

FILED

NOV 17 2009

DEPARTMENT OF REAL ESTATE

By H. Mar

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of)	
)	NO. H-10701 SF
RANDALL RUBEN RAMIREZ,)	
)	OAH NO. 2009070077
Respondent.)	
_____)	

DECISION

The Proposed Decision dated October 5, 2009, 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.

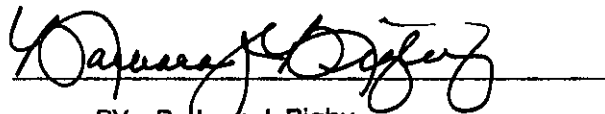
If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon on

DEC - 8 2009

IT IS SO ORDERED 11-16-09

JEFF DAVI
Real Estate Commissioner


BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

RANDALL RUBEN RAMIREZ,

Respondent.

No. H-10701 SF

OAH No. 2009070077

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on September 3, 2009, in Oakland, California.

Department of Real Estate Counsel Richard K. Uno represented complainant Joe M. Carrillo, Deputy Real Estate Commissioner, State of California.

J. Anne Rawlins, Attorney at Law, represented respondent Randall Ruben Ramirez, who was present.

The matter was submitted for decision on September 3, 2009.

FACTUAL FINDINGS

1. Respondent Randall Ruben Ramirez submitted to the Department of Real Estate an application for a real estate salesperson license. The application was dated September 15, 2008, and the department received it on September 17, 2008.
2. On March 20, 1987, in Alameda County, respondent was convicted on his plea of nolo contendere of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on court probation for 36 months. One of the conditions of probation was that respondent complete a first offender DUI program.
3. The facts and circumstances of this conviction are that on December 14, 1986, one week after his 18th birthday, respondent was driving home from a party when he was pulled over by police for not making a complete stop at a stop sign. Respondent had been drinking and was under the influence of alcohol. The court documents indicate respondent's blood alcohol content was 0.15/0.17 percent.

4. On June 14, 1988, in Alameda County, respondent was convicted on his plea of guilty of violating Penal Code section 211 (robbery, second degree), a felony. On September 23, 1988, imposition of sentence was suspended and respondent was placed on formal probation for three years. He was required to serve the first six months of probation in county jail, but he was referred to the work furlough program.

5. The facts and circumstances of this conviction are that on January 14, 1988, respondent went to a liquor store to steal some beer, and his friend took an unloaded shotgun into the store and demanded money from the cashier. Respondent asserts that when they got to the store he told his friend, "This isn't right" (referring to bringing the gun into the store), but respondent still followed his friend in. Respondent grabbed some beer while his friend robbed the cashier.

6. On August 16, 1988, in Alameda County, respondent was convicted on his plea of guilty of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on court probation for 36 months. Conditions of probation included a 10-day jail sentence in the work furlough program, and an 18-month driver's license suspension.

7. The facts and circumstances of this conviction are that on April 23, 1988, respondent was driving his girlfriend home when he was pulled over by police for not making a complete stop before turning right at a stop light. Respondent had been drinking and was under the influence of alcohol.

8. On July 18, 1991, in Santa Cruz County, respondent was convicted on his plea of no contest of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on formal probation for 60 months. Conditions of probation included a 150-day jail sentence, with 15 days' credit for time served; and requirements that respondent totally abstain from alcohol and submit to periodic drug/alcohol testing.

9. The facts and circumstances of this conviction are that on July 4, 1991, when he was leaving Santa Cruz after drinking with friends at the Beach Boardwalk, respondent was stopped for speeding and running a red light. The police report indicates respondent's blood alcohol content was 0.24/0.26 percent.

10. On June 30, 1999, in Sacramento County, respondent was convicted on his plea of no contest of violating Vehicle Code section 23153, subdivision (a) (driving under the influence of alcohol/causing bodily injury), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on informal probation for three years. Conditions of probation included a 90-day jail sentence, to be served in the weekend work program; a one-year driver's license suspension; and requirements that respondent complete a first offender DUI program, attend eight AA meetings, and not drive a motor vehicle with any measurable amount of alcohol in his system.

11. The facts and circumstances of this conviction are that on March 20, 1999, respondent was driving in Sacramento after having had "too much to drink." He did not realize that the street he was on turned from a one-way street to a two-way street, and respondent drove over the center line and struck an oncoming vehicle. Respondent and his passenger were injured, as were persons in the other vehicle. The police report indicates respondent's blood alcohol content was 0.24 percent.

