

FILED

OCT - 3 2001

DEPARTMENT OF REAL ESTATE

[Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

No. H-7900 SF

CESAR CUEVAS,

OAH No. N-2001010564

Respondent.

DECISION AFTER REJECTION

This matter came on for hearing before Cheryl R. Tompkin, Administrative Law Judge of the Office of Administrative Hearings, in Oakland, California, on April 11, 2001. James L. Beaver, Counsel, represented the Complainant. Respondent Cesar Cuevas appeared in person and through Curtis V. Rodriguez, Esq. Evidence was received, the record was closed, and the matter was submitted on April 11, 2001.

On May 11, 2001, the Administrative Law Judge rendered a Proposed Decision (hereinafter "the Proposed Decision") which I declined to adopt as my Decision herein. Pursuant to Section 11517 of the Government Code of the State of California, Respondent was served with notice of my determination not to

1 adopt the Proposed Decision along with a copy of said Proposed
2 Decision. Respondent was notified that the case would be
3 decided by me upon the record, the transcript of proceedings
4 held on April 11, 2001, and upon written argument offered by
5 Respondent and Complainant.

6 On August 24, 2001, written argument was submitted on
7 behalf of Respondent by Arturo Hernandez-M, Esq. Written
8 argument has been submitted on behalf of Complainant.

9 I have given careful consideration to the record in
10 this case, including the transcript of proceedings of April 11,
11 2001, the documentary exhibits, and written argument offered on
12 behalf of Respondent and Complainant. The following shall
13 constitute the Decision of the Real Estate Commissioner in these
14 proceedings.

15 FACTUAL FINDINGS

16 1. Official notice is taken that Complainant Les R.
17 Bettencourt made the Accusation in his official capacity as a
18 Deputy Real Estate Commissioner of the State of California.

19 2. Respondent CESAR CUEVAS (Respondent) is presently
20 licensed and/or has license rights under the Real Estate Law as
21 a real estate salesperson. Except for a brief period (from
22 February 17, 2001 through March 1, 2001) of administrative
23 suspension under Section 10153.4 of the Code, Respondent's
24 license was in full force and effect at all times pertinent to
25 this matter from and after August 16, 1999, and is scheduled to
26 expire on August 15, 2003.

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1 3. On January 13, 1999, a Felony Complaint was filed
2 in People v. Cesar Raul Cuevas, et al., Case No. C9915004,
3 Superior Court of the State of California, County of Santa
4 Clara, San Jose Facility, charging Respondent, Respondent's
5 wife, and others with:

6 (a) five counts (Counts 1 through 5: one count each
7 for 1992, 1993, 1994, 1995 and 1996) of
8 "Misrepresentation of Fact To Obtain Insurance At
 Less Rate" in violation of Insurance Code Section
 11880, each a felony;

9 (b) five counts ((Counts 6, 8, 10, 12 and 14: one
10 count each for 1992, 1993, 1994, 1995 and 1996)
11 of "Failure To File A Return In A Timely Manner"
 in violation of Unemployment Insurance Code
 Section 2117.5, each a felony; and

12 (c) five counts ((Counts 7, 9, 11, 13 and 15: one
13 count each for 1992, 1993, 1994, 1995 and 1996)
14 of "Failure To Pay Tax" in violation of
 Unemployment Insurance Code Section 2118.5, each
 a felony.

15 4. The facts and circumstances of the crimes
16 are that from at least January 1, 1994 through December 31,
17 1996, Respondent was licensed to operate and did operate C & M
18 Roofing. During this time period, up to twenty-five individuals
19 were employed under Respondent's C & M Roofing contractor's
20 license. Respondent misrepresented (underreported) the number
21 of employees in order to avoid paying premiums and to obtain
22 insurance from the State Compensation Insurance fund at less
23 than the proper rate for the insurance. Respondent also
24 willfully failed to collect, account for and pay employment
25 development (state income and employment insurance) taxes that
26 are required to be withheld and/or paid on employee wages under
27 the California Unemployment Insurance Code. According to

1 Respondent, he loaned his roofing contractor's license to his
2 friend Mario Sanchez, who hired workers without obtaining the
3 proper insurance or paying the appropriate taxes. Sanchez used
4 the license to start a roof tear off business. In exchange for
5 use of the license, Sanchez would tear off and dispose of roofs
6 on Respondent's independent projects. Respondent denies he
7 personally had any employees during the period covered by his
8 criminal convictions. In an interview with the Department's
9 investigator, Respondent admitted that he suspected Sanchez was
10 not in compliance with applicable laws, but chose to accept
11 Sanchez' assurances that he was in compliance at face value.

