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FILED
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
By Anne Shaw

* * *

In the Matter of the Application of)
RYAN ORTEGA,) NO. H-3170 SD
Respondent.) N-2005040303

DECISION

The Proposed Decision dated August 24, 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. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon on October 10, 2005.

IT IS SO ORDERED 9-14, 2005.

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

RYAN ORTEGA,

Applicant/Respondent.

Case No. H-3170-SD

OAH No. L2005040303

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 23, 2005, in San Diego, California.

Truly Sughrue, Counsel, represented complainant J. Chris Graves, a Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Applicant/Respondent Ryan Ortega represented himself and was present throughout the administrative hearing.

The matter was submitted on August 23, 2005.

FACTUAL FINDINGS

*Jurisdictional Matters -
The Motion to Continue*

1. On December 3, 2003, applicant/respondent Ryan Ortega (Ortega or respondent) filed his application for a real estate salesperson's license with the Department of Real Estate (the Department). Ortega disclosed three felony convictions.
2. Between December 2003 and February 2005, the Department obtained certified court documents related to Ortega's convictions. On February 28, 2005, as part of the Department's investigation into his qualifications to hold a real estate salesperson's license, Ortega submitted a confidential interview information statement.
3. On March 8, 2005, complainant J. Chris Graves, a Deputy Real Estate Commissioner, Department of Real Estate, State of California, signed the Statement of Issues

in his official capacity. The Statement of Issues and other required jurisdictional documents were served on Ortega.

On April 1, 2005, Ortega signed a Notice of Defense on Application that was timely filed with the Department. In that notice, Ortega advised that he did not intend to be represented by counsel at that time.

4. An administrative hearing was set for June 16, 2005. Shortly before the hearing, Ortega retained counsel who requested a continuance. That request was granted and the hearing was continued to August 9, 2005. Shortly before that date, Ortega's attorney requested a continuance due to a recent injury which made it impossible for him to appear. That request was granted and the hearing was continued to August 23, 2005.

5. Ortega terminated his attorney's services on August 19, 2005.

6. On August 23, 2005, the administrative record was opened and jurisdictional documents were presented. Ortega requested a continuance on two grounds: (1) he needed time to secure the services of a new attorney and (2) several character witnesses, including DEA Agent Keith Spitchley, could be called to testify if the continuance were granted. The Department opposed the request for a continuance. Both Ortega and his father were present to testify concerning Ortega's rehabilitation. In addition, a stipulation was admitted regarding Spitchley's testimony. Factual Finding 20, below. Good cause was not shown and the request for a continuance was denied. Documentary evidence and sworn testimony was received, closing arguments were given, the record was closed and the matter was submitted.

The Application for Licensure

7. On December 3, 2003, Ortega applied to the Department for the issuance of a real estate salesperson license.

8. Question 25 in that application asked:

"HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE."

Ortega marked the "YES" box below that question.

Question 27 asked for detailed explanations related to any violation of law.

Ortega listed three felony convictions and provided numerous details concerning those convictions.

Ortega signed the application under penalty of perjury on August 4, 2003.

Ortega's Convictions and Sentences

9. On May 23, 1995, Ortega was convicted on his plea of guilty of violating Health and Safety Code section 11379, subdivision (a) (Transportation of a Controlled Substance), a felony and a crime involving moral turpitude, in the Superior Court of California, County of San Diego, in Case No. SCD110801 entitled *People of the State of California v. Ryan Madulid Ortega, aka Ryan Ortega*.

On September 18, 1995 (pursuant to a nunc pro tunc order dated April 10, 1996), probation was denied and Ortega was committed to the Department of Corrections for a term of two years, which was to be served consecutively with the sentence imposed in Case No. SCD1132804.

10. On September 18, 1995, Ortega was convicted on his plea of guilty of violating Health and Safety Code section 11378 (Possession for Sale of a Controlled Substance), a felony and a crime involving moral turpitude, in the Superior Court of California, County of San Diego, in Case No. SCD1132804 entitled *People of the State of California v. Ryan Madulio Ortega*.

On September 18, 1995 (pursuant to a nunc pro tunc order dated February 8, 1996), probation was denied and Ortega was committed to the Department of Corrections for a term of two years eight months, which was to be served consecutively with the sentence imposed in Case No. SCD110801.

11. Following his sentencing, Ortega was incarcerated in the Department of Corrections through April 22, 1997, when he was released on parole. Ortega received an early discharge from parole in May 1998.

12. On November 20, 2002, Ortega was convicted of violating Health and Safety Code section 11279, subdivision (a) (Transportation of a Controlled Substance), a felony and a crime involving moral turpitude, in the Superior Court of California, County of San Diego, in Case No. SCD167953 entitled *People of the State of California v. Ryan Madulio Ortega, aka Ryan Madulid Ortega*.

