

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAY 13 2004

DEPARTMENT OF REAL ESTATE

By *Jean Brunel*

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In the Matter of the Accusation of)
MARCELO ANDRES CAMPOS,)
Respondent.)

NO. H-2954 SD

OAH NO. L-2004030054

DECISION

The Proposed Decision dated April 13, 2004, 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 June 3, 2004.

IT IS SO ORDERED April 22, 2004.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MARCELO ANDRES CAMPOS,

Respondent.

Case No. H-2954 SD

OAH No. L2004030054

PROPOSED DECISION

On April 6, 2004, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Deidre L. Johnson, Counsel, represented complainant.

John Patrick Murphy, Attorney at Law, represented respondent.

The matter was submitted on April 6, 2004.

FACTUAL FINDINGS

1. J. Chris Graves, Deputy Real Estate Commissioner of the State of California (hereafter, "Department") filed Accusation No. H-2954 SD in his official capacity on January 24, 2004. Respondent filed a timely Notice of Defense.

2. The Department issued real estate salesperson license number 01260114 to respondent in 1999.

3. On March 17, 2003, in the San Diego Superior Court, respondent pled guilty and was convicted of one count of violating Vehicle Code section 23152(b), driving with a blood alcohol level of .08 percent or higher, with one prior, a misdemeanor. The court placed respondent on probation for five years on condition, among others, he serve 365 days in custody, stayed but serve 96 hours in custody, pay fines and fees in the amount of \$1,373.00, complete a Multiple Conviction Alcohol Program, attend a MADD impact panel, and his driver's license was restricted. On April 2, 2003, the court modified probation and required him to contact the alcohol program by April 9.

Respondent committed the offense on January 15, 2003. He informed the Department on its Conviction Detail Report form he had been drinking with friends on a boat and did not think he had had much to drink, but he was stopped, given a field sobriety test, and arrested. He admitted he made a bad decision to drink and then drive.

4. On May 28, 2002, in the San Diego County Superior Court, respondent pled guilty and was convicted of one count of violating Vehicle Code section 23152(a), driving under the influence of alcohol, a misdemeanor. The court placed respondent on probation for five years on condition, among others, he serve 180 days in custody, suspended, pay fines and fees in the amount of \$1,300.00, complete 20 days in a Public Service Work Program, complete the first conviction program and the MADD panel, and his driver's license was restricted for three months.

Respondent committed the offense on October 17, 2001. He indicated to the Department he decided to have a few beers after work and was stopped on his way home.

5. On May 24, 2001, in the San Diego County Superior Court, respondent pled guilty and was convicted of violating Vehicle Code section 22107, unsafe turn, Vehicle Code section 21658(a), straddling lanes, and Penal Code section 647(f), drunk in public. The court placed respondent on probation for three years and fined him a total of \$850.00. The court required him to attend the MADD panel.

Respondent committed these offenses on March 28, 2001. He informed the Department he attempted to pass a car and made a U-turn, he lost control of his car and it came to a stop in the bushes, and when the police arrived, they determined he had been drinking and his blood alcohol level was 0.07 percent. He indicated he did not think this was much of a crime.

6. Respondent's convictions of violating Vehicle Code sections 23152(a) and (b), and Penal Code section 647(f), involve moral turpitude and are substantially related to the qualifications, functions, or duties of a real estate salesperson. Title 10, California Code of Regulations, sections 2910(a)(10) and (11).

7. On April 10, 2003, respondent signed a Salesperson Renewal Application and submitted it to the Department. Question number 3 of the application asks:

Within the past four year period, have you ever 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 do not constitute a misdemeanor or a felony.

Respondent answered question number 3 by checking the "No" box. Question number 15 asks for a detailed explanation of question number 3. Below the question is a grid and blank lines. Respondent filled in two boxes by disclosing his 2002 and 2003 driving

under the influence convictions. He then listed a car accident for which he was not at fault and a speeding ticket. Neither of these matters were the convictions he suffered in 2001.

8. Respondent is 35 years of age. He was born in Santiago, Chile, moved to Caracas, Venezuela when he was four, and came to the United States when he was 18. He and his family lived in San Francisco first, where he worked as a dishwasher, and then moved up in the restaurant business until he became a chef. He moved to Lake Tahoe where he ran a restaurant and gave water skiing lessons. He came to San Diego but was unable to find a job in the restaurant business. He found a job working for Seacoast Equities processing loans. He worked there for a year and then obtained his license. He continued to work there selling homes, and then moved to Ameribank, where he worked for a year. He sold homes and handled loans.

Respondent began working for Advantage Real Estate Consultants in August 2000. The office also operates under the business name of First American Mortgage.

