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FILED  
SEP 19 2007

DEPARTMENT OF REAL ESTATE

By *K. Contreras*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of )  
  )  
                              JESUS DAVID SIFUENTES,              )      NO. H-1941 FR  
  )  
  )      Respondent.              )  
\_\_\_\_\_

ORDER DENYING RECONSIDERATION

On July 30, 2007, a Decision After Rejection was rendered in the above-entitled matter to become effective August 20, 2007.

On August 10, 2007, Respondent requested a stay for the purpose of filing a petition for reconsideration of the Decision After Rejection of July 30, 2007, and the effective date was stayed to September 19, 2007.

I have given due consideration to the petition of  
Respondent. I find no good cause to reconsider the Order of  
July 30, 2007, and reconsideration is hereby denied.

IT IS HEREBY ORDERED     *9-19* , 2007.

JEFF DAVI  
Real Estate Commissioner  
*[Signature]*

FILED  
AUG 15 2007

DEPARTMENT OF REAL ESTATE

By K. Contreras

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of )	)	NO. H-1941 FR
JESUS DAVID SIFUENTES, )	)	CAH NO. N-2006070240
Respondent. )	)	

ORDER STAYING EFFECTIVE DATE

On July 30, 2007, a Decision After Rejection was rendered in the above-entitled matter to become effective on August 20, 2007.

On August 8, 2007, Respondent requested a stay for the purpose of filing a petition for reconsideration of the Decision After Rejection of July 30, 2007.

IT IS HEREBY ORDERED that the effective date of the Decision After Rejection is stayed for a period of thirty (30) days. The Decision After Rejection of July 30, 2007, shall become effective at 12 o'clock noon on September 19, 2007.

DATED: 8-14-, 2007.

JEFF DAVIS  
Real Estate Commissioner

[Signature]

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FILED  
JUL 31 2007

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of )	NO. H-1941 FR
JESUS DAVID SIFUENTES, )	OAH NO. N-2006070240
Respondent. )	

DECISION AFTER REJECTION

This matter came on for hearing before Trevor Skarda, Administrative Law Judge of the Office of Administrative Hearings, in Sacramento, California, on January 25, 2007.

Daniel Kehew, Counsel, represented the Complainant.

Respondent JESUS DAVID SIFUENTES appeared and was represented by attorney Frank M. Buda.

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

On February 23, 2007, the Administrative Law Judge rendered a Proposed Decision (hereinafter "the Proposed Decision") which I declined to adopt as my Decision herein. Pursuant to Section 11517 of the Government Code of the State of California, Respondent JESUS DAVID SIFUENTES (hereinafter

1 "Respondent") was served with notice of my determination not to  
2 adopt the Proposed Decision along with a copy of said Proposed  
3 Decision. Respondent was notified that the case would be decided  
4 by me upon the record, the transcript of proceedings held on  
5 January 25, 2007, and upon written argument offered by Respondent  
6 and Complainant.

7 Respondent, via Mr. Buda, submitted a written Argument  
8 After Rejection on May 10, 2007. The Complainant, via Mr. Kehew,  
9 submitted its written Response to the Argument After Rejection on  
10 June 1, 2007.

11 I have given careful consideration to the record in  
12 this case, including the transcript of proceedings of January 25,  
13 2007, the documentary exhibits, and written argument offered by  
14 Respondent and Complainant.

15 The following shall constitute the Decision of the Real  
16 Estate Commissioner in these proceedings.

17 FACTUAL FINDINGS

18 1. Complainant John Sweeney is a Deputy Real Estate  
19 Commissioner of the State of California. He made the  
20 Statement of Issues in his official capacity.

21 2. Respondent applied to the Department of Real  
22 Estate (hereinafter the "Department") for a real estate  
23 salesperson's license on or about May 6, 2005.

24 *Respondent's convictions*

25 3. On March 24, 1999, in the Superior Court of  
26 California, County of Los Angeles, Respondent was convicted on  
27 his plea of nolo contendere of a violation of Vehicle Code

1 section 10851, subdivision (a) (taking or driving vehicle with  
2 intent to deprive owner of title and possession), a felony.  
3 This crime is substantially related to the qualifications,  
4 functions, or duties of a real estate licensee. (Cal. Code  
5 Regs., tit. 10, § 2910, subds. (a)(4) & (8).) Respondent  
6 was sentenced to ninety days in jail, three years of formal  
7 probation, and restitution. Respondent completed the terms  
8 of his probation and paid restitution. The court reduced  
9 the conviction to a misdemeanor on or about May 23, 2002.

