FILED
OCT - 6 2006
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of EDWARD NUNEZ, Respondent.	No. H-32298 LA L-2006030271

ORDER DENYING RECONSIDERATION

On August 18, 2006, a Decision was rendered in the above-entitled matter. The Decision was to become effective at 12 o'clock noon on September 7, 2006.

An Order Staying Effective Date was issued staying the effective date until 12 o'clock noon on October 6, 2006.

On September 21, 2006, Respondent petitioned for reconsideration of the Decision of August 18, 2006, and Respondent submitted argument in support of his petition for reconsideration therein.

I have given due consideration to the petition of respondent. I find no good cause to reconsider the Decision of August 18, 2006, and reconsideration is hereby denied.

IT IS SO ORDERED 10-2-06

JEFF DAVI
Real Estate Commissioner

FILED
SEP - 6 2006
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of EDWARD NUNEZ, Respondent.	DRE No. H-32298 LA L-2006030271

ORDER STAYING EFFECTIVE DATE

On August 18, 2006, a Decision was rendered in the above-entitled matter to become effective September 7, 2006.

IT IS HEREBY ORDERED that the effective date of the Decision of August 18, 2006, is stayed for a period of thirty days.

The Decision of August 18, 2006, shall become effective at 12 o'clock noon on October 6, 2006.

DATED: September 6, 2006

JEFF DAVI
Real Estate Commissioner

M. Dolores Weeks

By: M. Dolores Weeks
Regional Manager

FILED
AUG 18 2006
DEPARTMENT OF REAL ESTATE
By K. Mederholz

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of EDWARD NUNEZ, Respondent.	No. H-32298 LA L-2006030271

DECISION

The Proposed Decision dated July 14, 2006, 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 Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on SEP - 7 2006.

IT IS SO ORDERED August 18, 2006

JEFF DAVI
Real Estate Commissioner

John R Liberator

BY: John R. Liberator
Chief Deputy Commissioner

03/18/2006 08:23 FAX 9162279458 DRE LEGAL/RECOVERY - LA LEGAL 001/002

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	Agency No. H-32298 LA
	)	
EDWARD NUNEZ,	)	OAH No. L-2006030271
	)	
Respondent.	)	
	)	

PROPOSED DECISION

This matter came on regularly for hearing before Carolyn D. Magnuson, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on May 18, 2006.

Elliott MacLennan, Staff Counsel, represented the Complainant.

Edgardo Gonzalez, Attorney at Law, represented Edward Nunez, who was present at the hearing.

Testimonial and documentary evidence was received, and the record was left open at the close of the hearing to allow Respondent to submit evidence of expungement. No documentation was received, and the record was closed on June 16, 2006.

FACTUAL FINDINGS

1. Maria Suarez (Complainant) made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate (Department) of the State of California.

2. Edward Nunez (Respondent) holds real estate broker license number 01158627, issued to him by the Department. The license was in full force and effect at all relevant times.

3. On March 29, 1999, in the Superior Court of the State of California, County of Orange, the Respondent was convicted on his plea of guilty of violating Penal Code section 476a (writing a check on an account without sufficient funds on deposit in the account to cover the amount of the check). Imposition of sentence was suspended, and Respondent was placed on summary probation for three years on condition that he pay fines and assessments and make restitution, as ordered. Respondent successfully completed probation and has applied to have the conviction expunged.

4. The facts and circumstances which resulted in Respondent's conviction were that Respondent had cash flow problems in his business. He wrote a check on a closed account to pay an employee's salary.

5. On January 22, 2003, Respondent signed his broker renewal application. Thereafter he submitted the application to the Department. Question number three on the renewal application asks whether, during the past four years, the applicant has been convicted of any violation of law. Respondent marked the box denoting "No."

6. Respondent testified that he was not aware that the bank account had been closed when he wrote the check and believed there were sufficient funds in the account to cover the check.

7. Initially, Respondent testified that he could not recall whether he had disclosed his conviction on his license renewal application. Thereafter, Respondent offered a number of explanations for his failure to disclose the conviction:

a. He didn't list the conviction because he thought only serious crimes needed to be disclosed;
b. He didn't list the conviction because he didn't understand the question;
c. He didn't list the conviction because he had a communication gap;
d. He didn't list the conviction because he was embarrassed to tell the Department about the conviction; and
e. He didn't list the conviction because he was sleep deprived which caused him to be befuddled.

