

BEFORE THE
DEPARTMENT OF REAL STATE
STATE OF CALIFORNIA

In the Matter of the Application of:

ANTHONY ALLAND LUDENA,

Respondent.

Case No. H-29490 LA

OAH No. L2002060376

PROPOSED DECISION

This case was tried before Paul M. Hogan, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California on August 29, 2002.

Chris Leong, staff attorney, represented complainant. Steven A. Sokol, attorney at law, represented respondent Anthony Alland Ludena who appeared personally.

The parties presented oral and documentary evidence and submitted the matter for decision. The Administrative Law Judge finds, concludes and recommends as follows:

Findings of Fact

1. Complainant, Maria Suarez, is a Deputy Real Estate Commissioner of the State of California and filed and served the Statement of Issues herein while acting solely in her official capacity.

2. Respondent, Anthony Alland Ludena, applied to the above Department for issuance of a real estate salesperson license conditioned upon the educational requirements of Section 10153.4 of the Business and Professions Code.¹

¹ All statutory references herein are to this Code unless otherwise indicated.

3. In his written application, respondent denied ever having been convicted of any violation of law. At the time his application was filed, respondent had suffered one 1996 conviction of giving false information to a police officer in California, and was awaiting trial on a pending charge in Nevada which resulted in a subsequent misdemeanor conviction of disorderly conduct.

4. On March 13, 1996 respondent plead nolo contendere to a charge of giving false information to a police officer, a misdemeanor, and a crime involving moral turpitude which is substantially related to the qualifications, functions or duties of a real estate licensee. The court suspended sentence and placed respondent on three year's probation on condition that he obey all laws and pay fines and assessments of \$1885. During the course of probation, respondent evidently had difficulty paying these costs, and probation was extended an additional six months. At this time all conditions of probation have been complied with the criminal proceedings have been terminated. There is no evidence of any order of expungement.

5. Respondent asserts his failure to declare the 1996 conviction was a product of his misunderstanding of the parenthetical exceptions to Question 25 of the Department's application form. This is hard to understand. He was charged with lying to a police officer. He spent three days in jail. He was fined over \$1800., and had to spend over three years paying this amount to the court. He must surely have known this was somewhat more than "a minor traffic citation which [did] not constitute a misdemeanor...offense." (Pg. 2, Exh. 3 in evidence)

6. Real estate licensees are obliged to act in the utmost good faith in the dealings with their clients, associates, and with the public. Honesty is a characteristic manifestly expected of all such licensees. Thus a conviction of lying to a police officer is obviously material to the Department's decision to grant or deny an application for licensure.

7. Respondent, in connection with his preparation of the written application for licensure, made a material misstatement of fact in his application by failing to set forth his 1996 conviction.

8. Subsequent to the filing of his application, respondent was convicted in Nevada of a misdemeanor violation of Nev. Rev. Stat. Ann. §203.010, disorderly conduct. This statute reads as follows:

"Every person who shall maliciously and wilfully disturb the peace or quiet of any neighborhood or person or family by loud or unnecessary noises, or by tumultuous and offensive conduct, threatening, traducing or quarreling or challenging to fight or fighting, shall be guilty of a misdemeanor."

The court suspended sentence and placed respondent on summary probation for a year on condition he pay fines and costs in the sum of \$500.00.

Conclusions of Law

1. Respondent's application is subject to denial pursuant to Section 10177(a) of the Code for making a material misstatement of fact in his application as described in Findings 3 through 7 above.

2. Respondent's application is subject, separately and severally, to denial pursuant to Sections 480(a) and 10177(b) of the Code by reason of his conviction of lying to a police officer described in Finding 4 above.

3. Respondent's conviction of disorderly conduct in Nevada does not serve as a basis of denial of his application in that there is no foundation in the record to support a finding that the crime of which he was there convicted is substantially related to the duties, qualifications of functions of a real estate license as required by Section 480(a) of the Code.

Order

The application of Anthony A. Ludena for issuance of a real estate salesperson license is hereby denied.

September 13, 2002


Paul M. Hogan

Administrative Law Judge
Office of Administrative Hearings

SAC

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of) Case No. H-29490 LA
)
 ANTHONY ALLAND LUDENA,) OAH No. L-2002060376
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)
 _____)
 Respondent(s)

FILED
 JUL - 1 2002
 DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON APPLICATION

To the above-named Respondent(s):

[Handwritten signature]

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on THURSDAY, AUGUST 29, 2002, at the hour of 3:30 P.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.

DEPARTMENT OF REAL ESTATE

Dated: July 1, 2002

By *CHRIS LEONG*
 CHRIS LEONG, Counsel

cc: Anthony Alland Ludena
 Steven A. Sokol, Esq.
 Sacto.
 OAH

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II

Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in her official capacity.

III

On said application, in response to Question 25, "Have you ever been convicted of any violation of law?..", Respondent answered "No".

IV

On or about October 22, 2001, in the Justice Court, Las Vegas Township, Clark County Courthouse, Nevada, Case No. 01f00014x, Respondent was charged with violating NRS 202.840 (Bomb threat), a felony. As a result of a plea bargain, Respondent was convicted of (Misdemeanor Disorderly conduct). The conduct which led to the conviction involves moral turpitude which is substantially related to the qualifications, functions and duties of a real estate licensee.

V

On or about March 13, 1996, in the Municipal Court of Malibu Judicial District, County of Los Angeles, State of California, case number 95M1313, Respondent was convicted of violating Section 148.9(A) of the California Penal Code (Giving false information to a police officer), a crime involving moral turpitude which is substantially related to the qualifications, functions and duties of a real estate licensee.

VI

Respondent's convictions and failure to reveal, as set forth in Paragraphs III through V, are cause to deny Respondent's real estate license application pursuant to Code Sections 480(a), 480(c), 10177(a) and 10177(b).

These proceedings are brought under the provisions of Section 10100, Division 4 of the Business and Professions Code of the State of California and Sections 11500 through 11528 of the Government 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, ANTHONY ALLAND LUDENA, and for such other and further relief as may be proper in the premises.

Dated at Los Angeles, California
this 13th day of May, 2002.


Deputy Real Estate Commissioner

cc: Anthony Alland Ludena
Hamera Corp/Dewey Watson
Maria Suarez
Sacto.
CW