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FILED

NOV 28 2007

DEPARTMENT OF REAL ESTATE

By *Jan [Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of) No. H-1738 FR
JESUS ROBERTO ORTIZ,)
Respondent.)

ORDER GRANTING UNRESTRICTED LICENSE

On May 4, 2005, a Decision was rendered herein denying the Respondent's application for real estate salesperson license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on July 5, 2005, and Respondent has operated as a restricted licensee since that time.

On August 9, 2007, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

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1 I have considered Respondent's Petition and the
2 evidence submitted in support thereof including Respondent's
3 record as a restricted licensee. Respondent has demonstrated to
4 my satisfaction that Respondent meets the requirements of law for
5 the issuance to Respondent of an unrestricted real estate
6 salesperson license and that it would not be against the public
7 interest to issue said license to Respondent.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's
9 petition for removal of restrictions is granted and that a real
10 estate salesperson license be issued to Respondent subject to the
11 following understanding and conditions:

12 1. The license issued pursuant to this order shall be
13 deemed to be the first renewal of respondent's real estate
14 salesperson license for the purpose of applying the provisions of
15 Section 10153.4.

16 2. Within nine (9) months from the date of this order
17 respondent shall:

18 (a) Submit a completed application and pay the
19 appropriate fee for a real estate salesperson license, and

20 (b) Submit evidence of having taken and successfully
21 completed the courses specified in subdivisions (a) (1), (2), (3)
22 and (4) of Section 10170.5 of the Real Estate Law for renewal of
23 a real estate license.

24 3. Upon renewal of the license issued pursuant to this
25 order, respondent shall submit evidence of having taken and
26 successfully completed the continuing education requirements of

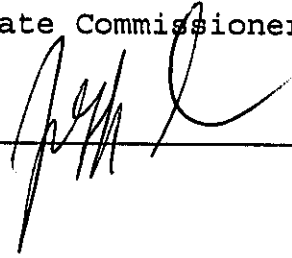
27 ///

1 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a
2 real estate license.

3 This Order shall become effective immediately.

4 IT IS SO ORDERED 11-13, 2007.

5 JEFF DAVI
6 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

FILED
MAY 05 2005

DEPARTMENT OF REAL ESTATE

By *Ann Shaw*

In the Matter of the Application of)
JESUS ROBERTO ORTIZ) NO. H-1738 FR
Respondent.) OAH NO. L-2005010228

DECISION

The Proposed Decision dated April 21, 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 salesperson license is denied, but the right to a restricted real estate salesperson 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 salesperson 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 MAY 25, 2005.

IT IS SO ORDERED *S. H.*, 2005.

JEFF DAVIS
Real Estate Commissioner

Jeff Davis

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

JESUS ROBERTO ORTIZ,

Respondent.

Case No. H-1738 FR

OAH No. N2005010228

PROPOSED DECISION

William O. Hoover, Administrative Law Judge, Office of Administrative Hearings, heard this matter on March 23, 2005, in Sacramento, California.

Truly Sughrue, Counsel, represented John W. Sweeney (complainant), Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California.

Scott G. Lyon, Attorney at Law, of the Law Offices of Julie L. Sak, PC, represented Jesus Roberto Ortiz (respondent) who was also present.

Evidence was received and the matter submitted on March 23, 2005.

FACTUAL FINDINGS

1. Respondent submitted to the Department an application for a real estate salesperson's license, signed and dated October 20, 2003, and received by the Department on November 17, 2003. The application was subject to the provisions of Business and Professions Code section 10153.4.

2. Following review and evaluation of respondent's application, complainant advised respondent that additional information would be required and made and filed this Statement of Issues in his official capacity. The Statement of Issues alleged, as grounds for denial of respondent's application, his convictions for driving without a license (1999) and petty theft (2003).

3. Respondent timely filed a Notice of Defense. He requested and is entitled to a hearing before an Administrative Law Judge of the Office of Administrative Hearings pursuant to Government Code section 1500, et seq. The standard of proof is preponderance of the evidence.

4. On November 8, 1999, before the Madera County Superior Court, in Case No. 102427, respondent, then age 25, was convicted on his plea of guilty to violations of Vehicle Code sections 12500(a) (driving without a valid license), a misdemeanor, and 16028(a) (driving without evidence of insurance), an infraction. On that same date, the court sentenced respondent to pay specified fines and fees. On March 16, 2005, the court granted respondent's petition for relief pursuant to Penal Code section 1203.4(a), resulting in dismissal of the misdemeanor offense.

5. The facts and circumstances relating to the above offense were provided by respondent's hearing testimony. While the precise details are unclear, it appears that respondent was driving unlawfully and without insurance on September 4, 1999. At that time, his license had previously been suspended due to earlier involvement in an injury accident. According to respondent, at a friend's request, he was driving the friend's car, and fell asleep at the wheel. The suspension related to an unpaid civil judgment in that matter. That matter has apparently been resolved and respondent currently possesses a valid license.

