

FILED

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

APR - 2 2008

DEPARTMENT OF REAL ESTATE

\* \* \*

In the Matter of the Accusation of  
CARLOS MANUEL RAMIREZ,  
Respondent.

NO. H-10194 SF  
OAH NO. N-2007110175

DECISION

The Proposed Decision dated February 25, 2008, 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 Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon

on **APR 23 2008**

IT IS SO ORDERED

3/28/08  
JEFF DAVI  
Real Estate Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CARLOS MANUEL RAMIREZ,

Respondent.

Case No. H-10194 SF

OAH No. 2007110175

**PROPOSED DECISION**

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter in Oakland, California, on January 28, 2008.

Angela L. Cash, Counsel, Department of Real Estate, represented Complainant Charles W. Koenig, Deputy Real Estate Commissioner.

Edgardo Gonzales, Attorney at Law, represented Respondent Carlos Manuel Ramirez, who was present.

The record closed on January 28, 2008.

**FACTUAL FINDINGS**

1. Complainant Charles W. Koenig filed the Accusation in his official capacity as a deputy real estate commissioner for the Department of Real Estate, State of California.
2. Carlos Manuel Ramirez (Respondent) is either licensed and/or has license rights under the Real Estate Law as a real estate broker. As of January 24, 2008, his broker license was scheduled to expire on September 15, 2010.
3. On March 22, 2007, in the San Francisco County Superior Court, Respondent was convicted by his plea of guilty of a felony violation of Penal Code section 32, accessory to a crime. The minute order does not identify the underlying crime, but the criminal complaint originally charged Respondent with one count of Health and Safety Code section 11359, possession of marijuana for sale, and one count of Health and Safety Code section 11358, cultivation of marijuana. Respondent was placed on probation for three years pursuant to numerous conditions.

4. Respondent's conviction resulted from his arrest on May 3, 2006, by officers with the San Francisco Police Department's Narcotics Division. SFPD assisted agents from the federal Drug Enforcement Administration and the Federal Bureau of Investigation in serving a search warrant at 118 Texas Street, Respondent's residence. The property, which was owned by and occupied by both Respondent and his brother Rafael Ramirez, contains a duplex and one garage.

The search revealed an indoor marijuana cultivation area in an enclosed area in the garage. Items seized included 99 plants ranging in height from eight to twelve inches and bags of marijuana buds and marijuana shake. The plants were in individual pots and sitting in trays that were elevated on wooden stands. There were large tubs of water under each planting tray and high-intensity grow lamps suspended over each tray. Each grow lamp was connected to a transformer/ballast which was connected to an electric timer. The room was cooled by an air conditioner unit and an electric fan. Fertilizer, growth medium and related items were found in various locations outside the enclosed area.

5. Rafael Ramirez was indicted in the United States District Court, Northern District of California. On August 27, 2007, he pled guilty to a violation of 21 United States Code, section 841(a)(1), possession with intent to distribute marijuana. Rafael Ramirez was sentenced to prison for 168 months with a recommendation that he participate in the 500-hour drug treatment program.

#### *Respondent's evidence*

6. Respondent was aware when his brother began the cultivation operation in 2005. But he felt at the time that he could ignore it because it was in the garage and not on the portion of the property that he considered his. Respondent felt caught in a very difficult position between his older brother and law enforcement. Respondent accepts responsibility for his lack of action and knows that it was "morally wrong."

7. Respondent obtained 14 character letters, which are in evidence in this matter, to show to the sentencing judge in his criminal case. He served his one day in jail and is working on paying the fines. Respondent represents that he is in compliance with his probation and plans to request that the conviction be reduced to a misdemeanor, as was provided in the plea bargain, at the appropriate time.

8. Respondent is currently 37 years of age. After graduating from high school in 2000, he attended community college, followed by the University of Southern California. Respondent graduated from USC in 2006 with a Bachelor of Science degree in business administration. Respondent has held a variety of positions in the real estate industry since 1995. In 2004 he founded the Hawthorne Group with three partners. It is a full service brokerage firm specializing in leasing, sales and financing of commercial real estate in San Francisco. Respondent holds the only broker license. Two salespersons work under his license.

9. Respondent now resides with his parents and his brother's wife and children. As his brother is in prison, he assists his niece and nephew as he can with financial support and as a surrogate father.

10. Respondent presented three witnesses. Michael Halprin, a licensed salesperson, is one of Respondent's partners at the Hawthorne Group. Halprin related that Respondent told him and the other partners about his arrest "right after the occurrence of the incident." Respondent explained that the crime involved his brother growing marijuana in the garage. Halprin had visited the home many times and saw no evidence of unlawful activity. He stated that Respondent always "does things above board" and that Respondent has tried to be a father figure for his niece and nephew.

Jeremy Styer owns a janitorial brokerage company and has been friends with Respondent since 7th grade. Respondent helped him to negotiate the lease for his business and has been a good friend.

Joel Gomez is a deputy with the San Francisco County Sheriff's office. He has known Respondent for about ten years. In 2004, Gomez obtained his salesperson license and Respondent was very helpful at that time. Gomez was very surprised to hear about Respondent's conviction as he would never have associated him with criminal activity.