10           4. The circumstances of the offense were that  
11 Respondent, then aged twenty, was a member of an El Segundo,  
12 California gang. On March 1, 1999, Respondent and two other  
13 individuals stole a white Chevrolet pickup truck with a  
14 camper shell parked on a street in Long Beach, California.  
15 A witness saw three individuals with dark hoods steal the  
16 vehicle. A Long Beach police officer followed a car matching  
17 the description of the stolen vehicle. Before he could stop  
18 the vehicle, Respondent and a passenger abandoned the still-  
19 moving vehicle and ran. According to the officer, Respondent  
20 was driving the vehicle. The truck rolled into a parked  
21 car causing minimal damage. Respondent was subsequently  
22 found in the vicinity of the crime at a friend's house.  
23 Clothes were found matching the eyewitness's description.  
24 The Long Beach police officer identified Respondent as the  
25 driver.

26           Respondent attempted to impeach his conviction,  
27 stating he was not the driver. He stated that a friend

1 gave him a ride and that he did not know the vehicle was  
2 stolen.<sup>1</sup>

3           5. Complainant alleged in the Statement of Issues  
4 that Respondent was convicted of "petit larceny" in Las Vegas  
5 Municipal Court, Las Vegas, Nevada, "on or about February 23,  
6 2004."

7           6. Respondent was charged with petit larceny on  
8 January 10, 2004. The charges were dismissed on September 28,  
9 2004, following Respondent's successful completion of a court  
10 counseling program.

11           7. On March 22, 2006, in the Superior Court of  
12 California, County of Kern, Respondent was convicted on his  
13 plea of nolo contendere, of a violation of Vehicle Code  
14 section 8804 (registering a vehicle in a foreign  
15 jurisdiction; failure to pay fees and taxes in this state), a  
16 misdemeanor.

17           8. The circumstances of the conviction were that in  
18 November 2004, Respondent moved from Las Vegas, Nevada to  
19 Bakersfield. In late 2005 or early 2006, Respondent learned  
20 of a bench warrant issued by Kern County Superior Court. He  
21 investigated the bench warrant, determined that it was issued  
22 because he had failed to pay vehicle license fees and taxes.  
23 Respondent turned himself in, pled nolo contendere, and paid  
24 the \$400 fine in installments. Respondent admitted that he  
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26           <sup>1</sup> Collateral attack of a criminal conviction in subsequent  
27 proceedings is prohibited. (Arneson v. Fox (1980) 28 Cal.3d 440, 449;  
Matansky v. Board of Medical Examiners (1978) 79 Cal.App.3d 293, 302.)

1 owned a vehicle not licensed in California. He claimed that  
2 he left the vehicle in Las Vegas when he moved to Bakersfield  
3 because it was inoperable. Respondent claimed that he pled  
4 nolo contendere because he did not want the violation to delay  
5 his application for a real estate salesperson's license.

6 9. An element of violation of Vehicle Code section  
7 8804 is the operation of the vehicle within California.  
8 (Jones v. Pierce (1988) 199 Cal.App.3d 736, 744). Respondent's  
9 claim of non-operation in California represents an attempt to  
10 impeach this conviction.<sup>2</sup>

11 *Respondent's rehabilitation*

12 10. Respondent disassociated from his gang in 2001,  
13 and soon thereafter, moved away from the Los Angeles area.  
14 Respondent has not associated with gang members since that  
15 time.

16 11. Respondent has a stable family life. He is  
17 engaged to be married in September 2007. They recently  
18 purchased a home together. Respondent's fiancé is pregnant  
19 with their first child. Respondent provides for his younger  
20 brother, who lives with him. He attends Catholic Church two  
21 times per month.

22 12. Respondent has been gainfully employed since his  
23 conviction for stealing an automobile. Shortly before the  
24 incident, he went to trade school to become a machinist.  
25 Thereafter, he worked as a computer numerically controlled

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26  
27 <sup>2</sup> Id.

