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DEC 06 1983

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Mary A. Morellis
Mary A. Morellis

- - -

In the Matter of the Application of)
CESAR CADENA,)
Respondent.)

NO. H-5341 SF
N 21735

DECISION

The Proposed Decision dated November 17, 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.

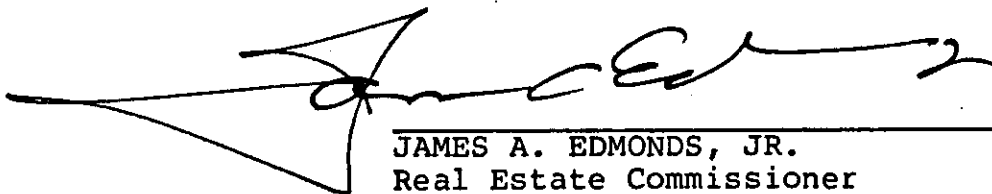
The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from restricted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

This Decision shall become effective at 12 o'clock
noon on DECEMBER 27, 1983.

IT IS SO ORDERED November 30, 1983.



JAMES A. EDMONDS, JR.
Real Estate Commissioner

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of)
CESAR CADENA,)
Respondent.)
_____)

NO. H-5341 SF

N 21735

PROPOSED DECISION

This matter was heard before George R. Coan, Administrative Law Judge, State of California, Office of Administrative Hearings, at San Francisco, California, on November 10, 1983.

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

Respondent appeared and was represented by his attorney, Brian P. Preston.

The following decision is proposed, certified and recommended for adoption:

FINDINGS OF FACT

I

Edward V. Chiolo made the Statement of Issues in his official capacity as a Deputy Real Estate Commissioner.

II

Respondent filed his application for a real estate salesperson license on May 26, 1983. On June 10, 1983, the license was issued.

III

On September 2, 1983, pursuant to Business and Professions Code section 10177.1, the Real Estate Commissioner suspended

respondent's license for having procured the license by fraud, misrepresentation or deceit and with knowingly made a false statement of fact required to be revealed in the application.

IV

The Real Estate Commissioner has required further proof of the honesty and truthfulness of respondent pursuant to Business and Professions Code section 10152.

FIRST CAUSE OF ACTION

V

On or about April 24, 1981, in the Municipal Court of California, Santa Clara County Judicial District, respondent entered a plea of nolo contendere and was convicted of violating section 484/487 of the California Penal Code (Grand Theft).

Pursuant to Penal Code section 17, the crime was reduced to a misdemeanor. Respondent was placed on probation for 18 months, fined \$260 and was sentenced to 20 days in the county jail. He was ordered to make restitution but no such claim was submitted.

On December 8, 1982, the conviction was dismissed pursuant to Penal Code section 1203.4.

VI

When he was 19, respondent let himself be talked into stealing auto parts by two older friends of his brother. One was sentenced to six months; the other to three months.

VII

Respondent has been convicted of a crime involving moral turpitude.

VIII

Respondent has been convicted of a crime substantially related to the qualifications, functions and duties of a real estate salesperson.

IX

Respondent has been a licensed motor vehicle salesperson. That license has never been disciplined except that the Department of Motor Vehicles requested he turn back his license because of his conviction.

For the past two years, respondent has been employed as a loan officer by Accredited Mortgage Services, Inc. Although he was very young (age 20) when first employed, he has progressed rapidly. He is well thought of by his employers.

He is from a disadvantaged background and is determined to make something out of his life.

SECOND CAUSE OF ACTION

X

On or about May 26, 1983, respondent filed with the Department of Real Estate, State of California (hereinafter referred to as the Department) an application for the issuance to him of a real estate salesperson license. In response to the following question in said application, to wit: "21. Have you ever been convicted of any violation of law? (excluding non-moving traffic violations)," respondent answered "No."

XI

In reliance upon respondent's answer to question No. 21 in the application, the Department issued to respondent, on or about June 10, 1983, a real estate salesperson license having a termination date of June 9, 1987.

XII

In fact respondent had suffered the following conviction:

On or about April 24, 1981, in the Municipal Court of California, Santa Clara Judicial District, respondent entered a plea of nolo contendere and was convicted of violating section 484/487 of the California Penal Code (Grand Theft) as set forth in Finding V above.