12 5. Respondent was arrested and spent some of March
13 and April, 1999 in custody. He hired an attorney to defend his
14 wife, but used the services of a public defender for his own
15 defense. From March through July, 1999, Respondent was aware
16 that he was under criminal prosecution. He knew that he was in
17 jeopardy of going to prison and found that a very frightening
18 experience.

19 6. On August 2, 1999, the Department received
20 Respondent's application for a conditional real estate
21 salesperson license. The license application contains twenty-
22 seven questions that require responses from an applicant. Items
23 number 24 through 27 relate to prior licensure actions (item
24 number 24) and to violations of law (items 25 through 27). The
25 form instructs the applicant to "carefully read and provide
26 detailed answers to questions #24-26." Item number 26 in the
27 application asks the following question:

1 "ARE THERE ANY CRIMINAL CHARGES PENDING AGAINST
2 YOU AT THIS TIME?"

3 Item number 26 includes two boxes, one marked "NO" and the other
4 marked "YES". Respondent replied "NO". The instructions in
5 item number 26 state that if the answer to the question in
6 number 26 is "YES", the applicant should complete item number
7 27. Item number 27 required Respondent to disclose the court,
8 arresting agency, date of conviction, type of conviction, code
9 name and section number violated, disposition and case number,
10 for each such pending charge or conviction. Item number 27
11 includes the following instructions:

12 "DETAILED EXPLANATION OF ITEMS 24-26. COMPLETE ONE
13 LINE FOR EACH VIOLATION AND PROVIDE EXPLANATION BELOW.
14 IF YOU ARE UNABLE TO PROVIDE THIS INFORMATION, A
15 DETAILED EXPLANATION MAY SUFFICE. INDICATE WHETHER
16 EACH CONVICTION WAS A MISDEMEANOR OR FELONY AT THE
TIME THE CONVICTION OCCURRED. IF THE CONVICTION
STATUS HAS BEEN SUBSEQUENTLY CHANGED OR REDUCED, NOTE
THAT FACT IN THE AREA PROVIDED FOR ADDITIONAL
INFORMATION."

17 Respondent provided no response to item number 27. The real
18 estate salesperson application concludes with an item headed
19 "SALESPERSON CERTIFICATION - Please Read Carefully." The
20 certification begins with the attestation, "I certify under
21 penalty of perjury under the laws of the State of California
22 that the foregoing answers and statements given in the
23 application are true and correct...". Respondent signed the
24 certification under penalty of perjury falsely attesting that
25 his answers on the application were truthful.

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1 7. Respondent personally read and filled out his
2 salesperson license application. At the time he signed the
3 application he was aware that he had fifteen felony counts
4 pending against him, including five felony insurance fraud
5 counts involving making false statements on an application for
6 insurance. He was fully aware that he was signing the
7 application under penalty of perjury, and that the Department
8 would rely on his statements in the application in determining
9 whether to issue the license. However, Respondent denies any
10 intent to deceive the Department. Respondent claims he did not
11 disclose the pending criminal charges because his sponsoring
12 broker advised him not to do so since Respondent was expecting
13 the charges against him to be dropped. Respondent testified
14 that after he was criminally charged, Sanchez told him he would
15 accept responsibility for his employees, and the District
16 Attorney agreed to drop charges against Respondent if Sanchez
17 did do. However, Sanchez never did accept responsibility.
18 Respondent eventually pled guilty to three of fifteen felony
19 charges against him.

20 8. Respondent signed his original application for a
21 real estate salesperson license on July 27, 1999. Respondent's
22 answer to question number 26 was false, deceptive and misleading
23 in that he knowingly failed to disclose that multiple felony
24 charges had been filed against him on or about January 13, 1999,
25 and were then pending against him in Santa Clara County Superior
26 Court. Even assuming that the District Attorney had indicated
27 that the charges might be dismissed, Respondent knew perfectly

1 well that the charges had not yet been dismissed, would not be
2 dismissed unless Sanchez intervened, and that Respondent had a
3 duty to disclose the charges on his license application. In
4 order to avoid the risk of delay or license denial that might
5 have attended disclosure of the pending convictions, Respondent
6 simply gambled that the Department would not discover the
7 deception or would be persuaded to allow Respondent to keep the
8 license obtained by this deception.