9. In connection with his two driving under the influence convictions, respondent paid all the fines. He completed the first offender program which lasted six months and the MADD panel. He has completed fourteen months of the 18-month multiple offender program. During the first twelve months of that program, he attended weekly individual and group counseling sessions and education classes. He has been attending two A.A. meetings a week but will reduce that to once a month when he begins the re-entry portion of the program. He expects to get his driver's license back shortly.

Respondent testified he stopped drinking after his 2003 conviction because he realized he would lose everything if he continued to drink. He testified he has a lot of responsibilities, including helping to support his mother who lives in Venezuela. His father and two of his brothers died within the last several years.

10. Respondent's understanding of English is somewhat limited. He testified he became confused when he filled out the renewal application and he tried to fill it out as best as he could. He put down a car accident because he thought that was asked of him and he testified he would have put down the drunk in public conviction if he knew that was being asked. He pointed out he had no reason to hide this conviction. He explained he had not much communication with his attorney during the first case and he thought the charges had been dropped to reckless driving.

11. In December 2003, respondent went to the Substance Abuse Evaluation Resource Center Corporation in San Diego to be assessed due to his driving under the influence convictions. Theodore W. Walker, a case manager, did the assessment and wrote a report. He used a variety of testing tools. He found respondent was engaged in the principles of his behavior modification program, and he indicated respondent had embraced sobriety and was addressing his high risk behaviors with a sense of commitment. He found no evidence of alcohol or drug dependency.

12. Respondent submitted a number of letters. G. R. Arnold is respondent's broker and president of First American Mortgage, Inc. He wrote respondent had always tried to comply with Department regulations as well as office policy and procedures and he felt respondent's failure to disclose one of his convictions must have resulted from a misunderstanding of what was required of him.

Mai Owens has been dating respondent for six months and has been driving him to work. She has not seen respondent drink, and further, has seen him make sure no one he knows drinks and drives. She wrote respondent is hard working and passionate about his job, and he accepted responsibility for his mistakes.

Several letters from colleagues and a mentor in the real estate field praised his work and his efforts at sobriety.

13. Section 2912 of Title 10 of the California Code of Regulations sets forth the Department's criteria of rehabilitation. The evidence disclosed respondent's convictions are very recent and he remains on probation. He was convicted twice of driving under the influence while he was on probation. He completed one course but that did not deter him from drinking and driving. He is presently completing the second course.

Respondent presented little evidence of rehabilitation. He testified he no longer drinks and supported that with some sort of assessment report. Respondent's employing broker did not testify but did submit a letter in his behalf.

Respondent recognizes he has a drinking problem but he does not appear to be committed to treatment through A.A. He has read the twelve steps but has not implemented them. He does not have a sponsor. If respondent hopes to continue to work in real estate, he must make more of a commitment to remain sober.

The evidence showed respondent was convicted of driving under the influence on two occasions, and the drunk in public conviction resulted from a traffic accident caused by respondent's drinking. Such convictions are a concern because real estate salespersons frequently drive clients to view homes. Respondent, however, works as a loan officer and therefore has less of a need to drive as part of his professional duties. While respondent's actions are sufficient to warrant the imposition of discipline, revocation of his license is not warranted. The most appropriate penalty is for the Department to issue a restricted license to respondent, with additional conditions directed toward his alcohol problem.

LEGAL CONCLUSIONS

1. Cause to revoke or suspend respondent's real estate salesperson's license for violation of Business and Professions Code sections 490 and 10177(b), conviction of crimes involving moral turpitude and substantially related to the qualifications, functions, and duties of a real estate salesperson, was established by reason of Findings 3 through 6.

2. Cause to revoke or suspend respondent's real estate salesperson's license for violation of Business and Professions Code sections 498 and 10177(a), failure to disclose his public intoxication conviction, was established by Factual Findings 5 and 7.

Little weight, however, is placed on this violation. Respondent disclosed the more serious offenses on his renewal application. The conviction is a relatively minor one, and his explanation that he was confused appeared to be truthful. As he testified, he had no reason to hide this conviction while at the same time disclosing the driving under the influence convictions.

3. Cause for issuance of a restricted real estate salesperson license was established by reason of Findings 8 through 13.

ORDER

All licenses and licensing rights of respondent Marcelo Andres Campos under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to the respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of section 10156.6 of said Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions attaching to the restricted license until three (3) years have elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker, on a form approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commission that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
6. Respondent shall abstain completely from the use of products or beverages containing alcohol.
7. Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon the request of the Commissioner or his designee. A certified copy of any laboratory test results may be received in evidence in any proceedings between the Department and respondent. Failure to submit to, or failure to complete the required biological fluid testing, is a violation of probation.
8. Upon his completion of the multiple offender program, respondent shall submit evidence of his completion of the program to the Department. Respondent shall complete the multiple offender program within one year of the effective date of this decision.

