

FLAG

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
APR 19 2007

DEPARTMENT OF REAL ESTATE
By L. Frost

* * *

In the Matter of the Application of)
ISIDRO AGUAYO, JR.,)
Respondent.)

CASE NO. H-4642 SAC
OAH NO. N2007010702

DECISION

The Proposed Decision dated March 22, 2007, 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 MAY 09 2007

IT IS SO ORDERED 4-17-07

JEFF DAVI
Real Estate Commissioner
Jeff Davi

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

ISIDRO AGUAYO, JR.,

Respondent.

Case No. H-4642 SAC

OAH No. N2007010702

PROPOSED DECISION

Administrative Law Judge M. Amanda Behe, Office of Administrative Hearings, State of California, heard this matter on March 15, 2007, in Sacramento, California.

John Van Driel, Counsel, appeared on behalf of complainant.

Respondent represented himself.

Evidence was received, the record was closed, and the matter was submitted on March 15, 2007.

FACTUAL FINDINGS

1. Complainant Charles Koenig made the Statement of Issues in his official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate.
2. On December 1, 2005, respondent Isidro Aguayo, Jr., filed an application with the Department for a real estate salesperson license.
3. On July 31, 2000, in the Calaveras County Superior Court, respondent was convicted of a violation of Penal Code section 261.5, subdivision (c), unlawful sexual intercourse with a minor more than three years younger, a felony. Respondent's first appearance in Superior Court in the matter occurred on July 26, 1999. On October 12, 1999, a bench warrant was issued pursuant to Penal Code section 1320, subdivision (a), for his failure to appear after he had been released on his own recognizance. The warrant was recalled on October 18, 1999. Respondent was sentenced to one year in county jail, placed on five years probation and ordered to complete a counseling program and pay various fines.

He paid the ordered fines and was released after only six months in jail. On July 25, 2005, Valley Community Counseling Services reported that respondent completed the court-ordered Adult Sex Offender Treatment Program.

The circumstances of the crime were that on June 27, 1999, respondent was present with his girlfriend at her home on the date of her younger sister's sixteenth birthday. Respondent was 19½ years old. He and the two girls, and others present, drank beer, wine and hard liquor apparently furnished by the girls' father. The 16-year-old girl became intoxicated and went to her bedroom where she passed out on the floor wearing a top and shorts. Respondent urged his girlfriend to have sex with him, but she refused because her father was at the house. Respondent, on the pretext of using the bathroom, went into the victim's bedroom, removed her shorts, and raped her.

Respondent's girlfriend entered the room after the act and respondent pretended to be looking for a blanket. The victim was unaware of the assault until the morning when she noticed her injury. The following day respondent's girlfriend asked respondent if he had sex with her sister and said that deputies had the panties the victim was wearing. Respondent, who initially denied the act, admitted that he took off the victim's shorts, slid her panties aside, and had sex with her.

On December 12, 2005, respondent's petition to have his felony conviction reduced to a misdemeanor and for expungement of his conviction was granted by the court.

4. Respondent completed a Confidential Interview Information Statement on April 10, 2006. With regard to the rape he committed respondent wrote: "What I did was very unfortunate for the victim. I will never forget what I did, and I wish on nobody to experience what that person experienced." He also wrote that the girl's father threw a birthday party with alcohol and: "Everybody was drunk, including me. Towards the end of the night I got involved with that girl. She was very drunk and I was very drunk. We had sex."

With regard to his conviction respondent testified that he displayed "poor judgment" by waking the 16-year-old girl and having sex with her. When confronted with the information in the police reports that the girl was unconscious and had passed out he admitted that she was passed out, and then contradicted that statement with the claim that "she was not completely unconscious." Whatever "not completely unconscious" might mean, respondent's testimony, and the statement in his Confidential Interview Information Statement that he "got involved with" her, establish that he fails to fully acknowledge his crime. His equivocation demonstrates a lack of rehabilitation, irrespective of his success in obtaining an expungement.

5. Respondent testified that he wants a real estate license to help himself and his family. He is 27 years old and lives with his girlfriend, who is in her 40's, and her 26 year-

old son. Respondent plans to work for broker Hal Lurtsema of Prudential California Realtors; no letter or other communication from Mr. Lurtsema was offered.

Respondent received a GED certificate and AA degree in business from San Joaquin Delta Community College. He received a grade of "B" in Principles of Real Estate in the spring 2005 semester.

Respondent played Little League and high school baseball, and aspired to a professional baseball career. He played baseball in community college but failed to make the team in his one or two semesters at the University of California at Davis. He is no longer enrolled at Davis but hopes to complete a bachelor's degree. The only civic or community group he participates in is a baseball league.

Respondent currently overhauls engine parts for Aviation Associates, a job he has held two weeks, and he previously was a Comcast installer for six months. He testified that his longest employment was a year at Lowe's, and that he jumps from job to job but professional baseball is his dream.

Respondent wrote on his Confidential Interview Information Statement that he worked as a loan officer at Intercapital Mortgage from February to March 2006. He testified that he was a loan "originator" and the job involved making cold calls to homeowners to persuade them to refinance their mortgages. He opined that the job did not require a license, and that the broker said he "would back me up." Even after having taken a class in Principles of Real Estate and studying for the examination respondent could not identify the credential or license required for the position.

