



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

DAVE T. GONZALEZ,

Respondent.

Case No. H-7910 SF

OAH No. N2001010425

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, on May 9, 2001, in Oakland, California.

Complainant was represented by Deidre L. Johnson, Counsel, Department of Real Estate.

Respondent Dave T. Gonzalez was present and represented by Shawn R. Parr, Attorney at Law, 95 South Market Street, Suite 300, San Jose, California 95113.

The case was submitted for decision on May 9, 2001.

**FACTUAL FINDINGS**

1. Complainant Les R. Bettencourt, a Deputy Real Estate Commissioner of the State of California, made the Statement of Issues in his official capacity.

2. Dave T. Gonzalez (respondent) made application to the Department of Real Estate (Department) for a real estate salesperson license on May 17, 2000. Applications are made with the knowledge and understanding that any license issued would be subject to the conditions of section 10153.4 of the Business and Professions Code relating to completion of required courses.

3. On June 4, 1996, in the Municipal Court of California, Santa Clara County Judicial District, respondent was convicted of violation of California Penal Code section 647.6 (Annoying or Molesting a Child). This is a crime involving moral turpitude that bears a substantial relationship to the qualifications, functions or duties of a real estate licensee. (Cal. Code Regs., tit. 10, § 2910.)

Respondent was given a suspended jail sentence (60 days) and placed on two (2) years formal probation. He was ordered to pay a fine and penalty assessment, and to complete 150 hours of volunteer work. He has done so and he is no longer on probation. His criminal record was expunged under Penal Code section 1203.4.

4. Respondent was employed as a police officer with the San Jose Police Department (SJPD). The events leading to his conviction occurred on August 24, 1994, while he was on duty as a uniformed officer in a marked patrol car. Respondent was dispatched to a disturbance call between a 13-year old female and her 15-year old ex-boyfriend. Respondent made contact with her, about one block from the ex-boyfriend's residence. She then rode in the front seat of the patrol car with respondent to this residence, a ride that probably took no more than a minute.

5. Respondent was charged with putting his fingers through the sides of her overalls, and moving his hand toward her vaginal area. He also allegedly made comments about her underwear, all of which he denies. Respondent only acknowledges error in allowing her to sit in the front seat of the patrol car against SJPD policy and regulations. His denials notwithstanding, respondent was convicted of annoying or molesting a child following court trial.

6. The girl testified at the criminal trial. A review of SJPD police reports indicates that her statements to investigators, and her version of what happened over multiple interviews were consistent throughout. During the criminal trial her testimony and other prosecution evidence was subject to the beyond the reasonable doubt standard of proof, and the criminal court's judgment is fully accepted here. Respondent was not convicted of a mere lapse in judgment in allowing a minor female to sit in the front seat of a patrol car. His conviction was all about molesting/annoying a child, something he has denied and continues to deny to this date.

The incident is particularly disturbing because he took full advantage of his position and authority as a sworn police officer in molesting a 13-year old female. This was at a time when she was already in apparent distress from the dispute with her ex-boyfriend.

7. A second Penal Code section 647.6 count involving a second girl and arising from an August 1995 incident was dismissed. He resigned from SJPD in 1996.

8. Respondent is now sole proprietor of a small pet care business that serves clients throughout the Silicon Valley. This business affords him full access to people's homes. He is routinely given keys, alarm/gate codes in order to care for his clients' pets, and gaining a reputation for trustworthiness and honesty is therefore important in the development of this business. A fair number of letters from satisfied clients attest to the degree to which he has earned their trust.

9. Respondent is married. His wife works for the SJP. Following his resignation from SJP he entered into a course of individual and couple treatment that extended over two years with Cynthia Hettinger, a marriage and family therapist. The focus of these sessions was addressing issues related to his resignation.

Respondent and his wife have three daughters, and he plays an active role in parenting.

10. Bic Pho is a licensed real estate broker with Century 21. He has known respondent for over three years and he is willing to take on the extra burden and monitoring of a restricted licensee, and to otherwise make the extra time to mentor respondent. Mr. Pho has several branch offices, each overseen by a branch manager. He primarily does residential sales. Upwards of 65 agents are associated with his business.

### LEGAL CONCLUSIONS

1. Cause exists for denial of respondent's application for a real estate license under Business and Professions Code sections 480(a) and 10177(b), by reason of the matters set forth in Finding 3. Respondent was convicted of a crime involving moral turpitude.