9 9. On August 16, 1999, the Department issued the
10 conditional real estate salesperson license to Respondent in
11 reliance on Respondent's application. The Department's
12 Licensing Section would have referred Respondent's application
13 to the Enforcement Program for investigation and would not have
14 issued the license to Respondent if the criminal charges pending
15 against Respondent had been disclosed to the Licensing Program
16 prior to the issuance of the license.

17 10. On September 2, 1999, in the Superior Court of
18 the State of California for the County of Santa Clara,
19 Respondent was convicted, upon a plea of guilty, of violation of
20 Insurance Code Section 11880 (insurance fraud), and two counts
21 of violation of Unemployment Insurance Code Section 2118.5
22 (failure to pay tax), all felonies and crimes involving moral
23 turpitude which are substantially related to the qualifications,
24 functions or duties of a real estate salesperson. Respondent's
25 involvement in his crimes was central, not peripheral. These
26 crimes involved no isolated incident: for at least three years
27 Respondent received tear-off services in exchange for extending

1 the protection of Respondent's contractor's license and workers
2 compensation insurance over the tear-off business. Respondent
3 obtained tear-off services without having to pay the cost of the
4 tear off crew's workers compensation insurance premiums and
5 unemployment insurance taxes. Thus, through the use of a
6 dishonest subterfuge, Respondent attempted to obtain a personal
7 benefit from a willful violation of law. Crimes such as these,
8 involving dishonest in financial transactions and disregard of
9 the laws governing professional relationships, are the types of
10 misconduct which the legislature intended to prevent when
11 establishing the minimum licensing standards for professions
12 possessing the public trust.

13 11. Respondent explains he pled guilty (although he
14 still denies any wrongdoing) to ensure that his pregnant wife,
15 who was also charged, would not go to jail, to minimize his own
16 potential exposure to prison time, and because it was wrong for
17 him to have loaned his contractor's license to Sanchez.

18 12. Imposition of sentence was suspended and
19 Respondent was placed on three years formal probation on terms
20 and conditions that included paying restitution of \$12,112.68 to
21 the State Compensation Insurance Fund and \$59,685.62 to the
22 State of California Unemployment Development Department.
23 Respondent also had to pay fines totaling \$640.50 and was
24 sentenced to six months in jail. He actually served 36 days in
25 jail and completed the balance of his jail sentence through work
26 furlough. Respondent represents that he is no longer on formal
27 probation (although he is still on informal probation), he has

1 paid all court ordered fines and that in or about March 2001 he
2 completed payment of court ordered restitution.

3 13. Respondent is 35 years old. He is married with
4 three children, ages 12, 10 and 2. His wife does not work
5 outside the home. Since May 2000 Respondent has worked as a
6 loan broker trainee at Loan Professors-Real Estate Professors,
7 in San Jose, California. He assists in obtaining and processing
8 loan applications, which gives him access to virtually all of
9 the personal financial information of clients, including social
10 security and credit card numbers. Respondent represents he has
11 never misused this critical information, and that no client has
12 ever filed a complaint about his work. In 1998, he earned
13 approximately \$24,000.00. In 1999, he earned approximately
14 \$40,000.00. Respondent enjoys helping individuals fulfill their
15 dream of owning their own home and wishes to continue working in
16 the field of real estate. Respondent acknowledges he made a
17 mistake and says that he accepts responsibility for his actions
18 even though he feels his friend took advantage of him.
19 Respondent no longer associates with Sanchez and states that in
20 the future he will never lend any license he obtains to anyone.
21 He asks that he be given a second chance so that he can continue
22 to work and support his family.

23 14. Respondent attends church occasionally and also
24 does volunteer work with Victory Outreach, a community program
25 that provides support to youth who are involved in drugs or
26 gangs.