1 (CNC) machine operator for several different companies from  
2 approximately January, 2000 through November, 2004. For the  
3 last two years, Respondent has worked as an assistant to  
4 the office managers at Century 21 Premiere Realty in  
5 Bakersfield.

6 Respondent's sponsoring broker, Jose Garcia, is the  
7 broker at Century 21. Mr. Garcia testified that Respondent  
8 has been a model employee for the past two years and that he  
9 will closely supervise Respondent should he receive a real  
10 estate license. Gilberto Mendoza, one of Respondent's  
11 immediate supervisors at Century 21, testified similarly;  
12 Respondent has been a model employee for the last two years.  
13 Respondent also submitted several letters, which were admitted  
14 as administrative hearsay, which reflect that he has put his  
15 criminal past behind him and changed his attitude.

16 13. Respondent fully disclosed his convictions on his  
17 application.

18 14. Respondent fully disclosed his convictions to his  
19 employer at Century 21.

20 15. Respondent claims a change in attitude since the  
21 time of his conviction. According to his office manager,  
22 broker, fiancé and Respondent, he has surrounded himself with  
23 positive, forward-looking people. Respondent regrets his gang  
24 activity and readily admits that, prior to 2001, he engaged in  
25 numerous criminal acts.

26 16. Several factors weigh against Respondent's claims  
27 of a change in attitude. Respondent persists in collateral



1 attack on the 1999 felony conviction under Vehicle Code  
2 section 10851, subdivision (a). Respondent also mounts a  
3 collateral attack on his 2006 misdemeanor conviction under  
4 Vehicle Code section 8804. If one took Respondent's word  
5 alone for the facts of these matters, one would believe  
6 Respondent had never committed the crimes for which he admits  
7 he was convicted. In so doing, Respondent takes no  
8 responsibility for his offenses.

9           This poor impression of Respondent's change in  
10 attitude is re-emphasized by Respondent's dubious explanation  
11 for the Nevada incident that resulted in charges of petit  
12 theft in 2004 and Respondent's admitted participation in  
13 court-ordered diversion program. Again, Respondent's story  
14 completely relieves him of responsibility. He testifies that  
15 he was in a Wal-Mart with a little nephew and that this  
16 nephew took what he thought were "childish items." The items  
17 were, in fact, underarm deodorants, and the Respondent  
18 admitted upon cross-examination that the nephew was 14 years  
19 old. Respondent offered no credible explanation why he, and  
20 not his nephew, would be charged with the offense and  
21 subjected to the court-ordered diversion program.

22           The contrast between Respondent's assertions  
23 regarding these events and the other facts in evidence are  
24 consistent with Respondent's collateral attacks on the 1999  
25 and 2006 convictions, and similarly weigh against his claims  
26 of a change in attitude.

27 \\\

1 This factual finding goes only to consideration of  
2 Respondent's rehabilitation and is not viewed as an  
3 independent basis for rejection of Respondent's application.

4 16. Respondent did not submit sufficient documentation  
5 to the Department to show that he has successfully completed  
6 all the courses required pursuant to Business and Professions  
7 Code section 10153.4.

#### 8 LEGAL CONCLUSIONS

9 1. Business and Professions Code section 10177,  
10 subdivision (b), provides that a real estate license may be  
11 denied to an applicant who has been convicted of a felony or a  
12 crime involving moral turpitude.<sup>3</sup> "'Moral turpitude' means a  
13 general 'readiness to do evil'"... i.e., 'an act of baseness,  
14 vileness or depravity in the private and social duties which a  
15 man owes to his fellowmen, or to society in general, contrary  
16 to the accepted and customary rule of right and duty between  
17 man and man.'" (*People v. Mansfield* (1988) 200 Cal.App.3d 82,  
18 87, citations omitted.)

19 2. Complainant failed to establish that Respondent  
20 was "convicted" of petit larceny in Nevada in 2004. This  
21 allegation does not provide a basis for discipline.

