

flag

FILED

APR 05 2005

DEPARTMENT OF REAL ESTATE

By Jean Cronin

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

No. H-5258 SF

DAVID GUTIERREZ,

Respondent.

ORDER GRANTING REINSTATEMENT OF LICENSE

On November 17, 1982, a Decision was rendered herein revoking the real estate salesperson license of Respondent, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on May 4, 1983. Said restricted real estate salesperson license expired on May 3, 1987 and was not renewed thereafter.

On April 19, 2004, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

///

1 I have considered the petition of Respondent and the
2 evidence and arguments in support thereof including Respondent's
3 record as a restricted licensee. Respondent has demonstrated to
4 my satisfaction that Respondent meets the requirements of law for
5 the issuance to Respondent of an unrestricted real estate
6 salesperson license and that it would not be against the public
7 interest to issue said license to Respondent.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's
9 petition for reinstatement is granted and that a real estate
10 salesperson license be issued to Respondent if Respondent
11 satisfies the following conditions within nine months from the
12 date of this Order:

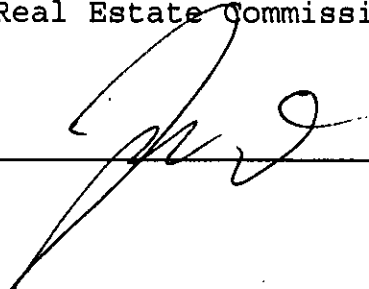
13 1. Submittal of a completed application and payment of
14 the fee for a real estate salesperson license.

15 2. Submittal of evidence of having, since the most
16 recent issuance of an original or renewal real estate license,
17 taken and successfully completed the continuing education
18 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
19 for renewal of a real estate license.

20 This Order shall be effective immediately.

21 DATED: 3-24, 2005.

22 JEFF DAVI
23 Real Estate Commissioner

24 
25
26
27

FILED
MAR 14 1983

DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Roshni R. Kalidin
Roshni R. Kalidin

In the Matter of the Accusation of) No. H-5258 SF
)
DAVID GUTIERREZ, aka) N 19991
DAVID JOSEPH GUTIERREZ,)
)
Respondent.)
)
)

DECISION

The Proposed Decision dated February 23, 1983, 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 April 4th, 1983.

IT IS SO ORDERED March 11, 1983.

DEPARTMENT OF REAL ESTATE

By:

W. Jerome Thomas
W. JEROME THOMAS

Acting Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
of:	)	NO. H-5258 SF
	)	
DAVID GUTIERREZ, aka	)	N-19991
DAVID JOSEPH GUTIERREZ,	)	
	)	
	)	
Respondent.	)	

PROPOSED DECISION

This matter came for hearing before Paul J. Doyle, Administrative Law Judge, State of California, Office of Administrative Hearings on February 14, 1983 in San Francisco, California.

Joseph McGovern, Counsel, represented the Department of Real Estate.

Respondent represented himself.

The matter was submitted and the following decision is herewith proposed and recommended for adoption:

FINDINGS OF FACT

I

Respondent David Gutierrez aka David Joseph Gutierrez is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).

II

At all times mentioned herein, respondent was licensed by the Department of Real Estate of the State of

California as a real estate salesperson. This license is scheduled to expire on or about June 27, 1984.

III

Complainant, Edward V. Chiolo, a Deputy Real Estate Commissioner of the State of California, acting in such official capacity and not otherwise, made the accusation herein.

IV

On or about July 12, 1982, In The Superior Court Of The State Of California, in And for The County Of Santa Clara, respondent entered a plea of nolo contendere. He was convicted of violating Section 11351 of the California Health and Safety Code (Possession For Sale); a felony.

V

The crime of which respondent was convicted, as found, is a felony; a crime involving moral turpitude and a crime which is substantially related to the qualifications, functions, or duties of a real estate licensee.

VI

The following supplemental facts were also established:

1. Respondent is 37 years of age, has been married for 15 years and has 3 dependent children ages 14, 10 and 7.
2. At the time of his arrest he was teaching in college, having previously received a Bachelor of Arts degree as well as 2 Master of Arts degrees.
3. To avoid embarrassment to the college and possibly to his family he resigned from the teaching position.
4. After such resignation he resorted to the full-time practice of real estate - and is doing well in residential and multiple unit sales. Prior to his resignation he practiced real estate since 1975 or 1976 on a periodic basis.
5. At the time of his arrest with another person respondent possessed approximately 1/2 ounce of cocaine,

together with at least the residue of other drugs as found in respondent's vehicle.

6. Respondent admits to having snorted "coke" (cocaine) for years prior to his arrest. Since the arrest he has not used non-prescription drugs of any kind. Also, since his arrest he has concentrated on rebuilding his life. He jogs extensively and has lost appreciable weight over the past year.

7. Mr. Gutierrez has fully paid the imposed fine of \$1500 plus a penalty of \$750 and has completed approximately half of his 200 hours required "volunteer" work. His criminal probationary period is scheduled to expire in September of 1984.

8. He has incurred no prior arrests or convictions with regard to illicit drugs and has incurred no known prior disciplinary action.

DETERMINATION OF ISSUES

Cause for the imposition of disciplinary action exists pursuant to provisions of Sections 490, 10177(b) and 10177(f) of the California Business and Professions Code.

ORDER

1. The license and licensing rights of respondent David Gutierrez, aka David Joseph Gutierrez, to act as a real estate salesperson in the State of California are hereby revoked.