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1 15. Title 10 of the California Code of Regulations,
2 Section 2912 sets forth the criteria developed by the Department
3 pursuant to Section 482(b) of the Code for the purpose of
4 evaluating the rehabilitation of a licensee against whom an
5 administrative disciplinary proceeding for revocation or
6 suspension of the license has been initiated on account of a
7 crime committed by the licensee. Applying those criteria, it
8 appears that, because of Respondent's history of acts or conduct
9 that are substantially related to the qualifications, functions
10 or duties of a real estate licensee, a period longer than two
11 years is required of Respondent to demonstrate rehabilitation.
12 It has only two years and one month since Respondent submitted
13 his materially false, deceptive, misleading and fraudulent
14 application to the Department. It is barely two years since
15 Respondent's felony insurance fraud and unemployment tax
16 convictions. The felony convictions have not been reduced to
17 misdemeanor status or expunged, and no certificate of
18 rehabilitation has been obtained. Respondent will remain on
19 probation for almost another year. Since persons under the
20 direct supervision of correctional authorities are required to
21 behave in exemplary fashion, little weight is generally placed
22 on the fact that a person did not commit additional crimes while
23 on probation. In re Gossage (2000) 23 Cal. 4th 1080.
24 Respondent's crimes involved fraudulent and deceptive business
25 practices. Those employed arranging mortgage loans have many
26 opportunities to engage in deceptive business practices, so
27 Respondent's deceptive license application provides a

1 particularly troubling indication that Respondent has not
2 changed the deceptive business practices that resulted in
3 Respondent's convictions.

4 16. More importantly, Respondent has failed to
5 demonstrate a change in attitude from that which existed at the
6 time of the conduct that resulted in Respondent's criminal
7 convictions. There is no reason to doubt Respondent committed
8 the crimes to which he pled guilty. Respondent knew that he was
9 responsible for providing workers compensation insurance and
10 paying unemployment insurance taxes covering those employed
11 under his contractor's license, but after accepting
12 responsibility under his license for Sanchez' crew, Respondent
13 failed to pay required unemployment insurance taxes, failed to
14 pay the workers compensation premiums due for workmen employed
15 under his license, and even helped submit a workers compensation
16 claim for "Antonio", an injured tear-off workman. Respondent's
17 crimes demonstrate grave deficiencies in Respondent's character
18 with respect to honesty and truthfulness. "Good moral character
19 includes traits of 'honesty, fairness, candor, trustworthiness,
20 observance of fiduciary responsibility, respect for and
21 obedience to the laws of the state and the nation and respect
22 for the rights of others and for the judicial process.'" In re
23 Gossage, supra, 1095. Exchanging a dishonest subterfuge for
24 roof tear-off services is not consistent with good character.
25 Certainly, "[p]ersons of good character do not commit acts or
26 crimes involving moral turpitude" (In re Gossage, supra; In re
27 Lesansky (2001) 25 Cal. App. 4th 11) like the insurance fraud

1 for which Respondent was convicted. But instead of accepting
2 responsibility for crimes that he personally committed,
3 Respondent persists in attempting to place blame for his crimes
4 on Sanchez. Instead of admitting that his own conduct resulted
5 in his conviction, Respondent persists in blaming Sanchez and
6 even his wife for his guilty plea. Rather than acknowledge that
7 it was his own decision to conceal the pending convictions on
8 his application, Respondent persists in attempting to place
9 responsibility for that decision on his sponsoring broker.
10 Respondent has submitted no competent evidence, other than hid
11 own testimony, to overcome the inference from his deceptive
12 application and his efforts to shirk responsibility that his
13 rehabilitation is far from complete and that his attitude at the
14 time of the crimes remains unchanged.

15 LEGAL CONCLUSIONS

16 1. Cause for suspension or revocation of
17 Respondent's real estate salesperson license exists pursuant to
18 Business and Professions Code Sections 498 and 10177(a) by
19 reason of the matters set forth in Factual Findings 3 through 9,
20 inclusive.

21 2. Cause for suspension or revocation of
22 Respondent's real estate salesperson license exists pursuant to
23 Business and Professions Code Sections 490 and 10177(b) by
24 reason of the matters set forth in Factual Findings 3, 4, and
25 10.

26 3. By reason of the matters set forth in Factual
27 Findings 15 and 16, taking into consideration the matters set

1 forth in Factual Findings 11 through 14, inclusive, it is
2 determined that the Criteria of Rehabilitation set forth in
3 Section 2912 of Chapter 6, Title 10, California Code of
4 Regulations remain unsatisfied.

5 4. It would be contrary to the public interest to
6 permit Respondent to retain a real estate salesperson license,
7 even on a restricted basis.