On July 1, 2003, Ortega was granted five years summary probation, which expires on June 30, 2008. The sentencing court retained jurisdiction in the matter. Ortega was ordered not to commit the same or similar violations while on probation.

13. Ortega remains on summary probation, which expires in June 2008, unless it is revoked or terminated before then. No evidence established any violation of probation. Ortega testified he has remained law abiding while on probation.

14. Ortega's convictions have not been expunged under Penal Code section 1203.4.

The Confidential - Interview Information Statement

15. The Department of Real Estate contacted Ortega concerning his convictions. In response, Ortega filed a Confidential - Interview Information Statement (RE Form 515) dated February 8, 2005. In that statement, Ortega listed his recent employers, his educational background, and other matters. He admitted all of his prior convictions.

In statement, Ortega wrote:

"I truly appreciate you time and help with my situation. As you can see, I have a troubled past. All of my charges with the exception of the last one occurred in 1994 and 1995. Since then I have worked with the San Diego DA's office and the DEA to change my behavior and prove that I can be a productive citizen in society. If needed, the agents and Deputy District Attorney that I've worked with can vouch and speak on my change in behavior and provide their professional opinions. I look forward to our meeting and can explain in more detail the sequence of events in my past . . .

I know my past has lengthy convictions, it was all in a period of time when I truly wasn't myself. I hope we have a chance to meet, along with letters from the DA's office and the DEA to show the person I am now is not the same as I was then in the past"

Ortega's Testimony and Other Evidence

16. Ortega was born on September 3, 1974, in the Philippines. He grew up in the Philippines, Guam and Washington, as his father was in the U. S. Navy. Ortega moved to San Diego with his family in 1982. He attended schools in the San Diego area and graduated from Summit High School in 1992.

After high school, Ortega attended Southwestern Community College and worked in the optical department at the Price Club for approximately three years.

17. Ortega began using methamphetamine around the time he graduated from high school. He associated with other drug users in his neighborhood and became addicted. Ortega testified he began using methamphetamine on a daily basis. He began transporting and selling methamphetamine to support himself and his habit.

On February 17, 1995, Ortega was arrested for transporting methamphetamine following a traffic stop. On May 31, 1995, Ortega was convicted of possession of methamphetamine for sale. Ortega served time at the R.J. Donovan State Prison, at the fire camp training facility in Jamestown, at the Department of Corrections fire camp in Riverside. Ortega was paroled in April 1997 and remained on parole for a year.

Ortega did not use drugs while he was in prison or on parole.

18. Ortega and a friend opened a coffee business at the Plaza Bonita Mall. Ortega was not particularly sensible and purchased the business without knowing that the equipment was not part of the sale. When the prior owner of the coffee business defaulted on payments for equipment, the equipment was repossessed and Ortega's coffee business went broke.

19. Ortega was very upset and had no idea what to do. He began selling and using drugs again. On June 11, 2002, Ortega and several others were arrested for transporting about four pounds of methamphetamine.

20. Following his arrest, Ortega cooperated with the district attorney's office and with the DEA. It was stipulated that if DEA Agent Keith Spitchley were called to testify, he would have stated that Ortega provided the DEA with valuable information, severed his ties with his past associates, and appeared to turn his life around.

21. Ortega testified he stopped using methamphetamine as a result of going to prison, and then began using methamphetamine again after his coffee business failed. He associated with persons in his neighborhood who used and sold drugs and he became addicted to the easy money associated with the lifestyle.

22. Following his most recent arrest, Ortega stopped associating with persons who used or sold drugs, cooperated with law enforcement, married, became a stepfather to a young girl, had a son of his own, dedicated himself to his family, purchased a home, helped his father, mother and sister, maintained gainful employment in real estate related fields (being a courier, contract processing), and devoted himself to the Catholic church.

23. Francisco Ortega, Ortega's father, honorably served in the U.S. Navy for many years. He was frequently away from home and was not aware of his son's drug problem until his son was arrested at home in May 1995 and the family home was searched. While he was not aware of his son's drug addiction, he was aware that his son had very little to do with the family at that time and appeared to be self-absorbed.

Ortega learned quite a bit in prison, according to his father. Since his son's most recent arrest, Ortega is not at all the same person. His father testified that the way his son talks, conducts himself, protects his family and interacts with loved ones is totally different now. His son has done an excellent job of rehabilitating himself and, unlike before, has a great deal to lose by returning to his old ways. His son is open and truthful.

The father, who is a licensed real estate broker, would provide close supervision if Ortega were to become licensed.

24. Ortega's interest in the real estate profession was sparked when he began working as a courier, a position he held for about a year. Ortega worked for nearly two years

for United Standard Funding, a mortgage brokerage, where he became familiar with the mortgage loan industry. Since then, Ortega has been self-employed as a contract processor, an unlicensed position in which he assists loan officers and mortgage brokers to assemble and process loan documents.

