

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
SEP 30 2005

DEPARTMENT OF REAL ESTATE

* * *

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By _____

In the Matter of the Application of)
) NO. H-9212 SF
JOSE GUADALUPE BARBA,)
) OAH NO. N-2005050219
Respondent.)
_____)

DECISION

The Proposed Decision dated August 30, 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 broker license is denied, but the right to a restricted real estate broker 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 broker 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 OCT 21 2005.

IT IS SO ORDERED 9-20-05

JEFF DAVI
Real Estate Commissioner

[Handwritten Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JOSE GUADALUPE BARBA,

Respondent

Case No. H-9212 SF

OAH No. N2005050219

PROPOSED DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on July 20, 2005.

Complainant E. J. Haberer II, Deputy Real Estate Commissioner, was represented by David B. Seals, Staff Counsel.

Respondent appeared and represented himself.

Submission of the case was deferred, pending respondent's submission of letters of reference. Respondent's letters of reference were marked for identification as Exhibit C and were received in evidence as administrative hearsay. The matter was submitted on August 3, 2005.

FACTUAL FINDINGS

1. Complainant E. J. Haberer II made and filed the Statement of Issues in his official capacity as a Deputy Real Estate Commissioner, Department of Real Estate (Department).
2. On August 13, 2004, respondent filed an application with the Department for a real estate broker license.
3. On or about August 2, 2003, in the Superior Court of the State of California, County of San Mateo, respondent was convicted, upon his plea of no contest, of violating Health and Safety Code section 11359 (possession for sale of marijuana), a felony and a crime involving moral turpitude.
4. As a consequence of the August 2, 2003 conviction, the court suspended imposition of sentence and placed respondent on formal probation for three years. As conditions of probation, respondent was ordered to serve 60 days in jail and pay a fine.

On December 3, 2004, the court modified respondent's sentence as follows: Respondent's probation was terminated, and his conviction was expunged pursuant to Penal Code section 1203.4.

5. According to the police report and respondent's testimony, the offense occurred in February 2002, when police seized five "baggies" filled with marijuana from respondent's vehicle. Following his arrest, respondent told police that he had sold marijuana for about three months. He sold marijuana in order to make enough money to enable him to smoke marijuana for "free."

6. Respondent was twenty-two years old at the time of his arrest in February 2002. He has not sold or used marijuana since his arrest. Respondent realizes that he made a big mistake and is embarrassed for his behavior. He testified that at the time he committed the offense, he did not understand its severity. Respondent further testified that the entire experience—spending time in jail, paying fines and performing community service—has been a learning experience for him. According to respondent, he learned his lesson the "hard way." He believes that he is fully rehabilitated from his criminal conduct and that he will not engage in such conduct again.

7. Respondent has put a great deal of effort into establishing a career for himself. Respondent graduated from San Francisco State with a Bachelor's Degree in Business in August 2002. He currently works as a financial advisor for the Liberty Group. Respondent's employer is aware of his criminal conviction and helped him obtain his license as a financial advisor. In March 2005, respondent received his license from the National Association of Securities Dealers (NASD) to work in the securities industry. Respondent also invests in real estate with his brother. In respondent's words, he wants to obtain his broker license because his "passion" is real estate.

8. Respondent lives with his parents and attends church with them twice per month. He participated in a church-sponsored drive to provide gifts to underprivileged children.

9. Respondent submitted letters of reference from family, friends and colleagues. These letters describe respondent as honest, hardworking, intelligent and kind. Those familiar with respondent's criminal conviction also attest to his remorse for his conduct, his maturity since his offense, and his commitment to leading a law-abiding and productive life.

One of the letters of reference was from Daniel R. Klein. Klein, an attorney, worked with respondent at Liberty Group, LLC, where Klein was general counsel and respondent was a financial advisor. Klein worked with respondent on several matters and was also involved in helping respondent obtain approval from NASD to work as a financial advisor.