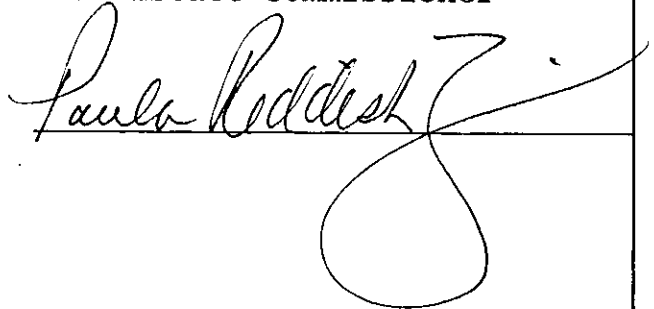
8 ORDER

9 All licenses and license rights of Respondent CESAR
10 CUEVAS under the Real Estate law are revoked.

11 This Decision shall become effective at 12 o'clock
12 noon on OCTOBER 24, 2001.

13 IT IS SO ORDERED October 1, 2001.

14 PAULA REDDISH ZINNEMANN
15 Real Estate Commissioner

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FILED

MAY 23 2001

DEPARTMENT OF REAL ESTATE

By *Laurie L. Zai*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

CESAR CUEVAS,)

No. H-7900 SF

Respondent.)

N-2001010564

NOTICE

TO: Respondent CESAR CUEVAS and CURTIS V. RODRIGUEZ, his
Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated May 11, 2001, of the Administrative Law Judge is not
adopted as the Decision of the Real Estate Commissioner. A copy
of the Proposed Decision dated, May 11, 2001, is attached for
your information.

In accordance with Section 11517(c) of the Government
Code of the State of California, the disposition of this case
will be determined by me after consideration of the record herein
including the transcript of the proceedings held on April 11,

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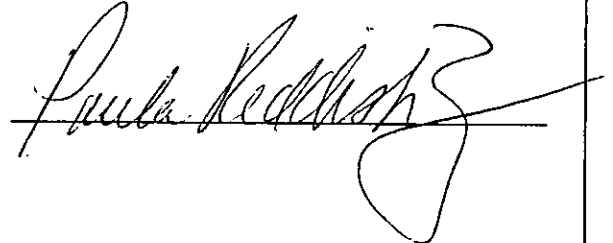
1 2001, and any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of April 11, 2001, at the Sacramento office of
6 the Department of Real Estate unless an extension of the time is
7 granted for good cause shown.

8 Written argument of Complainant to be considered by me
9 must be submitted within 15 days after receipt of the argument of
10 Respondent at the Sacramento office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: May 22, 2001

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15 PAULA REDDISH ZINNEBANN
16 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

CESAR CUEVAS

Respondent.

Case No. H-7900 SF

OAH No. N 2001010564

PROPOSED DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings heard this matter on April 11, 2001 in Oakland, California.

James L. Beaver, Counsel, represented the complainant Les R. Bettencourt, Deputy Real Estate Commissioner of the State of California.

Curtis V. Rodriguez, Attorney at Law, 95 South Market, No. 300, San Jose, California 95116 represented the respondent Cesar Cuevas, who was present at hearing

The matter was submitted on April 11, 2001.

FACTUAL FINDINGS

1. Official notice is taken that complainant Les R. Bettencourt made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Respondent Cesar Cuevas (respondent) is presently licensed and/or has license rights under the Real Estate Law as a real estate salesperson. Respondent's license was in full force and effect at all times pertinent to this matter and is scheduled to expire on August 15, 2003.

3. Respondent signed his original application for a real estate salesperson license on July 27, 1999, and submitted it to the Department of Real Estate. On Part B of the application respondent answered "No" in response to question number 26, "Are there any criminal charges pending against you at this time?" Respondent's answer to question number 26 was false or misleading in that he failed to disclose that multiple felony charges had been filed against him on or about January 13, 1999, and were then pending against him in San Jose Superior Court.

4. On September 2, 1999, in the Superior Court of the State of California for the County of Santa Clara, respondent was convicted, upon a plea of guilty, of violation of Insurance Code section 11880 (insurance fraud), and two counts of violation of Unemployment Code section 2118.5 (failure to pay tax), all felonies and crimes involving moral turpitude which are substantially related to the qualifications, functions or duties of a real estate salesperson.

