

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
MAR 18 2003

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

\* \* \*

In the Matter of the Application of )  
MARC A. GALLARDO, ) NO. H-8208 SF  
Respondent. ) N-2002120375

DECISION

The Proposed Decision dated February 14, 2003, 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. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon  
on April 7, 2003.

IT IS SO ORDERED March 4, 2003.

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

MARC A. GALLARDO,

Respondent.

No. H-8208 SF

OAH No. N 2002120375

**PROPOSED DECISION**

John K. Markley, Administrative Law Judge, Office of the Administrative Hearings, State of California, heard this matter on February 5, 2003, in Oakland, California.

The Department of Real Estate ("Department") was represented by Larry A. Alamao, Assistant Chief Counsel.

Marc A. Gallardo, respondent, was present and was represented by Charles Benninghoff, a professional advocate.

Evidence was received, the record was closed and the matter was submitted on February 5, 2003.

**FACTUAL FINDINGS**

1. Les R. Bettencourt ("complainant") made and filed this statement of issues in his official capacity of Deputy Real Estate Commissioner of the State of California.

2. On June 24, 2002, respondent made an application to the Department for a real estate salesperson license.

3. The Department's application expressly instructed respondent as follows: **"Carefully read and provide detailed answers to questions #24-26. You must provide a yes or no response to all questions.** "Convicted" as used in Question 25 includes a verdict of guilty by judge or jury, a plea of guilty or nolo contendere, or a forfeiture of bail in municipal, superior or federal court. All convictions must be disclosed whether or not the plea or verdict was set aside, the conviction against you was dismissed, or expunged or if you have been pardoned."

Question 25 of the application asked: "Have you ever been convicted of any violation of law? Convictions expunged under Penal Code Section 1203.4 must be disclosed."

Question 27 of the application required respondent to provide a detailed explanation of any prior criminal conviction.

4. Under penalty of perjury, respondent answered "NO" to question 25, and respondent did not disclose or detail his prior criminal conviction as required in question 27 of the application.

5. Respondent testified that he was confused as to whether he must disclose the January 23, 2001 criminal conviction on his application because of statements allegedly made by the judge at his criminal proceedings. Respondent also testified that he asked his father's advice on the disclosure question and received incorrect advice. The evidence offered by respondent, even if believed, does not justify or excuse respondent's failure to disclose in accordance with the express and clear instructions on the application. When respondent made his June 24, 2002 application, respondent was still serving his two-year criminal probation and had not sought or obtained an expungement under Penal Code section 1203.4. This was a "conviction" which was required to be disclosed. Consequently, it is found that respondent intentionally failed to disclose his prior criminal conviction on his application.

6. As to the undisclosed criminal conviction: On or about January 23, 2001, respondent pled guilty and was convicted of theft, a misdemeanor violation of California Penal Code section 484/488, in the Superior Court of California, County of Santa Clara, Case No. FF092189.

7. The underlying facts and circumstances of the conviction are: Respondent, then a college-age male, was owed approximately \$45.00 by a friend who was then employed as a clerk at Walmart. Respondent collected payment of the debt by purchasing merchandise from Walmart and allowing the debtor-clerk to charge less-than-full value for the merchandise or by failing to charge for all items purchased. Respondent's intentional act constituted the theft of merchandise from Walmart.

8. This theft is a crime involving moral turpitude and is substantially related to the qualifications, functions or duties of a real estate licensee as it involves the fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person as well as the doing of an unlawful act with the intent of conferring a financial or economic benefit on respondent.

9. For this misdemeanor crime, respondent was sentenced to serve two days in jail, with two years of probation, payment of court fines and performance of community service. Respondent paid the fines, served the two days, performed the

community service and successfully completed his two-year probation on January 23, 2003.

