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AUG 03 2010

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
By [Signature]

In the Matter of the Application of)
ELIAS ORDAZ,) CASE NO. H-10911 SF
Respondent.) OAH NO. 2010060015

DECISION

The Proposed Decision dated July 15, 2010, 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. 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 AUG 23 2010

IT IS SO ORDERED 7/27/2010

JEFF DAVIS
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

ELIAS ORDAZ,

Respondent.

Case No. H-10911 SF

OAH No. 2010060015

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on June 22, 2010.

Real Estate Counsel Jason D. Lazark represented complainant E. J. Haberer II, a Deputy Real Estate Commissioner.

Respondent Elias Ordaz was present and self-represented.

The record was closed and the matter was submitted for decision on June 22, 2010.

FACTUAL FINDINGS

1. Respondent Elias Ordaz filed with the Department of Real Estate an application for a real estate salesperson license. Respondent signed the application on August 12, 2009, and the Department received it on August 17, 2009. Respondent executed the application under penalty of perjury, certifying that his answers and statements on the application were true and correct.

Misrepresentation on Application

2. Question 1 of Part D of the application asks: "Have you ever been convicted of a misdemeanor or felony? Convictions expunged under Penal Code section 1230.4 must be disclosed. However, you may omit minor traffic citations which do not constitute a misdemeanor or felony." Respondent checked the box to indicate a "yes" answer to the question, and he listed his 2006 convictions set forth in Findings 4 and 5, below. Respondent did not disclose his 2008 conviction set forth in Finding 7, below. In so doing, respondent made a material misstatement of fact, and a false statement of fact, on his application for licensure.

3. In addition, respondent wrote on the application the following with respect to his criminal record:

All of my charges have been dismissed and I am no longer on probation.

This statement was untrue and misleading. Respondent was on criminal probation for his 2008 conviction at the time he completed his application for licensure, and there is no evidence that any of his convictions have been dismissed.

Criminal Convictions

4. On August 15, 2006, respondent was convicted in Santa Clara County, on his plea of guilty, of misdemeanor violations of Health and Safety Code sections 11550, subdivision (a) (under the influence of a controlled substance), and 11377, subdivision (a) (possession of a controlled substance). Imposition of sentence was suspended and respondent was placed on probation for two years, on the condition that he complete a drug treatment placement.

The offenses took place on October 15, 2005. Respondent drove a vehicle after having had alcohol and taking ecstasy.

5. On August 1, 2006, respondent was convicted in Santa Clara County, on his plea of no contest, of a felony violation of Health and Safety Code section 11378 (possession for sale of a controlled substance (ecstasy)). Respondent was placed on formal probation for two years, ordered to serve six months in county jail, which was suspended (except for 15 days) upon completion of a Proposition 36 substance abuse counseling program. Respondent was ordered to pay fines and fees of approximately \$667.55.

The offense took place on April 27, 2006. Respondent was pulled over for a traffic violation. The police found marijuana and ecstasy pills in his vehicle.

6. As a result of his felony conviction, the court revoked respondent's probation for the two misdemeanor offenses. The court reinstated respondent on probation on the same terms as his felony probation.

7. On March 20, 2008, respondent was convicted in Santa Clara County, on his plea of nolo contendere, of a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of 0.08 percent or more). Imposition of sentence was suspended and respondent was placed on court probation for three years, on conditions that included six days in county jail, completion of a first offender program, and fines and fees of approximately \$1,700.

The offense took place on November 10, 2007. On that day respondent was pulled over for a traffic violation after having consumed alcohol at a bar. Respondent had two

passengers in his vehicle. He smelled of alcohol, had slurred speech, was unsteady on his feet, and he failed all field sobriety tests he was given. Blood tests were taken one hour later, and they revealed an alcohol level of 0.14 percent.