Imposition of sentence was suspended and respondent was placed on three years formal probation on terms and conditions that included paying restitution of \$12,112.68 to the State Compensation Insurance Fund and \$59,685.62 to the State of California Unemployment Development Department. Respondent also had to pay fines totaling \$640.50 and was sentenced to six months in jail. He actually served 36 days in jail and completed the balance of his jail sentence through work furlough. Respondent represents that he is no longer on formal probation (although he is still on informal probation), he has paid all court ordered fines and that in or about March 2001 he completed payment of the court ordered restitution.

5. The facts and circumstances of the conviction are that from at least January 1, 1994, through December 31, 1996, respondent was licensed to operate and did operate C & M Roofing. During this time period up to twenty-five individuals were employed under the C & M Roofing license. C & M Roofing misrepresented (underreported) the number of employees in order to avoid paying premiums and to obtain insurance from the State Compensation Insurance fund at less than the proper rate for the insurance. C & M Roofing also willfully failed to collect, account for and pay employment development (state income and unemployment insurance) taxes that are required to be withheld and/or paid on employees wages under the California Unemployment Insurance Code.

6. Respondent admits that criminal charges were pending against him at the time he filed his application for a real estate salesperson license and that he failed to disclose that fact on his application. However, he denies any intent to deceive the Department. Respondent claims he did not disclose the pending criminal charges because his sponsoring broker advised him not to do so since respondent was expecting the charges against him to be dropped. According to respondent, he loaned his roofing contractor's license to his friend Mario Sanchez, who hired workers without obtaining the proper insurance or paying the appropriate taxes. Sanchez used the license to start a roof tear off business. In exchange for use of the license, Sanchez would tear off and dispose of roofs on respondent's independent projects. Respondent denies he personally had any employees during the period covered by his criminal convictions. Respondent testified that after he was criminally charged, Sanchez told him he would accept responsibility for his employees, and the District Attorney agreed to drop charges against respondent if Sanchez did do. However, Sanchez never did accept responsibility. Respondent eventually pled guilty to three of fifteen felony charges against him. Respondent explains he pled guilty (although he still denies any wrongdoing) to ensure that his pregnant wife, who was also charged, would not go to jail, to minimize his own potential exposure to prison time, and because it was wrong for him to have loaned his

contractor's license to Sanchez.¹ Respondent acknowledges he made a mistake and accepts responsibility for his actions even though he feels his friend took advantage of him. Respondent no longer associates with Sanchez and states that in the future he will never lend any license he obtains to anyone.

7. Respondent is 35 years old. He is married with three children, ages 12, 10 and 2. His wife does not work outside the home. Since May 2000 respondent has worked as a loan broker trainee at Loan Professors-Real Estate Professors, in San Jose, California. He assists in obtaining and processing loan applications, which gives him access to virtually all of the personal financial information of clients, including social security and credit card numbers. Respondent represents he has never misused this critical information, and that no client has ever filed a complaint about his work. Respondent receives a fifty percent commission split on all loans generated by him. In 1998 he earned approximately \$24,000.00. In 1999 he earned approximately \$40,000.00. Respondent enjoys helping individuals fulfill their dream of owning their own home and wishes to continue working in the field of real estate. He asks that he be given a second chance so that he can continue to work and support his family.

8. Respondent attends church occasionally and also does volunteer work with Victory Outreach, a community program that provides support to youth who are involved in drugs or gangs.

LEGAL CONCLUSIONS

1. Cause for license discipline exists pursuant to Business and Professions Code sections 498 and 10177, subdivision (a) in that respondent secured a license by fraud, misrepresentation, deceit or knowing misrepresentation or omission of a material fact, as set forth in Findings 3 and 6.

2. Cause for license discipline exists pursuant to Business and Professions Code sections 490 and 10177, subdivision (b) in that respondent has been convicted of a crime involving moral turpitude which is substantially related to the qualifications, functions or duties of a real estate sales person, as set forth in Finding 4.

3. The evidence established that respondent Cuevas knowingly failed to disclose that criminal charges were pending against him at the time he filed his application for a real estate salesperson license. In mitigation, respondent was working with the District Attorney's Office at the time and expected the charges to be dropped. It must also be noted that respondent has successfully practiced in the field of real estate for approximately one year and that respondent has not engaged in any known criminal conduct since 1996. After considering all of the evidence, it is determined that it would not be contrary to the public

¹ In an interview with Department investigator Premjit Rai, respondent admitted that he suspected Sanchez was not in compliance with applicable laws but chose to accept Sanchez's assurances that he was in compliance at face value.

interest to permit respondent to continue to hold a real estate salesperson license upon an appropriately restricted basis.

