859 SD, before the Department,
25 the Real Estate Commissioner denied Respondent's application for a real estate salesperson
26 license pursuant to Sections 480(a), 480(c), 10177(a) and 10177(b) of the California Business
27 and Professions Code (hereinafter "the Code").

The facts alleged in Paragraphs 2 through 5, above, constitute cause for denial of Respondent's application for a real estate license under Sections 480(a) (Conviction of Crime) and 10177(b) (Conviction of Crime Substantially Related to Qualifications, Functions or Duties of Real Estate Licensee) of the Code.

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 under the provisions of law.


JOSEPH AIÙ
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 17 day of September, 2011.