22 \_\_\_\_\_  
23 <sup>3</sup> Business and Professions Code section 10177, in relevant part,  
provides:

24 The commissioner ... may deny the issuance of a license to an applicant,  
25 who has done any of the following ...: [¶] ... [¶] (b) Entered a plea of  
26 guilty or nolo contendere to, or been found guilty of, or been  
27 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, irrespective of an order granting probation following that  
conviction, suspending the imposition of sentence, or of a subsequent  
order under Section 1203.4 of the Penal Code allowing that licensee to  
withdraw his or her plea of guilty and to enter a plea of not guilty, or  
dismissing the accusation or information.

1           3. Respondent's conviction for registering a vehicle  
2 in a foreign jurisdiction and not paying fees and taxes in  
3 California was not a crime involving moral turpitude.<sup>4</sup> A  
4 violation of Vehicle Code section 8804 is not, on its face, a  
5 crime of moral turpitude. While such action may seem likely  
6 to be an evasion of the state's motor vehicle licensing scheme  
7 and, as noted particularly within the very text of the  
8 statute, to evade the appropriate fees and taxes that  
9 accompany that licensing scheme, circumstances may be imagined  
10 that negate the intent of the actor.

11           The circumstances that Respondent describes present  
12 such a picture, but Respondent's story cannot be credited  
13 within this Decision. As noted in Factual Finding 9, above,  
14 Respondent's story exists as a collateral attack on the  
15 conviction.

16           No alternative circumstances are presented in the  
17 record, however. Complainant offered no police report  
18 relating to the offense, and no contrasting testimony arises  
19 within the transcript. Absent facts that would tend to  
20 confirm the presence of moral turpitude, this conviction  
21 cannot itself be used as a basis for denying Respondent's  
22 application for a license.

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25           <sup>4</sup> Vehicle Code section 8804 provides:  
26 Every person who, while a resident, as defined in Section 516, of this  
27 state, with respect to any vehicle owned by him and operated in this state,  
registers or renews the registration for the vehicle in a foreign  
jurisdiction, without the payment of appropriate fees and taxes to this  
state, is guilty of a misdemeanor.

1           4. Respondent's 1999 conviction for taking a vehicle  
2 with intent to deprive the owner of title and possession was a  
3 felony.

4           5. In addition to establishing that Respondent's 1999  
5 conviction was a felony, complainant must also establish that  
6 the conviction is substantially related to the qualifications,  
7 functions, or duties of a real estate licensee in accordance  
8 with Business and Professions Code section 480.<sup>5</sup> (*Petropoulos*  
9 *v. Department of Real Estate* (2006) 142 Cal.App.4th 554, 564-7.)  
10 In California Code of Regulations, title 10, section 2910,  
11 subdivision (a), the Department has set forth criteria for  
12 determining whether a crime is substantially related to the  
13 qualifications, functions, or duties of a real estate  
14 licensee. In relevant part, section 2910, subdivision (a)  
15 provides that a crime will be deemed to satisfy the  
16 requirements of substantial relationship when it involves:

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19           <sup>5</sup> Business and Professions Code section 480, in relevant part,  
20 provides: (a) A board may deny a license regulated by this code on  
the grounds that the applicant has one of the following:

- 21           (1) Been convicted of a crime.
- 22           (2) Done any act involving dishonesty, fraud or deceit with the  
intent to substantially benefit himself or another, or  
substantially injure another; or
- 23           (3) Done any act which if done by a licentiate of the business or  
24 profession in question, would be grounds for suspension or  
revocation of license.

25           The board may deny a license pursuant to this subdivision only if  
26 the crime or act is substantially related to the qualifications,  
functions or duties of the business or profession for which  
application is made.

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

4 [¶] ... [¶]

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

8 [¶] ... [¶]

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

14 Pursuant to California Code of Regulations, title 10, section  
15 2910, subdivisions (a) (1), (4) and (8), Respondent's  
16 conviction for taking a vehicle with the intent to deprive the  
17 owner of title or possession bears a substantial relationship  
18 to the qualifications, functions, and duties of a real estate  
19 licensee.

20 6. Respondent's 1999 conviction, therefore,  
21 establishes cause to deny Respondent's license application  
22 under Business and Professions Code section 10177, subdivision  
23 (b).