Evaluation

25. Ortega does not have any theft-related offenses, but he has experienced substantial problems relating to the transportation and sale of methamphetamine. He has three felony convictions involving moral turpitude in the past decade, the most recent of which occurred in November 2002 and for which he remains on probation. While Ortega's involvement in the drug trade is hopefully a thing of the past, his return to dealing after two and a half years in state prison established how powerful a hold that lifestyle has. His convictions have not been expunged.

Ortega cooperated with law enforcement after his last arrest, which likely resulted in his being granted five years summary probation rather than a prison sentence. He has been gainfully employed since his last arrest. Ortega was truthful in admitting his convictions to the Department and he was candid in his testimony at this hearing. He has totally changed his associates and he has demonstrated a strong commitment to his family and to his faith. He has not used drugs. Ortega expressed a significant change in attitude.

As promising as the future appears to be, it cannot be concluded that it would be in the public interest to issue Ortega a real estate salesperson's license at this time, even on a restricted basis. He has too many recent, serious convictions. More time must pass to assess his rehabilitation.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show that he or she is qualified to hold the license. The standard of proof is a preponderance of the evidence. See, *California Administrative Hearing Practice* (Second Edition), "The Hearing Process," sections 7.51-7.53, pp. 365-367, and the cases cited therein.

Applicable Statutes

2. Business and Professions Code section 480 provides in pertinent part:

"(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. . .

...

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 . . .”

3. Business and Professions Code Section 10177 provides in pertinent part:

“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 . . .”

Moral Turpitude/Substantial Relationship

4. Conviction alone will not support a denial of a license unless the crime substantially relates to the qualifications, functions, or duties of the business or profession in question. Honesty and truthfulness are two qualities deemed by the Legislature to bear on one’s fitness and qualification to be a real estate licensee. If an offense reflects unfavorably on an individual’s honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson. The Legislature intended to ensure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear. *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.

5. A conviction of possession of drugs for sale is a crime that is substantially and adversely related to the qualifications of a real estate licensee. See, *Golde v. Fox* (1979) 98 Cal.App.3d 167 [concluding a conviction of possession of marijuana for sale was grounds to revoke a real estate broker’s license].

6. While simple possession of narcotics does not necessarily involve moral turpitude, possession for sale does pass the test. The trait involved is not dishonesty but rather the intent to corrupt others. Anything that is related to trafficking is more serious than possessing. *Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1027.

7. California Code of Regulations, title 10, section 2910, subdivision (a), sets forth various criteria of substantial relationship which state “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 [Business and Professions] Code if it involves “(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator . . .” and “(10) Conduct which demonstrates a pattern of repeated and willful disregard of law.”

8. Ortega's three felony convictions were substantially and adversely related to the functions, qualifications and duties of a licensed real estate salesperson because they involved moral turpitude as a matter of law, Ortega knowingly committed the offenses for the purpose of his own economic benefit and the offenses constituted a pattern of repeated and willful disregard of law.

This conclusion is based on Factual Findings 1, 7-14, 17 and 19 and on Legal Conclusions 1-6.

Rehabilitation

9. Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." *Pachecho v. State Bar* (1987) 43 Cal.3d 1041, 1058.

10. The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. *Kwasnik v. State Bar* (1990) Cal.3d 1061, 1070.

11. Title 10, California Code of Regulations, section 2911 sets forth various criteria of rehabilitation. Those criteria are discussed and evaluated in Factual Findings 1, 7, 8, 13, 14 and 20-25.

Cause Exists to Deny the Application

12. Cause exists to deny Ortega's application for a real estate salesperson's license under Business and Professions Code sections 480 and 10177.

Ortega was convicted of three felonies involving moral turpitude between May 23, 1995 and November 20, 2002. The convictions have not been dismissed. Ortega remains on summary probation. The three felony convictions, taken together, established a substantial and adverse relationship to Ortega's capacity to hold a real estate salesperson license because they demonstrated a fairly recent, continuing pattern of willful disregard of the law.

On balance, an insufficient showing was made to conclude that Ortega has rehabilitated himself and possesses sufficient moral character to the extent that it would be in the public interest to issue him a real estate salesperson's license at this time, even if it were issued on a conditional basis. Ortega is to be commended for his outstanding efforts to rehabilitate himself since June 2002.

This conclusion is based on Factual Findings 1 and 7-25 and on Legal Conclusions 1-10.

Good Cause Did Not Support Granting a Continuance

13. Government Code section 11524 provides in part:

“(a) The agency may grant continuances. When an administrative law judge of the Office of Administrative Hearings has been assigned to the hearing, no continuance may be granted except by him or her or by the presiding judge of the appropriate regional office of the Office of Administrative Hearings, for good cause shown.

