



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

MARCIAL CONTRERAS-LARIOS,

Respondent.

Case No. H-8725 SF

OAH No. N2004050255

**PROPOSED DECISION**

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Oakland, California on July 7, 2004.

Complainant Les R. Bettencourt, Deputy Real Estate Commissioner, was represented by David B. Seals, Counsel.

Respondent Marcial Contreras-Larios was present and was represented by Peter A. Hass, Attorney at Law, P.O. Box 5001, Richmond, California 94805-2297.

The matter was submitted on July 7, 2004.

**FACTUAL FINDINGS**

1. On April 1, 2003, respondent Marcial Contreras-Larios submitted to the Department of Real Estate an application for a real estate salesperson license. Any license issued pursuant to that application would be subject to the provisions of Business and Professions Code section 10153.4. The department denied respondent's application and he appealed.

2. On January 12, 1998, respondent was convicted in Contra Costa County of a misdemeanor violation of Penal Code sections 484-488 (petty theft), a crime involving moral turpitude and that is substantially related to the qualifications, functions and duties of a real estate licensee. Respondent was placed on probation for one year on conditions that included payment of a \$100 fine and performance of two days of community service. Respondent has successfully completed his probation.

3. The incident that resulted in respondent's conviction occurred on November 21, 1997, when he was arrested for shoplifting at Copeland's Sports at Sun Valley Mall in Concord. At the time of his arrest, respondent gave the following account to the arresting

officer: He and a friend from the gym, whom he knew only by his first name, Steve, went to the mall to go shopping. Before entering Copeland's they talked about stealing a couple of pairs of shoes just to see if they could get away with it. Inside the store, Steve removed the security sensors from two pairs of shoes and returned them to their boxes. They left the store and went to Macy's, where respondent bought some cookware in a large box. He and Steve went to their car and respondent emptied the box into the car. He put the box back in the Macy's bag and he and Steve returned to Copeland's. Inside the store, he put into the cookware box one of the pairs of shoes from which the security sensors had been removed. Respondent left the store without paying for the shoes. He did not know if Steve had also stolen a pair of shoes.

At the hearing, respondent testified that the story he gave the police officer was not entirely true. He acknowledged it was true that Steve removed the security sensors from two pairs of shoes, that he and Steve then went to Macy's and made some purchases, and that they then returned to Copeland's to steal the shoes. But, respondent says, he did not steal any shoes himself; Steve was the one who took them. Respondent said Steve purchased one pair of shoes and stole another pair. After they left the store, they stopped at a juice bar and put down their bags. When they were approached by security, Steve picked up two bags and ran off. Respondent picked up one bag and ran. Respondent was caught by the security officers. He decided not to "rat out" his friend and when questioned took the full blame for the thefts.

4. Although he maintains he did not actually steal any shoes, respondent now accepts blame for the theft because he knew what Steve was doing and was with him when he removed the security sensors and when he returned to Copeland's to steal the shoes. When asked why he stayed with Steve during this time, respondent said, "I was foolish." Respondent said he was so upset with what had happened that he never saw Steve again. In fact, he switched gyms so he would not run into him again.

5. Respondent's current contention that it was Steve, and not he, who took the shoes is not credible. First, it is difficult to understand why respondent would take full blame for the theft, not wanting to "rat out" a man he barely knew. More importantly, the version of events respondent gave the arresting officer is corroborated by the account the Copeland's security officer gave the arresting officer. According to the security officer's account, he saw Steve remove the security sensors from two pairs of shoes while respondent stood next to him. The men then left the store. When they returned about half an hour later, both men were carrying shopping bags. The security officer saw respondent place one of the pairs of shoes into a box he had in his shopping bag. Steve stopped at the register and bought a pair of shoes, but respondent walked out of the store without paying. Both men ran when approached outside the store. Although the security officer's statement to the arresting police officer was received as hearsay, it may be used to supplement respondent's own statements to the police officer.

6. Respondent is 31 years old. For the past 12 years he has worked as a driver for Bay Cities Refuse Service, Inc. He has developed a reputation there as a person of strong

moral and ethical character, and as an industrious, energetic and helpful employee. He has volunteered his time to assist the company's general manager in a number of community events.