24 7. California Code of Regulations, title 10, section  
25 2911 sets forth criteria for determining whether an applicant  
26 who has been convicted of a crime has been sufficiently  
27 rehabilitated to support the issuance of a license.<sup>6</sup>

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28 <sup>6</sup> California Code of Regulations, title 10, section 2911  
29 provides as follows:

30 Criteria of Rehabilitation (Denial).

1  
2 The following criteria have been developed by the department  
3 pursuant to section 492(a) of the Business and Professions Code  
4 for the purpose of evaluating the rehabilitation of an applicant  
5 for issuance or for reinstatement of a license in considering  
6 whether or not to deny the issuance or reinstatement on account of  
7 a crime or act committed by the applicant:

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

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

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

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

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

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

27 (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.

1           8. Respondent has shown rehabilitation consistent  
2 with many of the factors set forth in section 2911.  
3 Respondent has a stable family life, has paid all fines and  
4 restitution and regrets his criminal past. Respondent went to  
5 school and became a machinist and has taken real estate  
6 courses in attempt to better himself. Respondent no longer  
7 associates with gang members. Respondent moved out of the  
8 Los Angeles area and has no intention of returning.  
9 Respondent attends church and has a much more positive outlook  
10 on life. He takes care of his little brother and has  
11 purchased a house with his fiancé.

12           Respondent has convinced his broker, office manager,  
13 fiancé, and many others that he has successfully changed his  
14 attitude since moving to Bakersfield in 2004. Moreover, he  
15 was forthright with the Department and his employers regarding  
16 the existence of all of his convictions, including convictions  
17 which he suffered when he was a minor.

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

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

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

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

1           However, it has been only eight years since his  
2 conviction for the serious felony that is the basis for this  
3 action. Respondent still maintains that he was not the  
4 driver, nor even aware of the theft, even though he fled the  
5 police when stopped and subsequently pled nolo contendere to  
6 the charge filed against him. Further, with regard to the two  
7 more recent incidents that brought Respondent into contact  
8 with the criminal justice system and saw at least some level  
9 of discipline imposed upon him, Respondent is consistent in  
10 his denial of ultimate responsibility.

11           9. The above matters having been considered, it would  
12 be contrary to the public interest and welfare to issue  
13 Respondent even a restricted real estate salesperson license  
14 at this time.

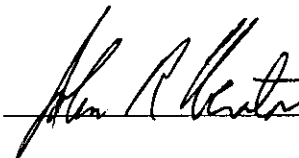
15                           ORDER

16           The application of Respondent JESUS DAVID SIFUENTES  
17 for a real estate salesperson license is hereby denied.

18           This Decision shall become effective at 12 o'clock  
19 noon on August 20, 2007.

20                           IT IS SO ORDERED July 30, 2007.  
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22   JEFF DAVI  
23   Real Estate Commissioner

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FILED  
MAR 30 2007  
DEPARTMENT OF REAL ESTATE  
By K. Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of	)	No. H-1941 FR
	)	
JESUS DAVID SIFUENTES,	)	N-2006070240
	)	
Respondent.	)	

NOTICE

TO: JESUS DAVID SIFUENTES, Respondent, and FRANK M. BUDA, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated February 23, 2007, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated February 23, 2007, 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 January 25,  
///

1 2007, and any written argument hereafter submitted on behalf of  
2 Respondent and Complainant.

3           Written argument of Respondent to be considered by me  
4 must be submitted within 15 days after receipt of the transcript  
5 of the proceedings of January 25, 2007, at the Sacramento office  
6 of the Department of Real Estate unless an extension of the time  
7 is granted for good cause shown.

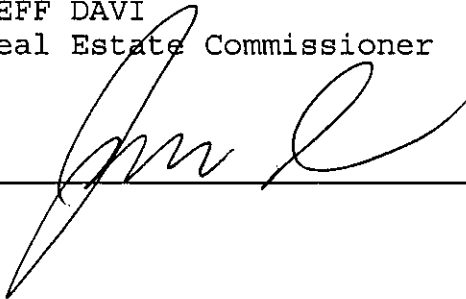
8           Written argument of Complainant to be considered by me  
9 must be submitted within 15 days after receipt of the argument of  
10 Respondent at the Sacramento office of the Department of Real  
11 Estate unless an extension of the time is granted for good cause  
12 shown.