6. On October 29, 2003, before the San Joaquin County Superior Court, in Case No. TM104423A, respondent was convicted on his plea of nolo contendere, of a violation of Penal Code section 484(a) (petty theft), a misdemeanor. The court suspended imposition of sentence and placed respondent on conditional probation for three years subject to terms and conditions. These terms and conditions included the requirements that respondent serve ten days in jail (stayed on condition of performing 80 hours of community service), stay away from the victim store and pay specified fines and fees. Respondent complied with all court orders and completed his probation. On March 1, 2005, the court granted respondent's petition for relief pursuant to Penal Code section 1203.4(a), resulting in dismissal of the petty theft offense.

7. The facts and circumstances of the offense are that on June 17, 2003, respondent, then age 29, stole a Palm Pilot® valued at \$199.99, from the Target Store located in Tracy, California. Store security personnel observed the theft, contacted respondent outside the store and detained him pending arrival of law enforcement. Respondent readily admitted the theft when queried about his actions, but denied that he entered the store with the intent to steal. The Palm Pilot® was recovered.

8. During his testimony at hearing, respondent explained the he went to Target with the intention of purchasing a videodisc for his daughter. He candidly admitted to the theft and expressed remorse and shame for his conduct. Although unsure of what motivated him to steal, he believes stress over his daughter's recent diagnosis of a learning disability was probably the cause. He has never stolen before and advised that he would never again subject himself or his family to the degradation he experienced. Because of the aberrant

nature of his conduct, respondent voluntarily sought counseling in an attempt to "find out why he would steal." Respondent attended approximately five sessions and, while he described them as beneficial, did not provide any real specifics. The conduct does not appear to be evidence of a pattern of dishonesty that would indicate a character trait for such.

9. Respondent has been married for ten years with four children, and an 18 year old stepson. His wife works full-time and her income has permitted respondent, since February 2005, to remain at home as a "househusband." Prior to taking on that role, respondent worked as a "graveyard shift" supervisor at Safeway's Distribution Center in the Tracy area. He is desirous of becoming a realtor specializing in residential properties, and has spent time at a local real estate office learning the business. Respondent states that he likes and is very interested in the field of real estate, not only for additional income, but also for its flexible schedule.

10. The owner of that particular office (a franchise), Phil Sotelo, testified on respondent's behalf and described him as a good candidate for real estate work. He has known respondent for three years (as clients initially) and is fully aware of his convictions. He is prepared to hire respondent upon his licensure. According to respondent, he has taken and passed the real estate examination and completed the Real Estate Principles course. However, he presented no supporting documentation.

11. Respondent's wife also testified on his behalf and described him as a "good father and husband." Other than the incident that resulted in his conviction for petty theft, respondent's wife has never known him to steal anything. She indicated that the event significantly affected respondent and that she observed him cry for the first time when he admitted his conduct to her. She confirmed that they were experiencing a difficult time as it related to their daughter's learning disability, but that "since then things are better." The daughter has since begun receiving state services for children with learning disabilities. Both respondent and his wife were candid and deemed credible witnesses.

12. In evaluating the extent of rehabilitation, the provisions of California Code of Regulations section 2911 are instructive and were considered. Respondent had the burden of establishing that he is entitled to licensure by the Department. He has met that burden.

APPLICABLE LAW

13. Business and Professions Code sections 480(a)(1) provides that the Department may deny issuance of a license to anyone who has been convicted of a crime that is substantially related to the qualifications, functions and duties of the licensed activity.

14. Business and Professions Code section 10177(b) provides that the Department may deny issuance of a license to anyone convicted of a felony or crime involving moral turpitude.

15. Business and Professions Code section 2910, provides in pertinent part:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

(2) Counterfeiting, forging or altering of an instrument or the uttering of a false statement.

(3) Willfully attempting to derive a personal financial benefit through the nonpayment or underpayment of taxes, assessments or levies duly imposed upon the licensee or applicant by federal, state, or local government.

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

(5) Sexually related conduct affecting a person who is an observer or non-consenting participant in the conduct or convictions which require registration pursuant to the provisions of Section 290 of the Penal Code.

(6) Willfully violating or failing to comply with a provision of Division 4 of the Business and Professions Code of the State of California.

(7) Willfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct.

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

(9) Contempt of court or willful failure to comply with a court order.

(10) Conduct which demonstrates a pattern of repeated and willful disregard of law.

(11) Two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs.

(b) The conviction of a crime constituting an attempt, solicitation or conspiracy to commit any of the above enumerated acts or omissions is also deemed to be substantially related to the qualifications, functions or duties of a licensee of the department.

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

16. California Code of Regulations section 2911, states:

The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

(c) Expungement of criminal convictions resulting from immoral or antisocial acts.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.

(g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.

(i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

(j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

(k) Correction of business practices resulting in injury to others or with the potential to cause such injury.

