

FILED  
JAN 16 2003

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

\* \* \*

By Kathleen Contreras

In the Matter of the Application of )  
JOSEPH MAROUGI, )  
Respondent. )

NO. H-8136 SF

N-2002070572

DECISION

The Proposed Decision dated December 13, 2002, 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 a restricted license is controlled by Section 11522 of the Government Code. A copy 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 appended hereto.

This Decision shall become effective at 12 o'clock noon on February 5, 2003.

IT IS SO ORDERED

December 30, 2002  
PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

Paula Reddish

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

JOSEPH MAROUGI

Respondent.

Case No. H-8136 SF

OAH No. N 2002070572

**PROPOSED DECISION**

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings heard this matter on October 9, 2002, in Oakland, California.

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

Michael K. Stevens, Attorney at Law, 1134 El Camino Real, Mountain View, California 92040 represented the respondent Joseph Marougi, who was present at hearing.

The matter was submitted on October 9, 2002.

**FACTUAL FINDINGS**

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

2. On August 7, 1991, in the Municipal Court of the State of California for the County of Los Angeles, respondent was convicted, on a plea of no contest, of violation of Penal Code section 484 (A) (petty theft), a misdemeanor. Petty theft is a crime involving moral turpitude and/or which bears a substantial relationship to the qualifications, functions or duties of a real estate salesperson.

Imposition of sentence was suspended and respondent was placed on 12 months summary probation on terms and conditions that included payment of fines totaling \$151 and staying away from the location where the arrest took place.

The facts and circumstances of the conviction are that on or about July 13, 1991, respondent entered a movie theater without first purchasing a ticket.

3. On September 17, 1993, in the Superior Court of the State of California for the County of Los Angeles, respondent was convicted, on a plea of guilty, of violation of Penal Code section 484(A) (a) (petty theft), a misdemeanor. Petty theft is a crime involving moral turpitude and/or which bears a substantial relationship to the qualifications, functions or duties of a real estate salesperson.

Imposition of sentence was suspended and respondent was placed on 12 months summary probation on terms and conditions that included payment of fines totaling \$243 and staying away from the location where the arrest took place.

The facts and circumstances of the conviction are that on or about August 19, 1993, respondent attempted to shoplift a pair of men's underwear while working as a clerk in a department store.

4. On or about July 27, 1998, respondent filed an application for a vehicle salesperson license with the Department of Motor Vehicles (DMV). Effective March 24, 2000, following a hearing in case No. RS-99-0658, the DMV denied respondent's application for a vehicle salesperson license. The DMV found cause to deny respondent's application existed by reason of respondent's criminal convictions and by reason of misrepresentations made by respondent on his application for licensure.<sup>1</sup>

5. With respect to his 1991 conviction respondent testified that he was at a movie theater with friends when he received a page from his mother. He thought he would have to return home so he requested a refund for his previously purchased movie ticket. After receiving the refund respondent called his mother and learned it was not necessary for him to return home. He then reentered the movie theater through a rear door without purchasing a new movie ticket. Respondent was arrested at the scene.

With respect to his 1993 conviction respondent explains he was working as a clerk at I. Magnin in the men's clothing department when he decided to shoplift an \$80 pair of shorts as a gift for a friend who had loaned him money. The security guard saw respondent take the shorts and he was arrested at the store.

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<sup>1</sup> On the DMV application, respondent answered "No" in response to question number 5, "...have you ever been CONVICTED, PLACED ON PROBATION, OR RELEASED FROM INCARCERATION FOLLOWING CONVICTION for any crime or offense either Felony or Misdemeanor, within the last ten years?" Respondent's answer to question number 5 was false or misleading in that he had been convicted of the offenses set forth above in Findings 2 and 3.

Respondent appeared in pro per at the hearings on both his arrests. He states he did not hire a lawyer because he knew he had committed the offenses and did not plan to dispute the charges. He therefore did not feel he needed representation. Respondent maintains he did not fully understand the effect of his convictions and thought the matters had been resolved by his payment of the fines and his staying away from the locations of arrest. (Respondent notes the fines he paid were small, no jail time was imposed and he was not required to report to a probation officer.) According to respondent, he did not understand he had been convicted of two "misdemeanor" offenses or that he had a criminal record. Therefore, when the DMV application posed the question whether he had been convicted of a criminal offense respondent answered no because he was not aware he had a criminal record. Respondent also admits he was in a rush, and therefore somewhat careless, when he filled out the DMV application. He denies any intent to deceive the DMV on his application.