13           DATED: \_\_\_\_\_

3/30/07

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15           JEFF DAVI  
16           Real Estate Commissioner

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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**  
MAR 30 2007  
DEPARTMENT OF REAL ESTATE  
By *K. Contreras*

In the Matter of the Statement of Issues  
Against:

JESUS DAVID SIFUENTES,

Respondent.

Case No. H-1941 FRESNO

OAH No. N2006070240

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Trevor Skarda, State of California, Office of Administrative Hearings, on January 25, 2007, in Sacramento, California.

Daniel E. Kehew, Counsel, Department of Real Estate, appeared on behalf of complainant.

Frank M. Budah, Attorney at Law, appeared for respondent.

The case was submitted for decision on January 25, 2007.

**FACTUAL FINDINGS**

1. Complainant John Sweeney is a Deputy Real Estate Commissioner of the State of California. He made the Statement of Issues in his official capacity.

2. Jesus David Sifuentes (respondent) applied to the Department of Real Estate (Department) for a real estate salesperson's license on or about May 6, 2005.

*Respondent's convictions*

3. On March 24, 1999, in the Superior Court of California, County of Los Angeles, respondent was convicted on his plea of nolo contendere of a violation of Vehicle Code section 10851, subdivision (a) (taking or driving vehicle with intent to deprive owner of title

and possession), a felony. This crime is substantially related to the qualifications, functions or duties of a real estate licensee. (Cal. Code Regs., tit. 10, § 2910, subs. (a)(4) & (8).)

Respondent was sentenced to ninety days in jail, three years of formal probation and restitution. Respondent completed the terms of his probation and paid restitution. The court reduced the conviction to a misdemeanor on or about May 23, 2002.

4. The circumstances of the offense were that respondent, then aged twenty, was a member of an El Segundo, California gang. On March 1, 1999, respondent and two other individuals stole a white Chevrolet pickup truck with a camper shell parked on a street in Long Beach, California. A witness saw three individuals with dark hoods steal the vehicle. A Long Beach police officer followed a car matching the description of the stolen vehicle. Before he could stop the vehicle, respondent and a passenger abandoned the still-moving vehicle and ran. According to the officer, respondent was driving the vehicle. The truck rolled into a parked car causing minimal damage. Respondent was subsequently found in the vicinity of the crime at a friend's house. Clothes were found matching the eyewitness's description. The Long Beach police officer identified respondent as the driver.

Respondent attempted to impeach his conviction, stating he was not the driver. He stated that a friend gave him a ride and that he did not know the vehicle was stolen.<sup>1</sup>

5. Complainant alleged in the Statement of Issues that respondent was convicted of "petit larceny" in Las Vegas Municipal Court, Las Vegas, Nevada, "on or about February 23, 2004."

6. Respondent was charged with petit larceny on January 10, 2004. The charges were dismissed on September 28, 2004, following respondent's successful completion of a court-counseling program.

7. On March 22, 2006, in the Superior Court of California, County of Kern, respondent was convicted on his plea of nolo contendere, of a violation of Vehicle Code section 8804 (registering a vehicle in a foreign jurisdiction; failure to pay fees and taxes in this state), a misdemeanor.

8. The circumstances of the conviction were that in November 2004, respondent moved from Las Vegas, Nevada to Bakersfield. In late 2005 or early 2006, respondent learned of a bench warrant issued by Kern County Superior Court. He investigated the bench warrant, determined that it was issued because he had failed to pay vehicle license fees and taxes. Respondent turned himself in, pled nolo contendere, and paid the \$400 fine in installments. Respondent admitted that he owned a vehicle not licensed in California. He claimed that he left the vehicle in Las Vegas when he moved to Bakersfield because it was inoperable. Respondent

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<sup>1</sup> Collateral attack of a criminal conviction in subsequent administrative proceedings is prohibited. (*Arneson v. Fox* (1980) 28 Cal.3d.440, 449; *Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 302.)

pled nolo contendere because he did not want the violation to delay his application for a real estate salesperson's license.

*Respondent's rehabilitation*

9. Respondent disassociated from his gang in 2001, and soon thereafter, moved away from the Los Angeles area. Respondent has not associated with gang members since that time.

10. Respondent has a stable family life. He is engaged to be married in September 2007. They recently purchased a home together. Respondent's fiancé is pregnant with their first child. Respondent provides for his younger brother, who lives with him. He attends Catholic Church two times per month.