(b) When seeking a continuance, a party shall apply for the continuance within 10 working days following the time the party discovered or reasonably should have discovered the event or occurrence which establishes the good cause for the continuance. A continuance may be granted for good cause after the 10 working days have lapsed if the party seeking the continuance is not responsible for and has made a good faith effort to prevent the condition or event establishing the good cause . . .”

14. In exercising the power to grant continuances, an administrative law judge must be guided by the same principles applicable to continuances generally in adjudicative settings. In this respect the litany must be that “continuances be granted sparingly, nay grudgingly, and then only on a proper and adequate showing of good cause.” In general, a continuance for a short and certain time is less objectionable than a continuance for a long and uncertain time, and obviously there must be a substantial showing of necessity to support a continuance into the indefinite future. But the factors which influence the granting or denying of a continuance in any particular case are so varied that the trial judge must necessarily exercise a broad discretion. And, since it is impossible to foresee or predict all of the vicissitudes that may occur in the course of a contested proceeding, the determination of a request for a continuance must be based upon the facts and circumstances of the case as they exist at the time of the determination. *Arnett v. Office of Administrative Hearings* (1996) 49 Cal.App.4th 332, 342-343.

15. It was not an abuse of discretion to deny a licensee’s request for a continuance on the first day set for the administrative hearing to enable the licensee to seek counsel. See, *Skipitar v. Munro* (1959) 175 Cal.App.2d 1.

16. Good cause was not established under Government Code section 11524 to continue the hearing.

Ortega initially retained counsel at the last minute. Counsel obtained a continuance to prepare for hearing. That hearing was continued again due to counsel’s unfortunate injury. Ortega terminated his relationship with counsel on the eve of this hearing, and sought a continuance on the basis that he needed counsel to present his case. The Department stipulated to the testimony of DEA Agent Keith Spitchley in opposing the motion for a continuance. The hearing did not involve significant legal issues requiring the assistance of counsel. Ortega had the opportunity to produce his testimony and that of his father on the issue of rehabilitation. Given the nature of Ortega’s convictions and the date of those

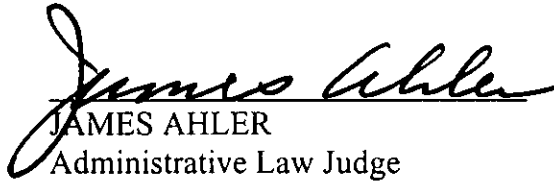
convictions, the cumulative testimony of other character witnesses would have had little impact on the outcome.

This conclusion is based on Factual Findings 4-6 and Legal Conclusions 12-14.

ORDER

The application for the issuance of a Real Estate Salesperson License filed by Ryan Ortega with the Department of Real Estate on December 3, 2003, is denied.

DATED: 8/24/05.


JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

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FILED

MAR 16 2005

DEPARTMENT OF REAL ESTATE

By Jean Arment

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Application of)
12 RYAN ORTEGA,)
13 Respondent.)

No. H- 3170 SD

STATEMENT OF ISSUES

15 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against RYAN ORTEGA (hereinafter "Respondent"), is informed and
18 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 December 3, 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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27 \\\

1 II

2 Complainant, J. CHRIS GRAVES, 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 February 8, 1996, in the Superior Court,
7 County of San Diego, Respondent was convicted of a violation of
8 Section 11378 of the California Health and Safety Code
9 (Possession of a Controlled Substance for Sale), a crime
10 involving moral turpitude which bears a substantial relationship
11 under Section 2910, Title 10, California Code of Regulations, to
12 the qualifications, functions, or duties of a real estate
13 licensee.

14 IV

15 On or about April 10, 1996, in the Superior Court,
16 County of San Diego, Respondent was convicted of a violation of
17 Section 11379(a) of the California Health and Safety Code
18 (Transporting Controlled Substance), a crime involving moral
19 turpitude which bears a substantial relationship under Section
20 2910, Title 10, California Code of Regulations, to the
21 qualifications, functions, or duties of a real estate licensee.

22 V

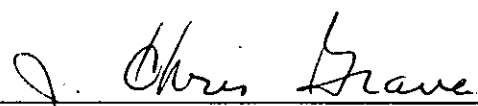
23 On or about July 1, 2003, in the Superior Court, County
24 of San Diego, Respondent was convicted of a violation of Section
25 11379(a) of the California Health and Safety Code (Transporting
26 Controlled Substance), a crime involving moral turpitude which
27 bears a substantial relationship under Section 2910, Title 10,

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

3 VI

4 The crime of which Respondent was convicted, as alleged
5 above, constitutes cause for denial of Respondent's application
6 for a real estate license under Sections 480(a) and 10177(b) of
7 the California Business and Professions Code.

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

14
15 
16 J. CHRIS GRAVES
Deputy Real Estate Commissioner

17 Dated at San Diego, California,
18 this 8th day of March, 2005.