2. Respondent notes that nearly five years have passed from the time of his conviction, that his criminal record has been expunged under Penal Code section 1203.4, that he has fully disclosed the conviction on his application for licensure and that he has completed his probation period with no further incidents. He also notes that he is a family man who attends church, that he and his wife have attended counseling and that he has made a successful go at starting a home business after resigning from SJP. These matters have all been considered, along with the letters submitted on respondent's behalf.

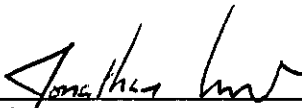
3. The matters set forth in Findings 5 and 6 have also been considered. Respondent does not acknowledge any wrongdoing other than allowing a minor to sit in the front of a patrol car, and he has demonstrated no apparent remorse or change in attitude. (See Cal. Code Regs., tit. 10, § 2912, subd. (1).) It is the abuse of power and authority while serving as a sworn police officer that stands out in this case. Real estate agents are in a position where they are given access to client monies, to their homes and to their private financial and personal information in connection with transacting business. They enter into fiduciary relationships of trust. Accordingly, the burden is upon respondent to establish that he is honest and trustworthy, and that he poses no risk of abusing this trust. His continued failure to acknowledge criminal wrongdoing indicates that he is not substantially rehabilitated.

4. By reason of the above, it would be contrary to the public interest to issue respondent a restricted license at this time.

**ORDER**

The application of Dave T. Gonzalez for a real estate salesperson license is denied.

DATED: May 15, 2001

  
\_\_\_\_\_  
JONATHAN LEW  
Administrative Law Judge  
Office of Administrative Hearings

FILED

FEB 21 2001

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

DEPARTMENT OF REAL ESTATE

By Shelly Ely

*In the Matter of the Application of*

DAVE T. GONZALEZ

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Case No. H-7910 SF

OAH No.

*Respondent*

**FIRST 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 THE OFFICE OF ADMINISTRATIVE HEARINGS, ELIHU M. HARRIS BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612 on WEDNESDAY--MAY 9, 2001, at the hour of 10:00 A.M., 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 Hearing 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 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.

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 for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: FEBRUARY 21, 2001

By Diedre L. Johnson  
DIEDRE L. JOHNSON, Counsel

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

**FILED**

JAN 17 2001

DEPARTMENT OF REAL ESTATE

*In the Matter of the Application of*

DAVE T. GONZALEZ

By: Shelly Ely

Case No. H-7910 SF

OAH No.

*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 THE OFFICE OF ADMINISTRATIVE HEARINGS, ELIHU M. HARRIS BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612 on WEDNESDAY--MARCH 14, 2001, at the hour of 1:30 P.M., 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 Hearing 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.

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DEPARTMENT OF REAL ESTATE

Dated: JANUARY 17, 2001

By

Larry Ajamao

LARRY AJAMAO,

Counsel

1 DAVID B. SEALS, Counsel (SBN 69378)  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000  
5 Telephone: (916) 227-0789  
6 -or- (916) 227-0792 (Direct)

FILED  
JAN 05 2001  
DEPARTMENT OF REAL ESTATE  
*Shelley Ely*

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

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11 In the Matter of the Application of )  
12 DAVE T. GONZALEZ, ) No. H-7910 SF  
13 Respondent. ) STATEMENT OF ISSUES

14  
15 The Complainant, Les R. Bettencourt, a Deputy Real  
16 Estate Commissioner of the State of California, for Statement of  
17 Issues against DAVE T. GONZALEZ (hereinafter "Respondent")  
18 alleges as follows:

19 I

20 Respondent made application to the Department of Real  
21 Estate of the State of California for a real estate salesperson  
22 license on or about May 17, 2000 with the knowledge and  
23 understanding that any license issued as a result of said  
24 application would be subject to the conditions of Section 10153.4  
25 of the California Business and Professions Code.

26 II

27 Complainant, Les R. Bettencourt, a Deputy Real Estate



1 Commissioner of the State of California, makes this Statement of  
2 Issues in his official capacity.

3 III

4 On or about January 10, 1996 in the Municipal Court of  
5 California, Santa Clara County Judicial District, Respondent was  
6 convicted of violation of California Penal Code Section 647.6  
7 (Child Molesters-Punishment), a crime involving moral turpitude  
8 which bears a substantial relationship under Section 2910, Title  
9 10, California Code of Regulations (herein "the Regulations"), to  
10 the qualifications, functions or duties of a real estate  
11 licensee.

12 IV

13 The crime of which Respondent was convicted, as alleged  
14 in Paragraph III, above, constitutes cause for denial of  
15 Respondent's application for a real estate license under Sections  
16 480(a) and 10177(b) of the California Business and Professions  
17 Code.

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

24   
25 LES R. BETTENCOURT  
26 Deputy Real Estate Commissioner

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