6. Respondent characterizes the actions that resulted in his convictions as "dumb things to do." He believes his conduct was the result of youthful indiscretion. Respondent was in his twenties at the time of both offenses, unmarried and living at home. He frequently hung out with his friends until 2:00 a.m. and was only working "off and on." He feels his illegal conduct was a byproduct of that irresponsible lifestyle. Respondent states he has matured substantially in the nine years since his last conviction. He has moved away from the Los Angeles area, where the arrests occurred, and no longer associates with his friends from that era. In February 1998 respondent got married and now owns a home in San Jose with his wife. He has been successfully supporting himself for over seven years as a salesperson in various fields, including automobile insurance, automobile sales and high-tech. He regularly attends church and participates in many church activities.

Respondent also asserts that he has not engaged in any illegal conduct since 1993 and notes that in February 2000 both of his criminal convictions were expunged pursuant to Penal Code 1203.4. Respondent maintains he has learned his lesson and that he will not engage in criminal conduct in the future. He specifically notes that his attempts to become a naturalized citizen (he is currently a resident alien) during the past 7 years have been unsuccessful and he now believes his convictions may be a factor. Respondent indicates he would not further prejudice his chances at naturalization by engaging in criminal conduct.

7. Respondent is 34 years old. He is married with no children. Respondent provides financial support to his mother, who is now disabled, and occasionally, to his in-laws. Respondent currently works as a junior account executive for Chapel Funding Corporation, a mortgage lender. He has held that position since August 1, 2002. Between April 2000 and July 2002 respondent held sales jobs with several high tech companies, including Citium Inc., Persistence Software and Elance Inc. From approximately July 1998 to March 2000 respondent worked in automobile sales on a temporary vehicle salesperson license that was extended several times. As previously noted respondent's application for a permanent vehicle salesperson license was ultimately denied effective March 2000.

Respondent is seeking a real estate license because he is interested in real estate (his aunt is a broker) and he feels he could be very successful in sales.

8. Respondent submitted letters of reference from three former employers and his current employer. In their letters respondent's former employers, Frank Shamoo of Frontier Ford, Jyotin Bharwada of Prism Communications, Inc., and Peter Torres of Citium Inc., all attest to their belief that respondent is honest, trustworthy, responsible and a hard worker. The letter from respondent's current employer, Tamara Webster, Regional V.P., Northwest Division of Chapel Funding Corporation, indicates she is aware of respondent's prior convictions but that it in no way affects his position with her organization. She notes that respondent is a quick learner and a team player, and that she is pleased with his performance.

### LEGAL CONCLUSIONS

1. Cause for denial of respondent's application exists pursuant to Business and Professions Code sections 480, subdivision (a) and 10177, subdivision (b) in that respondent has been convicted of crimes involving moral turpitude and/or which bear a substantial relationship to the qualifications, functions or duties of a real estate sales person, as set forth in Findings 2 and 3.

2. Cause for denial of respondent's application exists pursuant to Business and Professions Code sections 480, subdivision (a)(3) and 10177, subdivision (f) in that respondent committed acts which, if committed by a licensee, would be grounds for the suspension or revocation of his license, as set forth in Finding 4.

3. Notwithstanding respondent's convictions and the DMV's denial of his 1998 application for a vehicle salesperson license, it is determined that it would not be against the public interest to grant respondent a real estate salesperson license upon appropriate terms and conditions. In this regard, it is noted that respondent's most recent conviction occurred over nine years ago and respondent has not engaged in any known illegal conduct since that time. Although both of respondent's convictions involved dishonesty, they occurred when he was much younger and were for minor offenses that required only the payment of fines and unsupervised probation. These factors would tend to support respondent's claim that he was not aware of the full effect of his convictions at the time he filed his DMV application in 1998. Respondent also appears to have accepted responsibility for his actions and seems motivated to pursue honest employment. He has successfully done so for at least the last seven years. During that time he has also married and purchased a home. All of these factors indicate respondent has matured substantially since his last conviction in 1993. In addition, respondent is attempting to become a naturalized citizen. It thus appears unlikely that respondent will engage in criminal or dishonest conduct in the future.