Respondent's Evidence

8. Respondent testified that he was raised in a good, strong family with good values and was active in high school sports. He started using drugs and alcohol while in high school and when his parents separated.

a. His first offense occurred after he received a telephone call from his girlfriend who was a passenger in a vehicle that had been pulled over for a DUI. Respondent had drunk alcohol and had taken an ecstasy pill earlier that evening, but nevertheless drove to the scene. The police detained him after seeing his condition. Respondent successfully completed probation for these offenses.

b. The second conviction occurred because he had the opportunity to buy ecstasy at a reduced price while at a rave. Respondent was intending to take the pills with him to another rave, and to sell some of them to male friends, and to give away others to female friends. Respondent successfully completed the probation associated with this offense.

c. The DUI occurred while respondent was still in his Proposition 36 program. Respondent found this to be a pivotal time in his life. Respondent served six days in jail for the DUI offense. He has paid all fines and fees associated with this offense. He remains on probation until March 2011. It was not established if respondent has completed the first offender program.

9. With respect to the application for licensure, respondent answered that he did not list his DUI conviction because he "overlooked it." He states that it was an "honest mistake," and that he did not have any intent to deceive the department with respect to his criminal record.

10. Respondent attended Alcoholics Anonymous meetings as part of his Proposition 36 program, and he worked with sponsor during that time. Respondent stopped attending meetings after he completed the program, and he no longer has any program in place. Respondent does not currently use drugs, but he remains a social alcohol drinker. He testified that he has learned the dangers of drinking and driving, and he does not drive an automobile after drinking alcohol.

11. Respondent is 25 years old. He lives with two roommates. He has developed a good relationship with each of his parents. He has returned to attending church. At his former church, he volunteered once a week for about one year to help supervise an open gym.

12. Respondent's sponsoring broker corporation is International Brokers, Inc. Its licensed officer, Nathaniel Rutkoski, has been a long time friend of respondent. Respondent is currently working of the company, answering telephones and scheduling appointments for Rutkoski. Respondent did not present any evidence from Rutkoski or any other third person regarding his character or rehabilitation.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 10177, subdivision (b), the Commissioner may deny an application if the applicant has been convicted of a felony or of a crime that bears a substantial relationship to the licensed activity. Pursuant to Business and Professions Code section 480 the Commissioner may deny an application if the applicant has been convicted of a crime that bears a substantial relationship to the licensed activity. The department has developed criteria for determining the existence of a substantial relationship between the conduct or conviction at issue and the qualifications, functions and duties of the licensed activity. The criteria are set forth in California code of Regulations, title 10, section 2910.

Respondent's felony conviction for selling a controlled substance bears a substantial relationship to the qualifications, functions or duties of a real estate agent because it constitutes the doing of an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) This conviction provides cause to deny respondent's application for a real estate salesperson license pursuant to Business and Professions Code section 10177, subdivision (b), and Business and Professions Code section 480.

Respondent's misdemeanor convictions jointly bear a substantial relationship to the qualifications, functions or duties of a real estate agent because they constitute two or more offenses involving the use of drugs or alcohol and the driving of a vehicle. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(11).) These convictions jointly provide separate cause to deny respondent's application for a real estate salesperson license pursuant to Business and Professions Code section 10177, subdivision (b), and Business and Professions Code section 480.


2. Pursuant to Business and Professions Code section 10177, subdivision (a), the Commissioner may deny an application if the applicant has attempted to procure a license by fraud, misrepresentation or deceit, or by making a material misstatement of fact in the application. Pursuant to Business and Professions Code section 480, subdivision (c), the Commissioner may deny an application if the applicant has knowingly made a false statement of fact required to be revealed in the application. By reason of the matters set forth in Factual Findings 2 and 9, respondent made a material misrepresentation of fact and a false statement of fact regarding his criminal record on the application for licensure. This misrepresentation provides cause to deny respondent's application for a real estate salesperson license pursuant to Business and Professions Code section 10177, subdivision (a), and Business and Professions Code section 480, subdivision (c).