(l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

(n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

LEGAL CONCLUSIONS

1. Cause for denial of respondent's application for a real estate salesperson license was established for violation of Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), based on Factual Finding 6 and 13-15.

The offense of petty theft involves moral turpitude. Whether an offense involves moral turpitude is a question of law. (*Yakov v. Board of Medical Examiners* (1968) 68 Cal.2d 67, 74.). Since the California Supreme Court's decision in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, "moral turpitude" must be interpreted to mean that the conduct is substantially related to fitness to engage in the particular occupation involved. Thus, since *Morrison*, moral turpitude requires a determination that the offense is substantially related to the qualifications, functions and duties of a real estate salesperson, the very same legal conclusion required by Business and Professions Code section 480. Moreover, the general provisions of the Business and Professions prevail over Business and Professions Code section 10177, subdivision (b), so all convictions, including those that are either felonies or involve moral turpitude, must also be substantially related to fitness to engage in the real estate profession. (*Pieri v. Fox* (1979) 96 Cal.App.3d 802, pp. 804,807.).

Petty theft is a crime that meets the Department's criteria for an offense that is substantially related to the qualifications, functions and duties of a real estate licensee.

2. *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d, 402, stands for the well-established proposition that honesty and integrity are essential traits for licensees due to their fiduciary responsibilities. Upon consideration of all the evidence in this matter the issuance of a restricted (conditional) license based on a substantial showing of rehabilitation, pursuant to California Code of Regulations section 2911, would not be contrary to the public interest. (Factual Findings 1-12 and 16)

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 10156.5 of the Business and Professions Code. The restricted license issued to the Respondent shall be subject to all of the provisions of Sections 10156.7 of the Business and Professions Code sections 10156.7, 10153.4, 10156.5, 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:

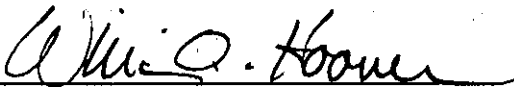
(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(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 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 two 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: 4/21/05


WILLIAM O. HOOVER
Administrative Law Judge
Office of Administrative Hearings

FLAG

FILED
JAN 25 2005

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

DEPARTMENT OF REAL ESTATE

By Carol Shanon

In the Matter of the Application of

JESUS ROBERTO ORTIZ

}

Case No. H-1738 FR

OAH No. N-2005010228

Respondent

NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, 560 J STREET, SUITE 340/360, SACRAMENTO, CA 95814** on **WEDNESDAY, MARCH 23, 2005**, at the hour of **11:00 A.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: JANUARY 25, 2005

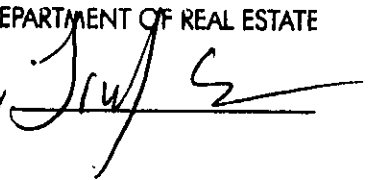
By Truly Sughrue/as
TRULY SUGHRUE, Counsel

TS/as

FILED
DEC 16 2004

DEPARTMENT OF REAL ESTATE

By



1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007
6
7 Telephone: (916) 227-0781
8

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Application of)	No. H-1738 FR
12 JESUS ROBERTO ORTIZ,)	<u>STATEMENT OF ISSUES</u>
13 Respondent.)	

15 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against JESUS ROBERTO ORTIZ (hereinafter "Respondent"), is
18 informed and 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 salesperson
22 license on or about November 17, 2003, with the knowledge and
23 understanding that any license issued as a result of said
24 application would be subject to the conditions of Section 10153.4
25 of the Business and Professions Code.

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1 II

2 Complainant, JOHN W. SWEENEY, a Deputy Real Estate
3 Commissioner of the State of California, makes this Statement of
4 Issues in his official capacity and not otherwise.

5 III

6 On or about November 8, 1999, in the Municipal Court,
7 County of Madera, Respondent was convicted of a violation of
8 Section 12500(a) of the California Vehicle Code (Driving While
9 Unlicensed), a crime involving moral turpitude which bears a
10 substantial relationship under Section 2910, Title 10, California
11 Code of Regulations, to the qualifications, functions, or duties
12 of a real estate licensee.

13 IV

14 On or about October 29, 2003, in the Superior Court,
15 County of San Joaquin, Respondent was convicted of a violation of
16 Section 484(A) of the California Penal Code (Petty Theft), a
17 crime involving moral turpitude which bears a substantial
18 relationship under Section 2910, Title 10, California Code of
19 Regulations, to the qualifications, functions, or duties of a
20 real estate licensee.

21 IV

22 The crimes of which Respondent was convicted, as
23 alleged above, constitutes cause for denial of Respondent's
24 application for a real estate license under Sections 480(a) and
25 10177(b) of the California Business and Professions Code.

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27 \\\

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, and for such other and further relief as
6 may be proper under other provisions of law.

7
8 
9 JOHN W. SWEENEY
 Deputy Real Estate Commissioner

10 Dated at Fresno, California,
11 this 14th day of December 2004.