

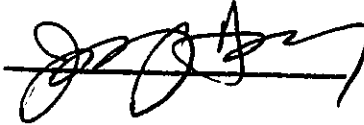
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FILED
DEC 28 2005

DEPARTMENT OF REAL ESTATE

By



BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of

No. H-31799 LA

FELIX O. PICHARDO,

L-2005050094

Respondent.

DECISION AFTER REJECTION

The matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on July 12, 2005.

Martha Rosett, Staff Counsel, represented the Complainant.

Respondent FELIX O. PICHARDO ("Respondent") was present in person and represented himself.

Evidence was received, the hearing was closed, and the matter was submitted.

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1 On August 1, 2005, the Administrative Law Judge
2 rendered a Proposed Decision, which I declined to adopt as my
3 Decision herein. Pursuant to Section 11517(c) of the Government
4 Code of the State of California, Respondent was served with
5 notice of my determination not to adopt the Proposed Decision of
6 the Administrative Law Judge along with a copy of said Proposed
7 Decision. Respondent was notified that the case would be
8 decided by me upon the record, the transcript of proceedings
9 held on July 12, 2005, and upon any written argument offered by
10 Respondent and Complainant.

11 I have given careful consideration to the record
12 in this case including the transcript of the proceedings of
13 July 12, 2005.

14 The Proposed Decision dated August 1, 2005, of the
15 Administrative Law Judge of the Office of Administrative
16 Hearings is hereby adopted as the Decision of the Real Estate
17 Commissioner in the above-entitled matter.

18 The application for a real estate salesperson license
19 is denied, but the right to a restricted real estate salesperson
20 license is granted to Respondent. Petition for the removal of
21 restrictions from a restricted license is controlled by Section
22 11522 of the Government Code. A copy is attached hereto for the
23 information of Respondent.

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1 If and when application is made for a real estate
2 salesperson license through a new application or through a
3 petition for removal of restrictions, all competent evidence of
4 rehabilitation presented by the Respondent will be considered by
5 the Real Estate Commissioner. A copy of the Commissioner's
6 Criteria of Rehabilitation is appended hereto.

7 This Decision shall become effective at 12 o'clock
8 noon on January 17, 2006.

9 IT IS SO ORDERED 12-22, 2005.

10 JEFF DAVI
11 Real Estate Commissioner
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

FELIX O. PICHARDO,

Respondent.

Case No. H-31799

OAH No. L2005050094

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on July 12, 2005.

Martha Rosett, Staff Counsel, represented the Complainant.

Respondent appeared in person and represented himself.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued and thereafter submitted.

The Administrative Law Judge now finds, concludes, and orders as follows:

FACTUAL FINDINGS

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

2. On June 2, 2004, pursuant to the provisions of Business and Professions Code section 10153.3, Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license with the knowledge and understanding that any license issued as a result of said application would be subject to the conditions of Business and Professions Code section 10153.4.

3. In August, 2000, Respondent attended a "Rave"¹ party in Los Angeles and there met an individual who promised to pay him \$500 to deliver five kilograms of cocaine to another individual in New York City. Respondent agreed to the deal and a flight was booked for him from Los Angeles to New York. During a "lay-over" at the Denver Airport Respondent was arrested with the cocaine in his possession. Thereafter, on October 26, 2000, in the United States District Court, District of Colorado, in Case No. 00-CR-224-WM, Respondent was convicted of violating 21 U.S.C. sections 841(a)(1) and (b)(1)(B) (possession with intent to distribute cocaine), a felony and crime of moral turpitude.

4. Respondent's criminal conduct was the doing of an unlawful act with the intent of conferring a financial and economic benefit upon Respondent.

5. Respondent first came to Los Angeles when he was fourteen years old. He was without family support and was at times hungry and homeless. Respondent committed the offense when he was eighteen years old. He had no prior criminal history. The offer of \$500, in light of his times of hunger and homelessness, was an "offer he could not refuse." These circumstances do not excuse his criminal conduct but do mitigate same.

