

FILED

MAR 25 2003

DEPARTMENT OF REAL ESTATE

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By Jean [Signature]

* * *

In the Matter of the Application of)
DAVE T. GONZALEZ,)
Respondent.)

NO. H-8222 SF

N-2002110628

DECISION

The Proposed Decision dated February 20, 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 15, 2003.

IT IS SO ORDERED March 4, 2003.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann [Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

DAVE T. GONZALEZ,

Respondent.

No. H-8222 SF

OAH No. N 2002110628

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.

Dave T. Gonzalez, respondent, was present and was assisted by Harvey Yalkut.

Evidence was received, the matter was submitted and the hearing was closed 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 March 19, 2002, respondent made application to the Department for a real estate salesperson license. Respondent's application disclosed that respondent had previously been convicted of a violation of the law.

3. After a judge trial, respondent was convicted on June 4, 1996, of annoying or molesting a child, a misdemeanor violation of California Penal Code section 647.6, in the Municipal Court of California, County of Santa Clara, Case No. C9559063.

4. An abnormal sexual interest or intent manifested by acts of annoyance or molestation of a child is a crime involving moral turpitude (see *Brewer v. Department of Motor Vehicles* (1979) 93 Cal.App.3d 358, 155 Cal.Rptr. 643). Respondent's criminal conviction involves moral turpitude. Further, this is a crime which caused emotional

distress to a 13-year old non-consenting participant as set forth in California Code of Regulations, section 2910. This crime is substantially related to the qualifications, functions or duties of a real estate licensee. Respondent's criminal conviction reflects adversely on his honesty and integrity, especially as respondent continues to deny any wrongdoing. Respondent's continued denial of any wrongdoing demonstrates he may still be inclined to engage in inappropriate sexual activity with, and to direct inappropriate sexual comments to, minor female members of families who seek to sell or buy homes. Most importantly, the criminal conviction demonstrates an abuse of the power and violation of the trust by one in a position of power and authority. We require real estate salespersons to be honest, to have personal integrity, to refrain from criminal actions, to refrain from criminal sexual acts, to honor their position of client trust and to uphold the agency and fiduciary duties owed to their real estate clients. Respondent's criminal conviction reflects adversely on these qualifications, functions and duties of a real estate licensee.

5. Respondent was sentenced to a suspended 60-day jail sentence, placed on two (2) years formal probation, to payment of fines and to performance of 150 hours of community service.

6. The underlying facts and circumstances of the 1996 conviction are: While on duty as a uniformed member of the San Jose Police Department on August 25, 1994, respondent responded to a disturbance call between a 13-year old female and her 15-year old ex-boyfriend. Against police policy, respondent directed the minor female to enter the front seat of the police vehicle for the one-block drive to her ex-boyfriend's house. Once she was in the police vehicle, respondent allegedly put his fingers through the sides of her overalls, moved his hand toward her vaginal area and made comments about her young age and her underwear. Respondent denies any wrong doing except allowing the female to sit in the front seat of the police vehicle. Despite similar testimony at the criminal trial, respondent was convicted of annoying or molesting a minor female. The criminal court judgment was subject to the beyond-a-reasonable-doubt standard of proof and is accepted here as establishing that the alleged actions in fact occurred.

7. Respondent was also investigated for and charged with a second Penal Code section 647.6 count in a separate incident involving allegedly improper comments to 15-year old female in August of 1995. This count was dismissed.

8. As a consequence of these incidents and the criminal conviction, respondent resigned from the San Jose Police Department in 1996.

9. As to respondent's efforts at rehabilitation:

(a) Respondent has not been charged with any criminal acts subsequent to the 1996 conviction.

(b) Respondent has fully performed all actions required by the 1996 criminal sentence, including the payment of all fines and the performance of all community service.

(c) Respondent successfully completed his probation in 1999.

(d) Respondent's criminal record was expunged under Penal Code section 1203.4 on November 29, 1999.

(e) Subsequent to his retirement from the San Jose Police Department, respondent opened and operated a pet care business serving clients in the San Jose area. Respondent sold this business in September of 2001. While conducting this business, respondent had door key and alarm code access to customers' homes in order to care for their pets. No customers complained of any criminal or improper activity and respondent gained a reputation for trustworthiness and honesty which is supported by the purchaser of the business.

(f) Following the sale of his pet care business, respondent is currently overseeing a real estate condominium owned jointly with his wife and acting as a sales representative for a sodium calcium carbonate product.

(g) Respondent's wife is also a San Jose Police Department officer. The criminal conviction took its toll on their marriage and, consequently, respondent is currently separated from his wife and a divorce proceeding is pending. Respondent describes the divorce proceedings as amicable.

(h) Respondent is the father of three minor children and he shares custody equally with their mother. Respondent maintains his house as a residence for these children and actively participates in their daily care and upbringing. By all accounts respondent is a good father to his children and tries to set a positive example for them.

