

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
FEB - 6 2004

DEPARTMENT OF REAL ESTATE

* * *

In the Matter of the Application of)
MARIO JOHN GATTAVARA,)
Respondent.)

NO. H-3898 SAC

N-2003100655

By: *K. P. Contreras*

DECISION

The Proposed Decision dated January 14, 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 application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon
on February 26, 2004.

IT IS SO ORDERED February 3, 2004.

Real Estate Commissioner

By:

John R. Liberator
JOHN R. LIBERATOR
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

MARIO JOHN GATTAVARA

Petitioner.

Case No. H-3898 SAC

OAH No. N2003100655

PROPOSED DECISION

On December 16, 2003, in Sacramento, California, Leonard L. Scott, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Larry A. Alamao, Counsel, represented the complainant.

Mario John Gattavara, respondent, appeared in his own behalf.

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

FACTUAL FINDINGS

1. Charles W. Koenig (Koenig), Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California, filed the Statement of Issues against respondent. Koenig acted in his official capacity.
2. On or about January 9, 2003, respondent filed an application for licensure as a real estate salesperson with the Department.
3. On or about January 2, 2001, in the Superior Court, County of Butte, State of California, in the matter entitled People v. Mario John Gattavara, case number SCR-33564, respondent was convicted, on his plea of nolo contendere, of a violation of Penal Code section 459 (second degree commercial burglary), a misdemeanor and a crime involving moral turpitude. Respondent's crime is substantially related to the qualifications, functions and duties of the licensed activity pursuant to the criteria enumerated in Title 10, California Code of Regulations, section 2910. Imposition of sentence was suspended and respondent

was placed on summary probation for 36 months with various terms and conditions, and ordered to serve 7 days in jail.

The facts and circumstances of the offense are that on or about the night of December 16, 2000, respondent and an associate stopped at a convenience store. Respondent stayed in the car while his associate went inside, picked up an 18 pack of beer and left without paying. Respondent drove the car as they left. They were later apprehended the same night. The associate did not use or display a weapon during the theft.

On or about December 23, 2002, the Court granted respondent early termination of probation and relief from his conviction pursuant to Penal Code section 1203.4.

4. Respondent was born on October 3, 1982 and is now 21 years of age. He admitted and provided details regarding his criminal conviction on his real estate salesperson's license application. He was in the Navy, on leave, when he committed the crime and was discharged from the Navy as a result of the conviction, receiving what he calls an "entry level discharge".

Respondent has a job selling real estate with Thurman Clark, a licensed real estate broker, if he is granted a license. His potential employer is aware of respondent's criminal conviction. Until recently respondent was employed as a sales representative for a cleaning service, then he worked cleaning air ducts in buildings.

In addition to taking the courses required for licensure, respondent has taken a number of additional courses to prepare himself to work in real estate. Altogether he has taken the following courses approved by the Department: California Real Estate Principles (DRE Approval Number 1572-95); California Real Estate Appraisal (DRE Approval Number 877-87); California Real Estate Finance (DRE Approval Number 834-86); California Real Estate Escrow 1 (DRE Approval Number 848-87); and California Real Estate Mortgage Loan Brokering and Lending (DRE Approval Number 1573-95). It was not clear whether these courses satisfied the requirement regarding certain additional courses that must be completed within 18 months of licensure.

Respondent has clearly changed and matured since the crime. His determination to work in real estate was demonstrated by the fact that although he failed the real estate salesperson's license test three times, he kept taking it until he passed. He is so motivated toward a career in real estate that he has not only taken the above listed courses but he has also prepaid over a thousand dollars for advertising to run if he receives a license.

5. Respondent provided hearsay letters of support from his proposed employing real estate broker, from past employers and from his attorney in the criminal case.

LEGAL CONCLUSIONS

1. Respondent's crime is substantially related to the licensed activity pursuant to Title 10, California Code of Regulations, section 2910(a)(8) an unlawful act that conferred an economic benefit on respondent.

2. Respondent provided evidence of his efforts to rehabilitate himself pursuant to the standards enunciated in Title 10, California Code of Regulations, section 2911: (a) the passage of at least two years since the criminal act; (c) expungement pursuant to Penal Code section 1203.4; (e) successful completion and early discharge from probation; (g) payment of fines and penalties; (i) completion of, or sustained enrollment in, formal educational courses for economic self-improvement; and (n) change in attitude from that which existed at the time of the criminal conduct.

3. Although cause for denial of respondent's application for a Real Estate Salesperson's license was established for violation of Business and Professions Code sections 480(a) and 10177(b), as found in Finding 3, he established cause to grant him a restricted license as found in Legal Conclusion 2.

ORDER

The application of respondent Mario John Gattavara for a Real Estate Salesperson's License is denied pursuant to Legal Conclusion 3; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to the Respondent shall be subject to all of the provisions of 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 attaching to

the restricted license until two years have elapsed from the date of issuance of the restricted license to Respondent.

3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

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

(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. If respondent has not already satisfied this requirement, then 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 two of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.

5. Pursuant to Section 10154, if Respondent has not satisfied the requirements for an unqualified license under Section 10153.4, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

Dated: January 14, 2004


LEONARD L. SCOTT
Administrative Law Judge
Office of Administrative Hearings

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

FILED
NOV - 4 2003

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Application of

MARIO JOHN GATTAVARA,

Respondent

Case No. H-3898 SAC

OAH No. N-2003100655

NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at

**THE OFFICE OF ADMINISTRATIVE HEARINGS
560 J STREET, SUITES 340/360
SACRAMENTO, CALIFORNIA 95814**

on **DECEMBER 16, 2003**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: NOVEMBER 3, 2003

DEPARTMENT OF REAL ESTATE
By Larry Alamo
LARRY A. ALAMO, 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
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DEPARTMENT OF REAL ESTATE

B. Kathleen Contreras

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)
MARIO JOHN GATTAVARA,) NO. H-3898 SAC
Respondent.) STATEMENT OF ISSUES

The Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against MARIO JOHN GATTAVARA (hereinafter "Respondent"), is informed and alleges as follows:

I

Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about January 9, 2003.

II

Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity and not otherwise.

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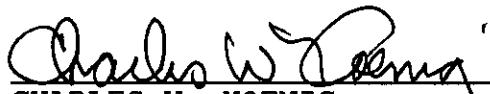
III

On or about January 2, 2001, in the Superior Court, County of Butte, Respondent was convicted of a violation of Section 459 of the California Penal Code (Burglary), a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

IV

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

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


CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 21st day of September, 2003.