2. A restricted real estate salesperson license shall, however, be issued to respondent pursuant to section 10156.5 of the Business and Professions Code, if respondent makes application therefor and pays the Department the appropriate fee for this license not earlier than 30 days from the effective date of this decision.

3. Such restricted license shall be subject to all the provisions of section 10156.7 of said Code as well as to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of said Code:

A. This restricted license 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 bears a

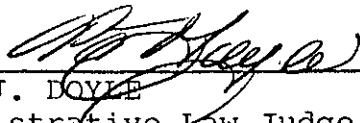
significant and/or substantial relationship to the respondent's fitness or capacity to act as a real estate licensee;

- B. Such restricted license may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated the provisions of the California Real Estate Law, the Subdivided Lands Law, regulations of the Real Estate Commissioner and/or conditions attaching to this restricted license;
- C. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate salesperson license nor the removal of any of the conditions, limitations or restrictions of said restricted license until one year has elapsed from the date of issuance of said restricted license;
- D. Respondent shall submit with his application for license under an employing broker --or his application for transfer to a new employing broker--a statement signed by the prospective employing broker, which shall certify:
 - (1) That he/she has read the decision of the Commissioner which granted the right to a restricted license; and
 - (2) That he/she will exercise close supervision over the performance by the restricted licensee of the activities for which a real estate license is required.
- E. Respondent shall report in writing to the Department as the Commissioner shall direct by his decision herein or by a separate writing issued while the restricted license is in effect. Such report shall concern respondent's activities for which a real estate salesperson license is required and as the Commissioner shall deem appropriate to protect the public interest. Such

report(s) may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent, periodic summaries of salient information concerning each real estate transaction in which respondent engaged during the period covered by the report.

- F. The restricted license may be suspended by order of the Real Estate Commissioner pending a final determination after hearing if the respondent fails to present evidence satisfactory to the Commissioner, within six months from the effective date of the decision of having taken and completed 45 hours of approved continuing education offerings within the four-year period immediately preceding the date on which the respondent presents such evidence to the Department.

DATED: February 23, 1983



PAUL J. DOYLE
Administrative Law Judge

PJD:rem

FILED
DEC 27 1982

BEFORE THE DEPARTMENT OF REAL ESTATE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By Roshni R. Kalidin
Roshni R. Kalidin

In the Matter of the Accusation of

DAVID GUTIERREZ

Case No. H-5258 SF

Your No. N 19991

Respondent(s)

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 Office of Administrative Hearings, Room 2248,
455 Golden Gate, San Francisco, California
on the 14th day of February, 1983, at the hour of 1:30 P.M.,
or as soon thereafter as the matter can be heard, upon the charges made in the
Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person, nor represented by counsel at the hearing, the Department may take disciplinary action against you upon any express admissions, 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.

DATED: December 27, 1982

E. LEE BRAZIL
DEPARTMENT OF REAL ESTATE

By Joseph McGovern
JOSEPH MCGOVERN, Counsel

COPY

JOSEPH McGOVERN, Counsel
DEPARTMENT OF REAL ESTATE
185 Berry Street, Room 5816
San Francisco, California 94107-1770

Telephone: (415) 557-3220

FILED
NOV 17 1982

DEPARTMENT OF REAL ESTATE

By Linda M. Souza
Linda M. Souza

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

NO. H-5258 SF

DAVID GUTIERREZ)

ACCUSATION

aka DAVID JOSEPH GUTIERREZ,)

Respondent.)

The complainant, EDWARD V. CHIOLO, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against DAVID GUTIERREZ aka DAVID JOSEPH GUTIERREZ, is informed and alleges as follows:

I

That DAVID GUTIERREZ aka DAVID JOSEPH GUTIERREZ (hereinafter referred to as respondent) is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).

II

That at all times mentioned herein, respondent was licensed by the Department of Real Estate of the State of

1 California as a real estate salesperson. That said license
2 will expire on or about June 27, 1984.

3 III

4 That the complainant, EDWARD V. CHIOLLO, a Deputy Real
5 Estate Commissioner of the State of California, acting in his
6 official capacity as such and not otherwise, makes this accusation
7 and alleges as follows:

8 IV

9 That on or about July 12, 1982, In The Superior Court
10 Of The State Of California In And For The County Of Santa Clara
11 respondent entered a plea of nolo contendere and was convicted
12 of violating Section 11351 of the California Health and Safety
13 Code (POSSESSION FOR SALE) a felony.

14 V

15 That the crime of which respondent was convicted, as
16 alleged in Paragraph IV above, is a felony and a crime involving
17 moral turpitude and a crime which is substantially related to the
18 qualifications, functions, or duties of a real estate licensee.

19 VI

20 That the facts, as alleged in Paragraphs IV and V above,
21 constitute grounds for disciplinary action under the provisions
22 of Sections 490, 10177(b) and 10177(f) of the Business and
23 Professions Code of the State of California.

24 * * * * *

25 WHEREFORE, complainant prays that a hearing be conducted
26 on the allegations of this Accusation and that upon proof thereof,
27 a decision be rendered imposing disciplinary action against all

1 licenses and license rights of respondent under the Real Estate
2 Law (Part 1 of Division 4 of the Business and Professions Code)
3 and for such other and further relief as may be proper under
4 other applicable provisions of law.

5
6 *Edward V. ChioLO*

7
8 EDWARD V. CHIOLO
9 Deputy Real Estate Commissioner

10 Dated at San Francisco, California
11 this 17th day of November, 1982.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27