(i) Respondent and his wife are long-time members of the St. Johns Vianni Catholic Church and are graduates of the St. Johns Vianni private religious school. Their three children are now attending this school. Respondent supports this religious school education and regularly takes his children to religious services. Respondent tries to set an example for his children by seriously participating in the church services and by volunteering his time to assist in the church events.

(j) Respondent comes from a large family of six siblings and has a good, ongoing relationship with his parents, brothers, sisters and their children. They frequent each others' houses for family and holiday events.

(k) Respondent has no credit or debt problems.

(l) Respondent has no drug or alcohol problems. Drugs and alcohol were not involved in the criminal conviction.

(m) Respondent has taken the educational courses necessary to obtain a real estate salesperson license, except for those courses which must be taken within 18 months following issuance of any license.

10. Respondent testified, that in support of his attempt to obtain a real estate license, he went to a professional counselor who concluded that he was a "no risk" or "low risk" threat to again commit sexual crimes (recidivism). However, the counselor was not present to testify and be cross-examined as an expert witness and, consequently, respondent's conclusory and hearsay testimony is of very limited value. It is specifically noted that under cross-examination by Mr. Alamao, respondent evaded the question of whether or not he admitted to the counselor that he had committed the alleged acts. Consequently, there is insufficient direct evidence to find that respondent obtained appropriate professional counseling and that the counseling cured him of his proclivity to annoy or molest children.

11. Respondent has not accepted personal responsibility for his actions and has not demonstrated any personal remorse. Respondent continues to deny that he engaged in any wrongdoing with regard to the 13-year old female. Respondent asserts that he did not touch the minor female, make the alleged improper comments and did not molest or annoy the minor female. Respondent asserts his only impropriety was an error in judgment in placing the 13-year female in the front seat of his police vehicle in violation of policy. Consequently, respondent has failed to demonstrate the required change of attitude since his 1996 conviction. It is noted that respondent previously was denied a real estate license on this same ground. Respondent's attitude did not change in the intervening period and he still has not satisfactorily demonstrated the change of attitude necessary to establish his personal rehabilitation.

12. As respondent has not yet demonstrated sufficient personal rehabilitation, it would be contrary to the public interest to issue to respondent a real estate salesperson license.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 2, 3 and 4, cause for disciplinary action exists pursuant to Business and Professions Code section 480(a) and section 10177 (b) in that respondent was convicted of annoying or molesting a child, a crime which involves moral turpitude and which is substantially related to the qualifications, functions or duties of a licensed real estate salesperson.

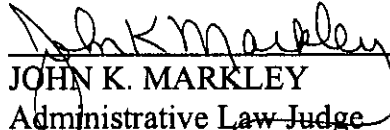
2. By reason of the matters set forth in Findings 5 through 12, inclusive, respondent has failed to establish his personal rehabilitation.

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

ORDER

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

Dated: February 20, 2003



JOHN K. MARKLEY
Administrative Law Judge
Office of Administrative Hearings

FILED
NOV 19 2002

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

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Application of

DAVE T. GONZALEZ,

}
}

Case No. H-8222 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 **9:00 AM**, 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: NOVEMBER 16, 2002

By Larry A. Alamao
LARRY A. ALAMA, Counsel
RE 500 (Rev. 8/97)

1 DEIDRE L. JOHNSON, Counsel
SBN 66322
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FILED
OCT 30 2002

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 Application of)
13 DAVE T. GONZALEZ,) NO. H-8222 SF
14 Respondent.) STATEMENT OF ISSUES
15)

16 The Complainant, LES R. BETTENCOURT, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 Statement of Issues against DAVE T. GONZALEZ, alleges as follows:

19 I

20 DAVE T. GONZALEZ (hereafter Respondent), pursuant to
21 the provisions of Section 10153.3 of the Business and Professions
22 Code (hereafter the Code), made application to the Department
23 of Real Estate of the State of California for a real estate
24 salesperson license on or about March 19, 2002, with the
25 knowledge and understanding that any license issued as a result
26 of said application would be subject to the conditions of
27 Section 10153.4 of the 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

On or about June 4, 1996, in the Municipal Court of the State of California, County of Santa Clara, Respondent was convicted of violation of Penal Code Section 647.6 (ANNOYING OR MOLESTING A CHILD), a crime involving moral turpitude, and/or a crime 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.

IV

Effective on or about July 2, 2001, in Case No. H-7910 SF, OAH Case No. N-2001010425, before the State of California Department of Real Estate, the application of Respondent for a real estate salesperson license, filed on May 17, 2000, was denied under Sections 480(a) and 10177(b) of the California Business and Professions Code (hereafter the Code).

V


The grounds for denial of Respondent's application alleged in Paragraph IV above were based in whole or in part on acts which, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, and constitute cause for denial of Respondent's present application for a real estate salesperson license under Section 10177(f) of the Code.

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VI

The crime of which Respondent was convicted as alleged in Paragraph III above constitutes cause for denial of Respondent's application for a real estate license under Sections 480(a) and/or 10177(b) of the Code.

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


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California
this 11th day of October, 2002.