6. As the result of the conviction Respondent served 36 months in prison commencing on May 24, 2000. Upon his release he did complete a six month term at a "half-way" house. He is meeting all conditions of probation. Probation is scheduled to end in March, 2006. While in prison Respondent used the time productively as is demonstrated by the Findings which follow:

7. Respondent did complete a nine-month drug and alcohol rehabilitation program under the instruction of a qualified professional. He continued with such instruction while at the "half-way" house. He is aware of the gravity of his offense, and the potential harm that his conduct could bring to others, and is contrite about same. He has a change in attitude from that which existed at the time of the crime. Contributing factors to that change have been Respondent's maturation (he is now twenty-three) Respondent's sustained employment and Respondent's present desire to "do good things".

8. Respondent did take a number of courses taught by qualified instructors, under the aegis of Allan Hancock College, including business courses and sales and marketing courses. He took instruction (GED) leading to a high school diploma. He took and completed a number of PCDI (Professional Career Development Institute) courses including Real Estate Investment, Real Estate Principles and Real Estate Mortgage Banking. He did receive an overall grade of 86% (B+) from PCDI's School of Bookkeeping and Accounting upon his graduation on July 21, 2003.

¹ A rave party, more often called a rave and sometimes called a free party, is typically an all-night dance event where DJs and other performers play electronic dance music and rave music. Controlled substances – particularly ecstasy – are, from time to time, available to participants.

9. Respondent's education, while in prison, was done for economic self-improvement and did equip Respondent to recently take and pass the California Real Estate Examination.

10. Respondent is presently employed by American Bankers, a diversified lending corporation. His employer is aware of his conviction. He has worked there continuously for one and one-half years as an assistant to a licensed loan officer. Respondent, a Spanish-Language speaker, is effective in his assistance to Spanish-speaking clientele of American Bankers. A number of personnel of American Bankers did submit character letters in support of Respondent including that company's Broker/Owner; a senior Loan Processor and his immediate supervisor. Respondent's credible testimony, supported by the character letters, did establish that Respondent, presently, is hardworking, diligent, productive, trustworthy and honest.

11. The crime occurred some years ago but the conviction is recent and Respondent is still on probation. However, Respondent, by his diligent efforts toward self-improvement, did establish a record of clear and convincing rehabilitation as is required by California Code of Regulations, Title 10, section 2911. Respondent is presently of good character. Accordingly, licensure of Respondent on a restricted status is consistent with the public interest.

LEGAL CONCLUSIONS

1. 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.

2. The crime set forth in Finding 3 is substantially related to the qualifications, functions and duties of a real estate licensee pursuant to the California Code of Regulations, Title 10, section 2910 by reason of Finding 4.

3. Respondent's conviction for a substantially related crime as set forth in Finding 3 constitutes grounds to deny his application for a real estate salesperson license pursuant to Business and Professions Code sections 10177, subdivision (b) and 480, subdivision (a). However, by reason of Findings 5 and 11 licensure on a restricted status is appropriate and in the public interest.

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ORDER

Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to section 10153.5 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.

3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

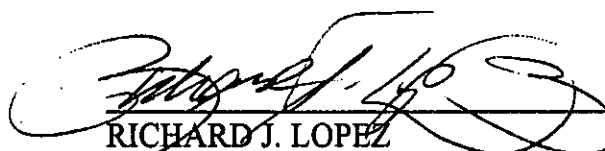
- (a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and
- (b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent's restricted real estate salesperson license is issued subject to the requirements of section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in section 10153.2, other than real estate principles; advanced legal aspects of real estate, advanced real estate finance or

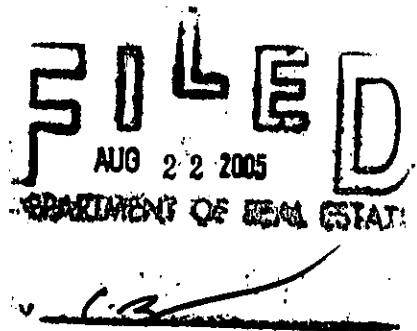
advanced real estate appraisal. If Respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.

5. Pursuant to section 10154, if Respondent has not satisfied the requirements for an unqualified license under section 10153.4, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to section 10153.4 until four years after the date of the issuance of the preceding restricted license.