Respondent is engaged to Theresa Delgado. They took real estate courses, and the licensing examination, together. After they passed the exam, Delgado began working as a salesperson with California Prudential Realty in Richmond. While waiting for his application to be processed, respondent began working as Delgado's administrative assistant and has continued to do so (in addition to holding down his regular, full-time job) for the past year. He assists his fiancée by taking messages for her and by translating for Spanish-speaking clients. The broker at California Prudential, Ray Smith, has been impressed by respondent and is willing to supervise him should he receive a license. Smith feels respondent poses no threat to the public. Respondent introduced letters from a number of friends, family members, and business associates. All vouch for respondent's good character.

### LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a) provides that a real estate license may be denied if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of the profession for which application is made. Business and Professions Code section 10177, subdivision (b) provides that a real estate license may be denied if the applicant has been convicted of a felony or a crime involving moral turpitude. Based upon the facts set forth in Finding 2, cause for denial of respondent's application exists under both these sections.

2. In California Code of Regulations, title 10, section 2911, the department has established certain criteria to be evaluated in determining whether to deny issuance of a license because of a criminal conviction. Respondent has met most of those criteria relevant to his situation: it has been well more than two years since his conviction; he has successfully completed probation; he has established a stable family life; he has completed real estate courses for economic self-improvement; and he no longer associates with the man who was involved with him in his crime. Respondent's own testimony provides some evidence of a change of attitude from that which existed at the time of his crime: respondent appears to be a more mature and responsible individual than he was six years ago. Of concern, however, is the fact that respondent did not appear to be truthful in recounting the circumstances of his crime. He forthrightly admitted that his current version of events is inconsistent with the version he gave the arresting officer, and he provided an explanation for that inconsistency. But as set forth in Finding 5, respondent's current explanation is not credible. And while respondent says he accepts responsibility for the crime because he knew what his friend was doing, his current version of events tends to minimize the direct involvement he actually had in the theft.


3. The Department of Real Estate has reason to require that its licensees be honest and forthright, not just with members of the public, but with the department itself.

While respondent has made substantial progress towards complete rehabilitation from his crime, and is to be commended for that progress, he has been less than candid with the department in explaining the circumstances of his crime. Therefore, it is determined that respondent has not established that it would be within the public interest to issue him a real estate license at this time.

ORDER

The application of respondent Marcial Contreras-Larios for a real estate salesperson license is denied.

DATED: July 16, 2004

  
MICHAEL C. COHN  
Administrative Law Judge  
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED

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DEPARTMENT OF REAL ESTATE

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In the Matter of the Application of

MARCIAL CONTRERAS-LARIOS,

Case No. H-8725 SF

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, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612 on WEDNESDAY, JULY 7, 2004, at the hour of 9:00 A.M., 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 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 his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: MAY 10, 2004

DEPARTMENT OF REAL ESTATE

By

*David B. Seals*  
DAVID B. SEALS, Counsel

filed

1 DAVID B. SEALS, Counsel (SBN 69378)  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007  
5 Telephone: (916) 227-0789  
6 -or- (916) 227-0792 (Direct)

FILED

APR 19 2004

DEPARTMENT OF REAL ESTATE

By Jean Arment

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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11	In the Matter of the Application of	)	No. H-8725 SF
12	MARCIAL CONTRERAS-LARIOS,	)	<u>STATEMENT OF ISSUES</u>
13	Respondent.	)	

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15 The Complainant, Les R. Bettencourt, a Deputy Real  
16 Estate Commissioner of the State of California, for Statement of  
17 Issues against MARCIAL CONTRERAS-LARIOS (hereinafter  
18 "Respondent") alleges as follows:

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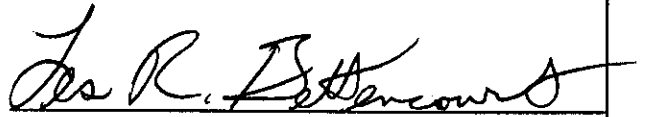
20 Respondent made application to the Department of Real  
21 Estate of the State of California for a real estate salesperson  
22 license on or about April 1, 2003 with the knowledge and  
23 understanding that any license issued as a result of said  
24 application would be subject to the conditions of Section 10153.4  
25 of the California Business and Professions Code.

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1                   WHEREFORE, the Complainant prays that the above-  
2 entitled matter be set for hearing and, upon proof of the charges  
3 contained herein, that the Commissioner refuse to authorize the  
4 issuance of, and deny the issuance of, a real estate salesperson  
5 license to Respondent, and for such other and further relief as  
6 may be proper under other provisions of law.

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8   
9 LES R. BETTENCOURT  
Deputy Real Estate Commissioner

10 Dated at Oakland, California,  
11 this 17<sup>th</sup> day of March, 2004.