10. As to respondent's rehabilitation: Respondent's own act, being the intentional failure to disclose his criminal conviction, negates and outweighs the substantial evidence offered by family and friends of respondent's good character and his change of attitude subsequent to the criminal conviction. Consequently, respondent has currently failed to demonstrate a sufficient change in his attitude from that attitude existing at the time of his criminal conviction as specified by section 2911 of the Regulations of the Real Estate Commissioner.

11. Issuing a real estate salesperson license to respondent at this time is contrary to the public interest.

### LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 2 through 5, inclusive, cause for disciplinary action exists pursuant to Business and Professions Code section 480(c) and section 10177(a) in that respondent attempted to procure a real estate license for himself by fraud, misrepresentation, deceit or by making a material misstatement of fact in his application.

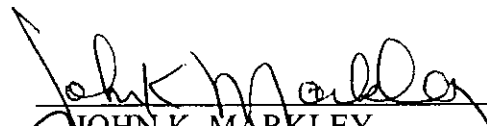
2. By reason of the matters set forth in Findings 6 through 8, inclusive, cause for disciplinary action exists pursuant to Business and Professions Code section 480(a) and section 10177(b) of the California Business and Professions Code in that respondent has been convicted of a crime involving moral turpitude which is substantially related to the qualifications, functions or duties of a real estate licensee.

3. By reason of the matters set forth in Findings 4, 5, 6, 7, 8, 10 and 11, respondent has failed to establish his personal rehabilitation under the criteria of section 2911 of the Regulations of the Real Estate Commissioner and, consequently, denial of respondent's current license application is required to protect the public interest.

### ORDER

The application of Marc A. Gallardo for a real estate salesperson license is denied.

Dated: February 14, 2003

  
\_\_\_\_\_  
JOHN K. MARKLEY  
Administrative Law Judge  
Office of Administrative Hearings

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

**FILED**  
**DEC 10 2002**

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

*In the Matter of the Application of*

MARC ANTHONY GALLARDO,

} Case No. H-8208 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  
THE ELIHU HARRIS STATE BUILDING  
1515 CLAY STREET, SUITE 206  
OAKLAND, CALIFORNIA 94612**

on **FEBRUARY 5, 2003**, at the hour of **1:30 PM**, 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.

*Dated:* DECEMBER 5, 2002

DEPARTMENT OF REAL ESTATE  
By Larry Alarao  
LARRY A. ALARAO, Counsel  
RE 500 (Rev. 8/97)

*flor*

1 LARRY A. ALAMAO, Counsel  
State Bar No. 47379  
2 Department of Real Estate  
P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4 Telephone: (916) 227-0789

FILED  
OCT 16 2002

DEPARTMENT OF REAL ESTATE

By *Juan Alamo*

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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of )	
)	NO. H-8208 SF
MARC ANTHONY GALLARDO, )	
)	<u>STATEMENT OF ISSUES</u>
Respondent. )	
)	

The Complainant, LES R. BETTENCOURT, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against MARC ANTHONY GALLARDO (hereinafter "Respondent"), is informed and alleges as follows:

I

Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about June 24, 2002, with the knowledge and understanding that any license issued as a result of said application would be subject to the conditions of Section 10153.4 of the Business and Professions Code.

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II

Complainant, LES R. BETTENCOURT, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity and not otherwise.

III

In response to Question 25 of said application, to wit: "Have you ever been convicted of any violation of law?", Respondent answered "No".

IV

On or about January 23, 2001, in the Superior Court, County of Santa Clara, Respondent was convicted of a violation of Section 484/488 of the California Penal Code (Theft), a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

V


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

VI

Respondent's failure to reveal the conviction set forth in Paragraph IV above in said application constitutes the procurement of a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said application, which failure is cause for denial of Respondent's

1 application for a real estate license under Sections 480(c) and  
2 10177(a) of the California Business and Professions Code.

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

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12 LES R. BETTENCOURT  
13 Deputy Real Estate Commissioner

14 Dated at Oakland, California,  
15 this 12th day of September, 2002.

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