11. Respondent has been gainfully employed since his conviction for stealing an automobile. Shortly before the incident, he went to trade school to become a machinist. Thereafter, he worked as a computer numerically controlled (CNC) machine operator for several different companies from approximately January 2000 through November 2004.

For the last two years, respondent has worked as an assistant to the officer managers at Century 21 Premiere Realty in Bakersfield. Respondent's sponsoring broker, Jose Garcia, is the broker at Century 21. Mr. Garcia testified that respondent has been a model employee for the past two years and that he will closely supervise respondent should he receive a real estate license. Gilberto Mendoza, one of respondent's immediate supervisors at Century 21 testified similarly; respondent has been a model employee for the last two years. Respondent also submitted several letters, which were admitted as administrative hearsay, which reflect that he has put his criminal past behind him and changed his attitude.

12. Respondent fully disclosed his convictions on his application.

13. Respondent fully disclosed his convictions to his employer at Century 21.

14. Respondent has changed his attitude since the time of his conviction, according to his officer manager, broker, fiancé and respondent. He has surrounded himself with positive, forward-looking people. Respondent regrets his gang activity and readily admits that, prior to 2001, he engaged in numerous criminal acts.

15. Respondent did not submit sufficient documentation to the Department to show that he has successfully completed all the courses required pursuant to Business and Professions Code section 10153.4.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivision (b), provides that a real estate license may be denied to an applicant who has been convicted of a felony or a crime involving moral turpitude.<sup>2</sup> “‘Moral turpitude’ means a general ‘‘readiness to do evil’’ ... i.e., ‘an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.’” (*People v. Mansfield* (1988) 200 Cal.App.3d 82, 87, citations omitted.)

2. Complainant failed to establish that respondent was “convicted” of petit larceny.

3. Respondent’s conviction for registering a vehicle in a foreign jurisdiction and not paying fees and taxes in California was not a crime involving moral turpitude.<sup>3</sup> A violation of Vehicle Code section 8804 does not demonstrate, on its face, a “readiness to do evil.” Moreover, the circumstances of respondent’s crime do not evince the requisite “moral turpitude.” Respondent was not aware that he was required to register an inoperable car, located in another state, in California.

4. Respondent’s 1999 conviction for taking a vehicle with intent to deprive the owner of title and possession was a felony.

5. In addition to establishing that respondent’s conviction 1999 conviction was a felony, complainant must also establish that the conviction is substantially related to the qualifications, functions or duties of a real estate licensee in accordance with Business and Professions Code section 480.<sup>4</sup> (*Petropoulos v. Department of Real Estate* (2006) 142 Cal.

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<sup>2</sup> Business and Professions Code section 10177, in relevant part, provides:

The commissioner ... 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, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

<sup>3</sup> Vehicle Code section 8804 provides:

Every person who, while a resident, as defined in Section 516, of this state, with respect to any vehicle owned by him and operated in this state, registers or renews the registration for the vehicle in a foreign jurisdiction, without the payment of appropriate fees and taxes to this state, is guilty of a misdemeanor.

<sup>4</sup> Business and Professions Code section 480, in relevant part, provides:

App. 4th 554, 564-7.) In California Code of Regulations, title 10, section 2910, subdivision (a), the Department has set forth criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. In relevant part, section 2910, subdivision (a) provides that a crime will be deemed to satisfy the requirements of substantial relationship when it involves:

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

[¶]...[¶]

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

[¶]...[¶]

(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.

Pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a) (1), (4) and (8), respondent's conviction for taking a vehicle with the intent to deprive the owner of title or possession bears a substantial relationship to the qualifications, functions and duties of a real estate licensee.

6. Respondent's 1999 conviction, therefore, establishes cause to deny respondent's license application under Business and Professions Code section 10177, subdivision (b).

7. California Code of Regulations, title 10, section 2911 sets forth criteria for determining whether an applicant who has been convicted of a crime has been sufficiently rehabilitated to support the issuance of a license.<sup>5</sup>

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(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

<sup>5</sup> California Code of Regulations, title 10, section 2911 provides as follows:

Criteria of Rehabilitation (Denial).