8. Respondent is married and has no children. He works full-time as a real estate broker involved in mortgage banking and real estate sales. As a broker, Respondent is in charge of five real estate offices. Respondent states he is able to adequately cover so many offices because none of them does a high volume of business.

9. Respondent's 2003 conviction is his sole criminal conviction. He is active in his church where he participates as a volunteer. Respondent has a contractor's license, which is not active.

10. Presently, Respondent tries not to write any checks. If he must use a check, Respondent confirms the account balance before releasing the check.

LEGAL CONCLUSIONS

1. Business and Professions Code section 490 provides:

> A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

2. Business and Professions Code section 10177, subdivision (b) provides:

> The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following . . .
>
> (b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal . . ..

3. An intent to defraud is one of the required elements of a violation of Penal Code section 476a. Thus, a conviction for violating that section is necessarily one involving dishonesty. Since honesty and integrity are essential characteristics of a real estate broker, Respondent's conviction is substantially related to his licensed responsibilities. Therefore, under the provisions of Business and Professions Code section 490 and 10177, subdivision (b), grounds exist for the Department to discipline Respondent's license because of his criminal conviction.

4. Cause exists under the provisions of Business and Professions Code sections 498 and 10177, subdivision (a), to discipline Respondent's license for procuring a renewal license by fraud, misrepresentation or deceit in that he failed to disclose his 1999 criminal conviction.

5. California Code of Regulations, title 10, section 2912 sets of out the criteria to be considered in assessing a licensee's rehabilitation. Respondent has met most of those criteria. However, rehabilitation is a qualitative determination. These assessment factors are merely indicators that a person has changed his or her ways and is, therefore, unlikely to reoffend. No one of them alone – in fact not all of them together – can guarantee that an individual is truly rehabilitated.

6. In this case, the fact that Respondent has met most of the criteria of rehabilitation provided by the regulation is not consistent with the fact that he failed to disclose he is conviction to the Department; and then, when testifying at the instant hearing, offered specious and inconsistent explanations for his failure.

7. It is this recent lack of candor which more accurately reflects Respondent's character. Thus, one cannot conclude that Respondent is truly rehabilitated and/or that it would be consistent with the public safety to allow Respondent to retain his license.

///

///

///

///

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent, Edward Nunez, under the Real Estate Law are revoked

Dated: July 14, 2006

Carolyn D. Magnuson

CAROLYN D. MAGNUSON
Administrative Law Judge
Office of Administrative Hearings

ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)
-or- (213) 576-6982 (office)

FILED
NOV - 3 2005
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of EDWARD NUNEZ, Respondent.	No. H-32298 LA ACCUSATION

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against EDWARD NUNEZ aka Eduardo Nunez ("respondent") is informed and alleges in her official capacity as follows:

1.

Respondent is presently licensed and/or has license rights as a restricted real estate broker under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code.

///

///

///

LICENSE HISTORY

2.

Respondent was originally licensed by the Department of Real Estate of the State of California as a real estate salesperson on May 3, 1993, and as a real estate broker on February 23, 1995.

3.

In response to Question 3 of the Broker Renewal Application of January 22, 2003, to wit: "Within the past four year period have you been convicted of any violation of law? (Convictions expunged under Penal Code Section 1203.4 must be disclosed however you may only omit minor traffic citations which citations which do not constitute a misdemeanor or felony offense)". Respondent marked the box denoting "No." Respondent failed to disclose the conviction below.

4.

On March 29, 1999, in the Superior Court of California, County of Orange, respondent was convicted upon a guilty plea to one count of Penal Code Section 476(a) (non-sufficient funds), a misdemeanor.

5.

This crime, by its facts and circumstances, involves moral turpitude and is substantially related under Section 2910(a), Chapter 6, Title 10 of the California Code of

Regulations, to the qualifications, functions or duties of a real estate licensee.

6.

Respondent's failure to reveal the criminal conviction in his Broker Renewal Application of January 22, 2003, constitutes the procurement by renewal of a real estate license by fraud, misrepresentation or deceit, or by making a material misstatement of fact in said application, which is cause for suspension or revocation of respondent's real estate broker license under Code Sections 498 and/or 10177(a).

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against the licenses and license rights of respondent EDWARD NUNEZ under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California
this 28th day of October 2005.

Deputy Real Estate Commissioner

cc: Edward Nunez
Maria Suarez
Sacto.
DG