Dated: August 1, 2005


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm



BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	
)	No. H-31799 LA
FELIX O. PICHARDO,)
)	L-2005050094
Respondent.)
)	
)	

NOTICE

TO: FELIX O. PICHARDO, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated August 1, 2005, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated August 1, 2005, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on July 12, 2005, and any written argument hereafter submitted on behalf of Respondent and Complainant.

1 Written argument of Respondent to be considered by me
2 must be submitted within 15 days after receipt of the transcript
3 of the proceedings of July 12, 2005, at the Los Angeles office of
4 the Department of Real Estate unless an extension of the time is
5 granted for good cause shown.

6 Written argument of Complainant to be considered by me
7 must be submitted within 15 days after receipt of the argument of
8 Respondent at the Los Angeles office of the Department of Real
9 Estate unless an extension of the time is granted for good cause
10 shown.

11 DATED: 8-16, 2005

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13 JEFF DAVIS
14 Real Estate Commissioner
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

FELIX O. PICHARDO,

Respondent.

Case No. H-31799

OAH No. L2005050094

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on July 12, 2005.

Martha Rosett, Staff Counsel, represented the Complainant.

Respondent appeared in person and represented himself.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued and thereafter submitted.

The Administrative Law Judge now finds, concludes, and orders as follows:

FACTUAL FINDINGS

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

2. On June 2, 2004, pursuant to the provisions of Business and Professions Code section 10153.3, Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license with the knowledge and understanding that any license issued as a result of said application would be subject to the conditions of Business and Professions Code section 10153.4.

3. In August, 2000, Respondent attended a "Rave"¹ party in Los Angeles and there met an individual who promised to pay him \$500 to deliver five kilograms of cocaine to another individual in New York City. Respondent agreed to the deal and a flight was booked for him from Los Angeles to New York. During a "lay-over" at the Denver Airport Respondent was arrested with the cocaine in his possession. Thereafter, on October 26, 2000, in the United States District Court, District of Colorado, in Case No. 00-CR-224-WM, Respondent was convicted of violating 21 U.S.C. sections 841(a)(1) and (b)(1)(B) (possession with intent to distribute cocaine), a felony and crime of moral turpitude.

4. Respondent's criminal conduct was the doing of an unlawful act with the intent of conferring a financial and economic benefit upon Respondent.

5. Respondent first came to Los Angeles when he was fourteen years old. He was without family support and was at times hungry and homeless. Respondent committed the offense when he was eighteen years old. He had no prior criminal history. The offer of \$500, in light of his times of hunger and homelessness, was an "offer he could not refuse." These circumstances do not excuse his criminal conduct but do mitigate same.

6. As the result of the conviction Respondent served 36 months in prison commencing on May 24, 2000. Upon his release he did complete a six month term at a "half-way" house. He is meeting all conditions of probation. Probation is scheduled to end in March, 2006. While in prison Respondent used the time productively as is demonstrated by the Findings which follow:

7. Respondent did complete a nine-month drug and alcohol rehabilitation program under the instruction of a qualified professional. He continued with such instruction while at the "half-way" house. He is aware of the gravity of his offense, and the potential harm that his conduct could bring to others, and is contrite about same. He has a change in attitude from that which existed at the time of the crime. Contributing factors to that change have been Respondent's maturation (he is now twenty-three) Respondent's sustained employment and Respondent's present desire to "do good things".

8. Respondent did take a number of courses taught by qualified instructors, under the aegis of Allan Hancock College, including business courses and sales and marketing courses. He took instruction (GED) leading to a high school diploma. He took and completed a number of PCDI (Professional Career Development Institute) courses including Real Estate Investment, Real Estate Principles and Real Estate Mortgage Banking. He did receive an overall grade of 86% (B+) from PCDI's School of Bookkeeping and Accounting upon his graduation on July 21, 2003.

¹ A rave party, more often called a rave and sometimes called a free party, is typically an all-night dance event where DJs and other performers play electronic dance music and rave music. Controlled substances – particularly ecstasy – are, from time to time, available to participants.

9. Respondent's education, while in prison, was done for economic self-improvement and did equip Respondent to recently take and pass the California Real Estate Examination.