Klein expressed the following opinion regarding respondent's rehabilitation and his fitness to act as a broker:

I believe that he deeply regrets his criminal past and would never go back down that path. Since his conviction he has demonstrated dedication to his career, which I believe he will never jeopardize by repeating any past indiscretions. Additionally, he has expressed remorse for what he has done and a desire to redeem himself.

I have no hesitation in recommending Jose Barba be licensed and allowed to work in the real estate industry. A person of Jose's intelligence and dedication would be an asset to the community as an agent or broker.

10. Respondent's testimony was forthright and credible in all respects.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 480, subdivision (a), the Commissioner may deny an application for a real estate broker license if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of a real estate license. Respondent's conviction for violating Health and Safety Code section 11359 (possession for sale of marijuana) bears a substantial relationship to qualifications, functions and duties of a real estate licensee. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8) [doing an unlawful act for financial gain].) Based upon the matters set forth in Factual Finding 3, cause exists to deny respondent's application under Business and Professions Code section 480, subdivision (a).

2. Pursuant to Business and Professions Code section 10177, subdivision (b), the Commissioner may deny an application for a real estate broker license if the applicant has been convicted of a felony or a crime involving moral turpitude. As set forth in Factual Finding 3, respondent was convicted of a felony and a crime involving moral turpitude. (See *People v. Vera* (1999) 69 Cal.App.4th 1100, 1103.) Accordingly, cause exists to deny respondent's application under Business and Professions Code section 10177, subdivision (b).

3. Title 10, California Code of Regulations, section 2911, provides criteria for evaluating an applicant's rehabilitation. As set forth in Factual Findings 6 through 10, respondent established that he has satisfied many of the criteria for rehabilitation since his criminal conviction.

Two years have passed since his conviction, and respondent has neither used nor sold marijuana since his arrest in 2002. He received an early discharge from probation, and his conviction has been expunged. Respondent realizes the gravity of his offense, and he is remorseful for his conduct. The testimony of respondent and the letters of reference submitted by those familiar with respondent's offense established that respondent has matured since the commission of his offense and has learned his lesson. Since his conviction, he has put a great deal of effort into improving himself and establishing a career.

By all accounts, respondent is a responsible and trustworthy individual who is committed to leading a law-abiding and productive life.


In view of the substantial progress respondent has made in his rehabilitation, it is determined that respondent can be trusted to discharge the duties of a real estate broker in a manner consistent with the protection of the public. Accordingly, it would not be contrary to the public interest to grant him a restricted license at this time.

ORDER

The application of respondent, Jose Guadalupe Barba, for a real estate broker license is denied; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to the Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:
 - (a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or
 - (b) The receipt of evidence 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 this restricted license.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to Respondent.

DATED: 8/30/05



DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings

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 27 2005

DEPARTMENT OF REAL ESTATE

[Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 JOSE GUADALUPE BARBA,)
13 Respondent.)

No. H-9212 SF
STATEMENT OF ISSUES

14
15 The Complainant, E. J. Haberer, II, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against JOSE GUADALUPE BARBA (hereinafter "Respondent")
18 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 broker
22 license on or about August 13, 2004.

23 II

24 Complainant, E. J. Haberer II, a Deputy Real Estate
25 Commissioner of the State of California, makes this Statement of
26 Issues in his official capacity.

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III

On or about November 8, 2002, in the Superior Court of California, County of San Mateo, Respondent was convicted of violation of California Health and Safety Code Section 11359 (Possessing Marijuana For Sale), a felony and a crime involving moral turpitude and/or which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations (herein "the Regulations"), to the qualifications, functions or duties of a real estate licensee.

IV

The crime of which Respondent was convicted, as alleged in Paragraph III above constitutes cause 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.

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 broker license to Respondent, and for such other and further relief as may be proper under other provisions of law.


E. J. HABERER II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 22 day of April, 2005.