9. Each week while respondent holds a restricted license, respondent shall be required to attend at least one 12-step recovery meeting such as Alcoholics Anonymous or an equivalent type of meeting. Respondent shall submit dated and signed documentation confirming such attendance to the Department at three month intervals.

DATED: 4/13/04



ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

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

FILED
MAR 16 2004

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of

MARCELO ANDRES CAMPOS,

Respondent

Case No. H-2954 SD

OAH No. L-2004030054

NOTICE OF HEARING ON ACCUSATION

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
1350 FRONT STREET, ROOM 6022
SAN DIEGO, CA 92101**

on **APRIL 6, 2004**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation 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.

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: MARCH 15, 2004

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

LARRY A. ALAMAO, Counsel
State Bar No. 47379
Department of Real Estate
P. O. Box 187000
Sacramento, CA 95818-7000
Telephone: (916) 227-0789

FILED
JAN 24 2004

DEPARTMENT OF REAL ESTATE

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
MARCELO ANDRES CAMPOS,)	NO. H-2954 SD
Respondent.)	<u>ACCUSATION</u>

The Complainant, J. CHRIS GRAVES, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against MARCELO ANDRES CAMPOS is informed and alleges as follows:

I

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

II

The Complainant, J. CHRIS GRAVES, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondent in his official capacity.

1 III

2 Respondent's real estate salesperson license was due to
3 expire on or about May 19, 2003. Respondent made application to
4 the Department of Real Estate of the State of California
5 (hereafter the Department) for a renewal real estate salesperson
6 license on or about April 14, 2003. In response to Question 3 of
7 said application, to wit: "Within the past four year period, have
8 you been convicted of any violation of law?", Respondent answered
9 "Yes," and disclosed the convictions alleged in Paragraphs IV and
10 V below. Respondent failed to disclose the conviction alleged in
11 Paragraph VI below.

12 IV

13 On or about March 17, 2003, in the Superior Court,
14 County of San Diego, Respondent was convicted of a violation of
15 Section 23152(b) of the California Vehicle Code (Driving While
16 Under the Influence), a crime involving moral turpitude which
17 bears a substantial relationship under Section 2910, Title 10,
18 California Code of Regulations, to the qualifications, functions,
19 or duties of a real estate licensee.

20 V

21 On or about May 28, 2002, in the Superior Court, County
22 of San Diego, Respondent was convicted of a violation of Section
23 23152(a) of the California Vehicle Code (Driving While Under the
24 Influence), a crime involving moral turpitude which bears a
25 substantial relationship under Section 2910, Title 10, California
26 Code of Regulations, to the qualifications, functions, or duties
27 of a real estate licensee.

1 VI

2 On or about May 24, 2001, in the Superior Court,
3 County of San Diego, Respondent was convicted of violation of
4 Sections 22107 (Unsafe Turn) and 21658a (Lane Violations) of the
5 California Vehicle Code and Section 647(f) of the California
6 Penal Code (Public Intoxication), crimes involving moral
7 turpitude which bear a substantial relationship under Section
8 2910, Title 10, California Code of Regulations, to the
9 qualifications, functions, or duties of a real estate licensee.

10 VII

11 The facts alleged in Paragraphs IV, V and VI above
12 constitute cause, jointly and severally, under Sections 490 and
13 10177(b) of the Code for suspension or revocation of all
14 license(s) and license rights of Respondent under the Real
15 Estate Law.

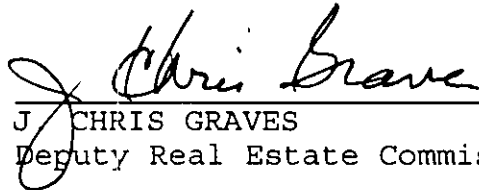
16 VIII

17 Respondent's failure to reveal the conviction alleged
18 in Paragraph VI above in said application for license renewal
19 constitutes the procurement of a real estate license by fraud,
20 misrepresentation, or deceit; and/or by making a material
21 misstatement of fact; and/or by knowingly omitting to state a
22 material fact in said application; and constitutes cause under
23 Sections 498 and 10177(a) of the Code for suspension or
24 revocation of all licenses and license rights of Respondent under
25 the Real Estate Law.

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27 ///

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

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11 
12 J. CHRIS GRAVES
13 Deputy Real Estate Commissioner
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15 Dated at San Diego, California,
16 this 15th day of January, 2004
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