10. Respondent is presently employed by American Bankers, a diversified lending corporation. His employer is aware of his conviction. He has worked there continuously for one and one-half years as an assistant to a licensed loan officer. Respondent, a Spanish-Language speaker, is effective in his assistance to Spanish-speaking clientele of American Bankers. A number of personnel of American Bankers did submit character letters in support of Respondent including that company's Broker/Owner; a senior Loan Processor and his immediate supervisor. Respondent's credible testimony, supported by the character letters, did establish that Respondent, presently, is hardworking, diligent, productive, trustworthy and honest.

11. The crime occurred some years ago but the conviction is recent and Respondent is still on probation. However, Respondent, by his diligent efforts toward self-improvement, did establish a record of clear and convincing rehabilitation as is required by California Code of Regulations, Title 10, section 2911. Respondent is presently of good character. Accordingly, licensure of Respondent on a restricted status is consistent with the public interest.

LEGAL CONCLUSIONS

1. 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.

2. The crime set forth in Finding 3 is substantially related to the qualifications, functions and duties of a real estate licensee pursuant to the California Code of Regulations, Title 10, section 2910 by reason of Finding 4.

3. Respondent's conviction for a substantially related crime as set forth in Finding 3 constitutes grounds to deny his application for a real estate salesperson license pursuant to Business and Professions Code sections 10177, subdivision (b) and 480, subdivision (a). However, by reason of Findings 5 and 11 licensure on a restricted status is appropriate and in the public interest.

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ORDER

Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to section 10153.5 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.

3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

- (a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and
- (b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent's restricted real estate salesperson license is issued subject to the requirements of section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or

not adopted

advanced real estate appraisal. If Respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.

5. Pursuant to section 10154, if Respondent has not satisfied the requirements for an unqualified license under section 10153.4, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to section 10153.4 until four years after the date of the issuance of the preceding restricted license.

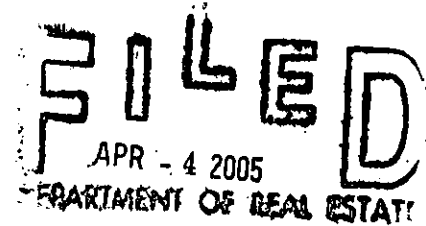
Dated: August 1, 2005


RICHARD J. LOPEZ

Administrative Law Judge
Office of Administrative Hearings

RJL:rfm

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1 MARTHA J. ROSETT, Counsel (SBN 142072)
2 Department of Real Estate
3 320 West Fourth St. #350
4 Los Angeles, CA 90013



4 (213) 576-6982
5 (213) 576-6907

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7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9
10 STATE OF CALIFORNIA

11 * * * *

12 In the Matter of the Application of) No. H-31799 LA
13 FELIX O. PICHARDO,)
14 Respondent.)
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16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, for Statement of Issues
18 against FELIX O. PICHARDO (hereinafter "Respondent"), alleges in
19 her official capacity as follows:

20 1.

21 On or about June 2, 2004, pursuant to the provisions of
22 Section 10153.3 of the Business and Professions Code (hereinafter
23 "Code"), Respondent made application to the Department of Real
24 Estate of the State of California for a real estate salesperson
25 license with the knowledge and understanding that any license
26 issued as a result of said application would be subject to the
27 conditions of Section 10153.4 of the Code.

2.

On or about October 26, 2000, the United States District Court, District of Colorado, in Case No. 00-CR-224-WM, Respondent was convicted of violating 21 U.S.C. Sections 841(a)(1) and (b)(1)(B) (possession with intent to distribute cocaine), a felony and crime of moral turpitude which is substantially related to the qualifications, functions and duties of a real estate licensee pursuant to Title 10, Chapter 6 of the California Code of Regulations, Regulation 2910(a). Respondent was sentenced to serve 57 months in the custody of the U.S. Bureau of Prisons, to be followed by three years of supervised release.

3.

Respondent's conviction, as set forth above in Paragraph 2, constitutes grounds to deny his application for a real estate salesperson license pursuant to Code Sections 10177(b) and 480(a).

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.

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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 FELIX O. PICHARDO and for such other and
6 further relief as may be proper under the law.

7 Dated at Los Angeles, California

8 this 28th day of March, 2005.

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12 Deputy Real Estate Commissioner
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23 cc: Felix O. Pichardo
24 American Bankers Diversified Lending Corp.
25 Sacto.
26 Maria Suarez
27 KA