## ORDER

Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to section 10156.5 of the Business and Professions Code. 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 license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:
  - (a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or
  - (b) The receipt of evidence 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.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to Respondent.
3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:
  - (a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and
  - (b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two courses listed in Section 10153.2, other than real estate principals, advanced real estate finance or advanced real estate appraisal. If Respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting the restriction.
5. Pursuant to Section 10154, if Respondent has not satisfied the requirements for an unqualified license under Section 10153.4, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

DATED: 12/13/02

  
CHERYL R. TOMPKIN  
Administrative Law Judge  
Office of Administrative Hearings

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

**FILED**  
**JUL 18 2002**

DEPARTMENT OF REAL ESTATE

*In the Matter of the Application of*

JOSEPH MAROUGI,

Case No. H-8136 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, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612** on **WEDNESDAY, OCTOBER 9, 2002**, 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 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.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you 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 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: JULY 18, 2002

By

*Deidre L. Johnson*  
DEIDRE L. JOHNSON, Counsel



1 JAMES L. BEAVER, Counsel (SBN 60543)  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0788 (Direct)

FILED  
JUL -1 2002

DEPARTMENT OF REAL ESTATE

By Laurie A. Zain

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Application of )

12 JOSEPH MAROUGI, )

13 Respondent. )

No. H-8136 SF

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 JOSEPH MAROUGI (hereinafter "Respondent") alleges  
18 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 February 20, 2002 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  
25 10153.4 of the California Business and Professions Code.

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1 II

2 Complainant, Les R. Bettencourt, a Deputy Real Estate  
3 Commissioner of the State of California, makes this Statement of  
4 Issues in his official capacity.

5 III

6 On or about August 7, 1991, in the Municipal Court of  
7 the State of California, County of Los Angeles, Van Nuys  
8 Judicial District, Respondent was convicted of the crime of  
9 Petty Theft in violation of Penal Code Section 484(a), a  
10 misdemeanor and a crime involving moral turpitude which bears a  
11 substantial relationship under Section 2910, Title 10,  
12 California Code of Regulations (herein "the Regulations"), to  
13 the qualifications, functions or duties of a real estate  
14 licensee.

15 IV

16 On or about September 17, 1993, in the Municipal Court  
17 of the State of California, County of Los Angeles, Van Nuys  
18 Judicial District, Respondent was convicted of the crime of  
19 Petty Theft in violation of Penal Code Section 484(a), a  
20 misdemeanor and a crime involving moral turpitude which bears a  
21 substantial relationship under Section 2910 of the Regulations  
22 to the qualifications, functions or duties of a real estate  
23 licensee.

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1 V

2 Effective March 24, 2000, after giving Respondent fair  
3 notice of the charges, a hearing, and the other due process  
4 protections afforded by the Administrative Procedure Act, the  
5 California Department of Motor Vehicles (hereinafter "the DMV")  
6 denied Respondent's application for a vehicle salesperson's  
7 license upon an express finding of violations of law for acts  
8 that, if done by a real estate licensee, would be grounds for  
9 the suspension or revocation of a California real estate license  
10 pursuant to the provisions of Sections 490, 10177(a) and  
11 10177(b) of the Code.

12 VI

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

18 VII

19 The denial by the DMV of Respondent's application for  
20 a motor vehicle salesperson's license, described in Paragraph V,  
21 above, constitutes cause for denial of Respondent's application  
22 for a real estate license under Sections 480(a)(3) and 10177(f)  
23 of the Code.


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27 ///

1           WHEREFORE, Complainant prays that the above-entitled  
2 matter be set for hearing and, upon proof of the charges  
3 contained herein, that the Commissioner refuse to authorize the  
4 issuance of, and deny the issuance of a real estate salesperson  
5 license to Respondent, and for such other and further relief as  
6 may be proper in the premises.

7  
8   
9 LES R. BETTENCOURT  
Deputy Real Estate Commissioner

10 Dated at Oakland, California,  
11 this 26th day of June, 2002.