XIII

Prior to the time respondent completed the application, he had been informed by his probation officer that as the conviction had been dismissed pursuant to Penal Code section 1203.4 that he could answer question No. 21 in the negative. The evidence establishes that respondent did not intend to mislead the Real Estate Commissioner when he failed to reveal his conviction. Respondent did not make a false statement of fact on his application nor did he attempt to procure a real estate license by fraud, misrepresentation or deceit. He did make a material-misstatement on his application but under such circumstances that a license should not be denied him.

DETERMINATION OF ISSUES

FIRST CAUSE OF ACTION

I

On the facts found in Finding V, cause for denying respondent's application have been established pursuant to Business and Professions Code sections 480(a) and 10177(b).

II

On the facts found in Findings VI and IX, it would not be against the public interest to issue to respondent a restricted real estate salesperson license.

SECOND CAUSE OF ACTION

III

No cause for denying respondent's application have been established pursuant to Business and Professions Code sections 480(c) or 10177(a).

ORDER

1. Respondent's application for a real estate salesperson license is denied.

2. 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 said license within one (1) year from the effective date of the Decision herein.

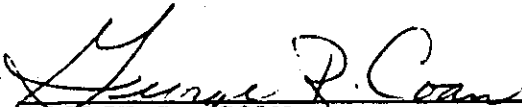
3. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6:

- a) Said 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 relation to respondent's fitness or capacity as a real estate licensee;
- b) Said 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 provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license;

- c) 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 has read the Decision of the Commissioner which granted the right to a restricted license; and
 - 2) That he will exercise close supervision over the performance of the restricted licensee of activities for which a real estate license is required.

DATED: November 17, 1983



GEORGE R. COAN
Administrative Law Judge

GRC:lhj

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OCT 07 1983

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Mary A. Morillo
Mary A. Morillo

In the Matter of the Application of
CESAR CADENA
Respondent

Case No. H-5341 SF
N 21735

CONTINUED
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 Office of Administrative Hearings, State Building, Room 2248, 455 Golden Gate Avenue, San Francisco, California

on the 10th day of November, 1983, at the hour of 3:00 P.M., or as soon thereafter as the matter can be heard, upon the Statement of Issues 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 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 are 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.

DATED: October 7, 1983

DEPARTMENT OF REAL ESTATE
By Joseph McGovern
JOSEPH MCGOVERN Counsel

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SEP 20 1983

BEFORE THE DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By Mary A. Morelle
Mary A. Morelle

In the Matter of the Application of
CESAR CADENA

Case No. H-5341 SF

N 21735

Respondent

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 Office of Administrative Hearings, State Building, Room 2248, 455 Golden Gate Avenue, San Francisco, California

on the 13th day of October, 1983, at the hour of 9:00 A.M., ^{Two Hour Hearing} or as soon thereafter as the matter can be heard, upon the Statement of Issues 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 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 are 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.

DATED: September 20, 1983

DEPARTMENT OF REAL ESTATE

By Joseph McGovern
JOSEPH McGOVERN Counsel

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DEPARTMENT OF REAL ESTATE

Roshni R. Kalidin
Roshni R. Kalidin

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

- - -

In the Matter of the Application of)
CESAR CADENA,)
Respondent.)

ORDER SUSPENDING REAL ESTATE LICENSE

TO: CESAR CADENA
419 Mignot Lane
San Jose, CA 95111

On May 26, 1983, the above-named respondent filed with the Department of Real Estate of the State of California (hereinafter referred to as Department) an application for a real estate salesperson license. In response to a question in said application, to wit: "21. Have you ever been convicted of any violation of law? (excluding non-moving traffic violations)", respondent answered "No."

On June 10, 1983, Department issued a real estate salesperson license to respondent in reliance upon the afore-said answer of respondent.

1 On August 26, 1983, in Case No. H-5341 SF, a Statement
2 of Issues signed by a Deputy Real Estate Commissioner of the
3 State of California was filed charging respondent with having
4 procured a real estate license by fraud, misrepresentation, or
5 deceit and with knowingly having made a false statement of fact
6 required to be revealed in the application for such license.

7 NOW, THEREFORE, IT IS ORDERED under authority of
8 Section 10177.1 of the Business and Professions Code of the
9 State of California, that the real estate salesperson license
10 heretofore issued to respondent and the exercise of any privileges
11 thereunder is hereby suspended pending final determination made
12 after a hearing on the aforesaid Statement of Issues, a copy
13 of which is attached hereto.