3. In California Code of Regulations, title 10, section 2911, the department has established criteria to be used in evaluating the rehabilitation of an applicant with a criminal record. The burden is on respondent to show that he is sufficiently rehabilitated so that it would be appropriate to issue him a real estate license. On this record, it is determined that respondent has failed to establish sufficient rehabilitation to warrant licensure, even on a restricted basis. Respondent remains on criminal probation until 2011. As noted by the California Supreme Court, one's rehabilitation cannot begin to be evaluated until one is free from the constraints of probation or parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) In short, although respondent has made some steps toward his rehabilitation, it is too early to have any confidence in his rehabilitation. Respondent's criminal convictions are not the only basis for concern about his fitness for licensure. Respondent's explanation for his failure to disclose his 2008 DUI conviction does not ring true, in view of his own testimony the 2008 arrest constituted a pivotal event in his life as he was just completing the Proposition 36 program. It is doubtful that he would forget the event one year later when completing the application for licensure. But even if respondent were to be given the benefit of the doubt, his conduct evidences that he does not give the attention to detail demanded for documents he executes under penalty of perjury. And it cannot be ignored that respondent provided the department with a misleading picture of his criminal record. All things considered, it is concluded that it is not in the public interest to grant respondent a real estate license at this time.

ORDER

The application of Elias Ordaz for a real estate salesperson license is denied.

DATED: July 15, 2010



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

1 Jason D. Lazark, Counsel (SBN 263714)
2 Department of Real Estate
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FILED

APR 22 2010

DEPARTMENT OF REAL ESTATE

By [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

11 In the Matter of the Application of
12 ELIAS ORDAZ,
13 Respondent.

No. H-10911 SF

STATEMENT OF ISSUES

15
16 The Complainant, E.J. HABERER, II, a Deputy Real Estate Commissioner of the
17 State of California, for Statement of Issues against ELIAS ORDAZ (herein "Respondent"),
18 acting in his official capacity, alleges as follows:

19 1.

20 On or about August 17, 2009, Respondent made application to the Department of
21 Real Estate of the State of California (herein "the Department") for a real estate salesperson
22 license.

23 2.

24 In response to Part D, Question 1 of said application, to wit: "Have you ever been
25 convicted of any violation of law? Convictions expunged under Penal Code § 1203.4 must be
26 disclosed. However, you may omit minor traffic citations which do not constitute a
27

1 misdemeanor or felony offense", Respondent concealed and failed to disclose the conviction
2 described in Paragraph 5 below.

3 3.

4 On or about August 15, 1996, in the Superior Court of the State of California,
5 County of Santa Clara, Case Number BB517018, Respondent was convicted of Health and
6 Safety Code § 11550 (under the influence of a controlled substance) and Health and Safety Code
7 § 11377 (possession of a controlled substance), misdemeanors which bears a substantial
8 relationship under § 2910 of the Regulations, to the qualifications, functions or duties of a real
9 estate licensee.

10 4.

11 On or about August 15, 1996, in the Superior Court of the State of California,
12 County of Santa Clara, Case Number CC633782, Respondent was convicted of Health and
13 Safety Code § 11378 (possession for sale of a controlled substance), a felony which bears a
14 substantial relationship under § 2910 of the Regulations, to the qualifications, functions or
15 duties of a real estate licensee.

16 5.

17 On or about March 20, 2008, in the Superior Court of the State of California,
18 County of Santa Clara, Case Number CC894760, Respondent was convicted of Vehicle Code §
19 23152(b) (driving with blood alcohol over .08%), a misdemeanor which bears a substantial
20 relationship under § 2910 of the Regulations, to the qualifications, functions or duties of a real
21 estate licensee.


22 6.

23 In failing to reveal the conviction described in Paragraph 5 above, Respondent
24 procured or attempted to procure a real estate license by fraud, misrepresentation, or deceit, or
25 by making a material misstatement of fact in said application, which constitutes cause for denial
26 of Respondent's application for a real estate license under Business and Professions Code §§
27 480(c) and 10177(a).

7.

Respondent's criminal convictions, as described in Paragraphs 3 through 5 above, constitute cause for denial of Respondent's application for a real estate license under Business and Professions Code §§ 480(a) and 10177(b).

WHEREFORE, 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.


E. J. HABERER, II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 20th day of April, 2010.