ORDER

All licenses and licensing rights of respondent Cesar Cuevas under the Real Estate Law are revoked; provided, however, 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 the restricted license within 90 days from the effective date of this Decision. 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 of said Code:

1. The restricted license issued to respondent 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 is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent 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 the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - a. That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - b. That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has,

NOT REJECTED

since the most recent issuance of an original or renewal license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Respondent shall, within six (6) months from the issuance of the restricted license, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriated examination fee. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent passes the examination.

DATED: 5/11/01


CHERYL R. TOMPKIN
Administrative Law Judge
Office of Administrative Hearings

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

FILED
JAN 23 2001

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

CESAR CUEVAS,

Case No. H-7900 SF

OAH No.

Respondent

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 THE OFFICE OF ADMINISTRATIVE HEARINGS, THE ELIHU STATE BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612 on APRIL 11, 2001, at the hour of 9:00 AM, or as soon thereafter as the matter can be heard, upon the Accusation 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.

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: JANUARY 22, 2001

DEPARTMENT OF REAL ESTATE

By

Counsel

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DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 CESAR CUEVAS,) NO. H-7900 SF
14 Respondent.) ACCUSATION
15 _____)

16 The Complainant, Les R. Bettencourt, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 Accusation against CESAR CUEVAS (hereinafter "Respondent"), is
19 informed and alleges as follows:

20 I

21 The Complainant, Les R. Bettencourt, a Deputy Real
22 Estate Commissioner of the State of California, makes this
23 Accusation in his official capacity and not otherwise.

24 II

25 Respondent was issued a real estate salesperson license
26 on or about August 16, 1999, following Respondent's application
27 therefor filed on or about August 2, 1999, with the knowledge

1 and understanding that any license issued as a result of said
2 application would be subject to the conditions of Section 10153.4
3 of the Business and Professions Code.

4 III

5 In response to Question 26 of said application, to wit:
6 "Are there any criminal charges pending against you at this
7 time?", Respondent answered "No".

8 IV

9 On or about January 13, 1999, in the Superior Court,
10 State of California, County of San Jose, multiple felony charges
11 were filed against Respondent in Case Number C991504. Said
12 charges against Respondent were pending at the time Respondent
13 made the representation described in Paragraph III above.

14 V

15 On or about September 2, 1999, in the Superior Court,
16 State of California, County of San Jose, Case Number C991504
17 Respondent was convicted of violation of Section 11880 of the
18 California Insurance Code (Insurance Fraud), and two counts of
19 violation of Section 2118.5 of the Unemployment Code (Failure to
20 Pay Tax), all felonies and crimes involving moral turpitude which
21 bear a substantial relationship under Section 2910, Title 10,
22 California Code of Regulations, to the qualifications, functions,
23 or duties of a real estate licensee.

24 VI

25 Respondent's failure to reveal the pending charges set
26 forth in Paragraph IV above, in said application, constitutes the
27 procurement of a real estate license by fraud, misrepresentation,

1 or deceit, or by making a material misstatement of fact in said
2 application.

3 VII

4 The facts alleged in Paragraph VI above constitute
5 cause under Sections 498 and 10177(a) of the Code for the
6 suspension or revocation of all licenses and license rights of
7 Respondent under the Real Estate Law.

8 VIII

9 The facts alleged in Paragraph V above constitute cause
10 under Sections 490 and 10177(b) of the Code for suspension or
11 revocation of all licenses and license rights of Respondent under
12 the Real Estate Law.

13 WHEREFORE, Complainant prays that a hearing be
14 conducted on the allegations of this Accusation and that upon
15 proof thereof, a decision be rendered imposing disciplinary
16 action against all licenses and license rights of Respondent
17 under the Real Estate Law (Part 1 of Division 4 of the Business
18 and Professions Code), and for such other and further relief as
19 may be proper under other provisions of law.

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23 
24 LES R. BETTENCOURT
25 Deputy Real Estate Commissioner

26 Dated at Oakland, California,
27 this 1st day of December, 2000.