14 IT IS FURTHER ORDERED that all license certificates
15 and identification cards issued by the Department which are in
16 the possession of respondent be immediately surrendered by
17 personal delivery or by mailing in the enclosed self-addressed
18 envelope to: Department of Real Estate, 185 Berry Street,
19 Room 5816, San Francisco, California 94107.

20 This Order shall be effective immediately.

21 DATED: September 2, 1983.

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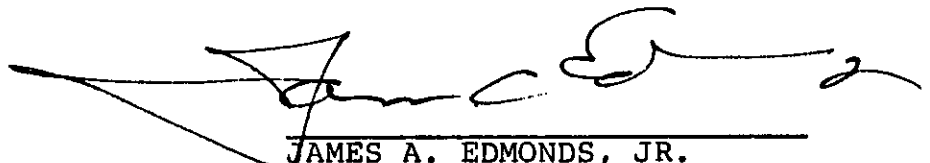
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JAMES A. EDMONDS, JR.
Real Estate Commissioner

1 JOSEPH McGOVERN, Counsel
2 DEPARTMENT OF REAL ESTATE
185 Berry Street, Room 5816
San Francisco, CA 94107

3 (415) 557-3220
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FILED
AUG 26 1983

DEPARTMENT OF REAL ESTATE

By *Roshni R. Kalidin*
Roshni R. Kalidin

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 - - -

11 In the Matter of the Application of) No. H-5341 SF
12 CESAR CADENA,)
13 Respondent.) STATEMENT OF ISSUES

14
15 FIRST CAUSE OF ACTION

16 I

17 The Real Estate Commissioner of the State of
18 California (hereinafter referred to as the Commissioner) in
19 conformity with Section 10152 of the Business and Professions
20 Code of the State of California (hereinafter referred to as
21 the Code) requires further proof of the honesty and truthfulness
22 of CESAR CADENA (hereinafter referred to as respondent) in
23 connection with his application for a real estate salesperson
24 license filed on or about May 26, 1983, and pursuant thereto
25 has instituted the within proceedings for the purpose of
26 inquiring into respondent's qualifications for said license.

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II

EDWARD V. CHIOLO, a Deputy Real Estate Commissioner of the State of California, acting in his official capacity as such and not otherwise, makes this Statement of Issues.

III

In acting upon the application of respondent, the Commissioner shall consider but shall not be limited to the following facts:

That on or about April 24, 1981 in the Municipal Court of California, Santa Clara County Judicial District, respondent entered a plea of nolo contendere and was convicted of violating Section 484/487 of the California Penal Code (GRAND THEFT).

IV

That the facts, as alleged in Paragraph III, pertain to the conviction of respondent of a crime that involves moral turpitude and that is substantially related to the qualifications, functions, or duties of licensure of a real estate salesperson and as such, under the provisions of Section 480(a) and Section 10177(b) of the Code, constitute grounds for the denial of respondent's application for a real estate salesperson license.

SECOND CAUSE OF ACTION

There is hereby incorporated into this second, separate and distinct cause of action, all of the allegations contained in Paragraphs I and II of the First Cause of Action with the same force and effect as if herein more fully set forth.

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I

That on or about May 26, 1983, respondent filed with the Department of Real Estate, State of California (hereinafter referred to as the Department) an application for the issuance to him of a real estate salesperson license; that in response to the following question in said application, to wit: "21. Have you ever been convicted of any violation of law? (excluding non-moving traffic violations)", respondent answered "No."

II

That in reliance upon the aforesaid answer to the aforesaid question in said application, the Department issued to respondent, on or about June 10, 1983, a real estate salesperson license having a termination date of June 9, 1987.

III

That said salesperson license was procured by respondent by virtue of his misrepresentation to the aforesaid question in said application, for the true facts were that he was convicted of the following violation of law:

That on or about April 24, 1981, in the Municipal Court of California, Santa Clara Judicial District, respondent entered a plea of nolo contendere and was convicted of violating Section 484/487 of the California Penal Code (GRAND THEFT).

IV

That the acts and conduct of respondent as alleged in Paragraphs I and III above pertain to a misrepresentation and to a false statement of fact which respondent knew to be untrue and which he was required to reveal in said license

1 application and are grounds for denial of respondent's applica-
2 tion for a real estate salesperson license under the provisions
3 of Sections 10177(a) and 480(c) of the Code.

4
5
6 *Edward V. Chiolo*

7
8 EDWARD V. CHIOLO
9 Deputy Real Estate Commissioner

10 Dated at San Francisco, California
11 this 26th day of August, 1983.

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