11. Respondent testified in a forthcoming manner that was consistent with credibility. He was persuasive in his assurances that his conviction was the result of unique circumstances and that he is committed to a law-abiding life.

### LEGAL CONCLUSIONS

1. Business and Professions Code sections 490 and 10177, subdivision (b), together provide that a real estate license may be disciplined if the licensee has been convicted of a felony or a crime of moral turpitude that is substantially related to the qualifications, functions, or duties of the profession. The offense of accessory to the possession and cultivation of drugs is both a felony and a crime of moral turpitude. Hence, there is no question that Respondent's conviction for that offense gives cause to discipline his license.

2. A primary purpose of the licensing scheme for real estate professionals is to protect the public from dishonest and unscrupulous licensees. Real estate licensees are fiduciaries, and it is particularly important that brokers possess the character traits of honesty and integrity. They owe a duty of affirmative honest conduct not only to their clients, but also to lenders, other parties, and the public at large. Respondent essentially looked the other way while his brother engaged in the cultivation of marijuana at their residence. This is evidence of a lack of honesty and integrity.

3. In California Code of Regulations, title 10, section 2912, the Department has established criteria to guide the analysis of whether a licensee with a criminal conviction is

sufficiently rehabilitated to be safe to practice as a real estate licensee. One of the criteria is passage of time (not less than two years) and this is a major stumbling block for Respondent. His conviction is less than one year old and he is still on probation. On the other hand, Respondent's crime consisted of failing to confront or turn over his brother to law enforcement. Respondent was not an active participant in the criminal activity. The facts underlying the conviction weigh in favor of the conclusion that his risk of reoffense is quite low.

Respondent has suffered greatly for his inaction. He now lives with other family members in part because his brother is in prison. Respondent's professional life is established and his crime was not directly connected to his work as a real estate broker. All things considered, it is determined that it would not be against the public interest for Respondent to be issued a restricted broker license.

#### ORDER

All licenses and licensing rights of Respondent Carlos Manuel Ramirez under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to section 10156.5 of the Business and Professions Code if Respondent makes application therefore 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 that Code:

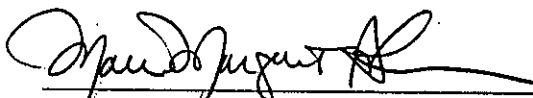
1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.
2. The 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 real estate license or for the removal of any of the conditions, limitations or restrictions of a restricted license until three years have elapsed from the effective date of this Decision.
4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or

renewal real estate 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.

5. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.
6. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which the Respondent engaged during the period covered by the report.

DATED: February 28, 2008

  
MARY-MARGARET ANDERSON  
Administrative Law Judge  
Office of Administrative Hearings

1 ANGELA L. CASH, Counsel (SBN 230882)  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0805 (Direct)

FILED  
SEP 26 2007

DEPARTMENT OF REAL ESTATE

By K. Mar

7  
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of )  
12 ) H-10194 SF  
13 CARLOS MANUEL RAMIREZ, )  
14 ) ACCUSATION  
Respondent. )

15 The Complainant, Charles W. Koenig, a Deputy Real  
16 Estate Commissioner of the State of California, for cause of  
17 Accusation against CARLOS MANUEL RAMIREZ (hereinafter  
18 "Respondent"), is informed and alleges as follows:

19 I

20 Complainant, Charles W. Koenig, a Deputy Real Estate  
21 Commissioner of the State of California, makes this Accusation  
22 against Respondent in his official capacity.

23 II

24 Respondent is presently licensed and/or has license  
25 rights under the Real Estate Law, Part 1 of Division 4 of the  
26 Business and Professions Code (hereinafter "the Code").

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1 III

2 At all times herein mentioned from and after  
3 September 16, 2002, Respondent was and now is licensed by the  
4 Department of Real Estate (herein "Department") as a real estate  
5 broker.

6 IV

7 On or about April 20, 2007, in the Superior Court of  
8 the State of California, County of San Francisco, Case Number  
9 2265288, Respondent was convicted of the crime of Accessory to  
10 Criminal Possession and Cultivation of Drugs in violation of  
11 Penal Code Section 32, a felony and a crime involving moral  
12 turpitude, which bears a substantial relationship under Section  
13 2910, Title 10, California Code of Regulations, to the  
14 qualifications, functions, or duties of a real estate licensee.

15 V

16 Respondent's criminal conviction described in  
17 Paragraph IV, above, constitutes cause under Sections 490 and  
18 10177(b) of the Code for suspension or revocation of  
19 Respondent's license under the Real Estate Law.

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1           WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a Decision be rendered imposing disciplinary  
4 action against all licenses and license rights of Respondent  
5 under the Code, and for such other and further relief as may be  
6 proper under provisions of law.

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9 CHARLES W. KOENIG  
Deputy Real Estate Commissioner

10 Dated at Sacramento, California  
11 this 25<sup>th</sup> day of September, 2007.  
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