8. Respondent has shown rehabilitation consistent with many of the factors set forth in section 2911. Respondent has a stable family life, has paid all fines and restitution

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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 is reflective of an inability to conform to societal rules when considered in light of the conduct in question.



and regrets his criminal past. Respondent went to school and became a machinist and has taken real estate courses in attempt to better himself. Respondent no longer associates with gang members. Respondent moved out of the Los Angeles area and has no intention of returning. Respondent attends church and has a much more positive outlook on life. He takes care of his little brother and has purchased a house with his fiancé.

However, it has been only eight years since his conviction for a serious felony, and respondent still maintains that he was not the driver, even though he pled nolo contendere. Nonetheless, respondent has proven to his broker, office manager, fiancé and many others that he has successfully changed his attitude since moving to Bakersfield in 2004. Moreover, he was honest and forthright with the Department and his employers regarding all of his convictions, including convictions which he suffered when he was a minor. Finally, respondent was honest and forthright at the hearing. His demeanor and attitude were consistent with an individual who has put all criminal activity behind him, and who will successfully provide for his new family through honest means.

9. The above matters having been considered; it would not be contrary to the public interest and welfare to issue respondent a restricted real estate salesperson license at this time.

#### 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 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

Not adopted

attaching to the restricted license until three (3) 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.

Not adopted

REVISION  
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DATE: February 23, 2007



TREVOR SKARDA  
Administrative Law Judge  
Office of Administrative Hearings

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5  
6  
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FILED  
JUN 20 2006

DEPARTMENT OF REAL ESTATE



8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Application of )  
12 JESUS DAVID SIFUENTES, )  
13 Respondent. )

) No. H-1941 FRESNO  
)  
) STATEMENT OF ISSUES  
)

14  
15 The Complainant, John Sweeney, a Deputy Real Estate  
16 Commissioner of the State of California, for Statement of Issues  
17 against JESUS DAVID SIFUENTES (hereinafter "Respondent") alleges  
18 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 May 6, 2005 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  
25 10153.4 of the California Business and Professions Code.

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II

Complainant, John Sweeney, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity.

III

On or about March 24, 1999, in the Superior Court of California, County of Los Angeles, Respondent was convicted of violation of California Vehicle Code Section 10851(a) (Theft or Unauthorized Use of Vehicle), a felony and a crime involving moral turpitude and/or which is substantially related under Section 2910, Title 10, California Code of Regulations (hereinafter the "Regulations") to the qualifications, functions or duties of a real estate licensee.

IV

On or about February 23, 2004, in the Las Vegas Municipal Court, State of Nevada, Respondent was convicted of petit larceny, a crime involving moral turpitude and/or which is substantially related under Section 2910 of the Regulations to the qualifications, functions or duties of a real estate licensee.

V

On or about March 22, 2006, in the Superior Court of California, County of Kern, Respondent was convicted of violation of California Vehicle Code Section 8804 (Owning a Vehicle Not Legally Registered in California), a crime involving moral turpitude and/or which is substantially related under

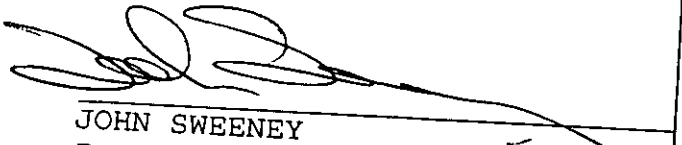
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1 Section 2910 of the Regulations to the qualifications, functions  
2 or duties of a real estate licensee.

3  
4 VI

5 Respondent's criminal convictions, as alleged in  
6 Paragraphs III through V above, constitute cause for denial of  
7 Respondent's application for a real estate license under  
8 Sections 480(a) and 10177(b) of the California Business and  
9 Professions Code.

10 WHEREFORE, the Complainant prays that the above-  
11 entitled matter be set for hearing and, upon proof of the  
12 charges contained herein, that the Commissioner refuse to  
13 authorize the issuance of, and deny the issuance of, a real  
14 estate salesperson license to Respondent, and for such other and  
15 further relief as may be proper under other provisions of law.

16  
17   
18 JOHN SWEENEY  
19 Deputy Real Estate Commissioner

20 Dated at Fresno, California,  
21 this 14<sup>th</sup> day of June, 2006.  
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24  
25  
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27