6. Respondent did not present any evidence of significant or conscientious involvement in community, church, or privately-sponsored programs designed to provide benefits or to ameliorate social problems. Respondent also presented no evidence from family members, friends or other persons familiar with his previous conduct and with his subsequent attitudes and behavioral patterns to show that he has experienced a change in attitude from that which existed at the time of his conviction.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), provides that an applicant may be denied a license for having been convicted of a crime that is substantially related to the qualifications, functions or duties of the business or profession for which the application was made. California Code of Regulations, title 10, section 2910, subdivision (a)(8) makes the "doing of any unlawful act with the . . . intent or threat of doing substantial injury to the person or property of another" a substantially related offense. Respondent's conviction is substantially related to the qualifications, functions or duties of a real estate licensee.

2. Business and Professions Code section 10177, subdivision (b), provides that a license may be denied to any applicant who has been convicted of a felony or a crime involving moral turpitude.¹ (See *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554.) “‘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.) Respondent’s conviction was for a crime involving moral turpitude, and is cause to deny his application.

In light of the access to unprotected minors in houses for sale, respondent’s crime is substantially related to the qualifications, functions or duties of a real estate licensee in accordance with Business and Professions Code section 480.² (*Petropoulos v. Department of Real Estate*, supra, 142 Cal.App.4th at 564-567; Cal. Cod Reg. tit. 10, section 2910.) The public interest would not be protected by issuance of even a restricted license.

3. California Code of Regulations, title 10, section 2911 sets forth criteria for determining whether an applicant who has previously been convicted of a crime has sufficiently rehabilitated to support the issuance of a license.³

¹ 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.

² Business and Professions Code section 480, in relevant part, provides:

(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. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

[¶]...[¶]

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 California Code of Regulations, title 10, section 2911 provides as follows:

Criteria of Rehabilitation (Denial).

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

Respondent has produced some evidence of rehabilitation, as evaluated by the rehabilitation criteria set forth in section 2911. His conviction was six years ago, but it was a felony involving rape of an unconscious minor. He has completed vocational training

issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

- (a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.)
- (b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.
- (c) Expungement of criminal convictions resulting from immoral or antisocial acts.
- (d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.
- (e) Successful completion or early discharge from probation or parole.
- (f) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.
- (g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.
- (h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.
- (i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.
- (j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.
- (k) Correction of business practices resulting in injury to others or with the potential to cause such injury.
- (l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- (m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.
- (n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:
 - (1) Testimony of applicant.
 - (2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.
 - (3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.
 - (4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.
 - (5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

courses for economic self-improvement. He presented no evidence of significant or conscientious involvement in community, church, or privately sponsored programs designed to provide benefits or to ameliorate social problems. Respondent presented no evidence from family members, friends or other persons familiar with respondent's previous conduct and with his subsequent attitudes and behavioral patterns to show that respondent has experienced a change in attitude from that which existed at the time of his convictions.

The burden is upon respondent to prove that he is entitled to the real estate salesperson license for which he has applied. Respondent has not met his burden of proof when all the factors set forth above are weighed and balanced.

ORDER

The application of respondent Isidro Aguayo, Jr., for the issuance of a real estate salesperson license is DENIED.

DATED: March 22, 2007


M. AMANDA BEHE

Administrative Law Judge
Office of Administrative Hearings

1 JOHN VAN DRIEL, Counsel (SBN 84056)
Department of Real Estate
2 P. O. Box 187007
Sacramento, CA 95818-7007

3
4 Telephone: (916) 227-0789
-or- (916) 227-0787 (Direct)

FILED

JAN 04 2007

DEPARTMENT OF REAL ESTATE

By *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 ISIDRO AGUAYO, JR.)
13 Respondent.)

No. H-4642 SAC

STATEMENT OF ISSUES

14
15 The Complainant, Charles Koenig, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against ISIDRO AGUAYO, JR. aka ISIDRO SALAS AGUAYO (hereinafter
18 "Respondent"), is informed and alleges as follows:

19 I

20 Complainant makes this Statement of Issues in his
21 official capacity.

22 II

23 Respondent made application to the Department of Real
24 Estate of the State of California for a real estate salesperson
25 license on or about December 1, 2005 with the knowledge and
26 understanding that any license issued as a result of said

27 ///

1 application would be subject to the conditions of Section 10153.4
2 of the Business & Professions Code.

3 III

4 On or about July 31, 2000, in the Calaveras County
5 Superior Court, Respondent was convicted of a violation of Penal
6 Code Section 261.5(c) (unlawful sexual intercourse w/ minor more
7 than 3 years younger), a felony involving moral turpitude and a
8 crime which bears a substantial relationship under Section 2910,
9 Title 10, California Code of Regulations, to the qualifications,
10 functions, or duties of a real estate licensee.

11 IV

12 The crime of which Respondent was convicted, as alleged
13 in Paragraph III, constitutes cause for denial of Respondent's
14 application for a real estate license under Sections 480(a) and
15 10177(b) of the California Business and Professions Code.

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

22
23
24 

25 CHARLES KOENIG
Deputy Real Estate Commissioner

26 Dated at Sacramento, California,
27 this 29th day of December 2006.