12. On August 30, 2000, in Santa Clara County, respondent was convicted on his plea of nolo contendere of violating Vehicle Code section 23152, subdivision (b) (driving a vehicle with a blood alcohol level of 0.08 percent or more), a misdemeanor, and Penal Code section 148, subdivision (a)(1) (resisting a peace officer). Imposition of sentence was suspended, and respondent was placed on formal probation for three years. Conditions of probation included a 60-day jail sentence, with 11 days' credit for time served; an 18-month restriction on respondent's driver's license; and requirements that respondent complete a multiple offender DUI program and participate in an alcohol program or AA meetings as directed by his probation officer.

13. The facts and circumstances of this conviction are that on August 21, 2000, respondent was driving home from a nightclub when he was pulled over by police for speeding and driving erratically. Although respondent denies that he resisted arrest, he had to be physically subdued by police. The court documents indicate respondent's blood alcohol content was 0.20 percent.

14. On March 1, 2004, in Alameda County, respondent was convicted by a jury verdict of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol), a misdemeanor. On April 19, 2004, imposition of sentence was suspended and respondent was placed on court probation for 36 months. Conditions of probation included a 130-day jail sentence; a 36-month driver's license suspension; and requirements that respondent complete a second offender DUI program, not drink alcoholic beverages to excess, and not drive a motor vehicle with any measurable amount of alcohol in his blood.

15. The facts and circumstances of this conviction are that on May 12, 2003, respondent was driving home after having had "too much to drink." In Castro Valley, he exited the freeway and pulled over on the off-ramp to answer his cell phone. A California Highway Patrol officer approached him because he had not pulled far enough off the roadway. Although respondent refused to take a chemical test after he was arrested, the results of the preliminary alcohol screening device showed a blood alcohol content of 0.15/0.17 percent.

16. Respondent is a 40-year-old man who had a difficult childhood and started drinking around age 15. His mother and grandmother are alcoholics, and he thinks his father might be an alcoholic. As a result of his many DUI convictions over the years, respondent participated in numerous DUI programs and attended court-ordered AA meetings. He was never motivated to quit drinking, however, until his last DUI arrest on May 12, 2003. Things

were going really well for respondent at that time. He had passed the real estate licensing examination after several tries, and his application for a real estate salesperson license was pending. Respondent was building a relationship with his father, a real estate broker who wanted to get respondent into his business, and he had purchased his first new car. His arrest on May 12, 2003 was a devastating setback, and respondent realized the only way he could avoid further arrests and convictions was to stop drinking altogether. He stopped drinking on his own, and he has remained sober ever since. "Knowing what's right" and wanting to live a healthy life is what keeps respondent sober. For the last two years, respondent's mother has lived with him, and he not only supports her financially but he supports her in her recovery efforts. She has had some relapses, but respondent encourages her to stay sober and he sometimes goes to AA meetings with her. It is important to respondent to be a positive influence on his mother.

17. On August 17, 2004, the Department of Real Estate filed a statement of issues seeking to deny respondent's March 2003 license application. Because of his then-recent conviction, respondent did not request a hearing. On October 15, 2004, the department denied his application in a default decision.

18. Respondent successfully completed probation on his last conviction, and on July 13, 2007, the court granted his petition to have the conviction expunged under Penal Code section 1203.4. At the same time, the court expunged respondent's August 1988 DUI conviction, but denied his request to expunge his 1987 DUI conviction. Respondent's 1991 DUI conviction has also been expunged, but his requests to expunge his 1988 robbery conviction and his 1999 DUI/bodily injury conviction were denied.

19. In 2007, respondent got his driver's license reinstated; he now is the designated driver when he goes out with friends or gets together with family.

20. From October 2007 to May 2009, respondent worked for Prometheus Real Estate Group as a leasing associate at various apartment complexes. He interacted with residents and potential renters, and his duties included taking rental applications and handling rental deposits. At the last property where he worked, respondent opened and closed the office by himself. Prometheus property manager Irene Nazareno came to the hearing to testify on respondent's behalf. She attested to his honesty and trustworthiness as an employee, and pointed out that respondent had access to personal information on rental applications.

21. In September 2008, respondent submitted his current application for a real estate license, fully disclosing his criminal convictions.

22. Since June 1, 2009, respondent has been employed by Marcus & Millichap in Palo Alto. He is the administrative assistant for David Dematteis, a real estate broker who specializes in apartment buildings. If respondent obtains a real estate license, he will continue working at Marcus & Millichap, but his duties will be expanded. Dematteis wrote a letter of reference in which he described respondent as dependable, honest and hardworking.

23. Respondent's mother and his uncle testified at the hearing, and they described respondent as honest, reliable, compassionate and family-oriented. They confirmed that respondent has been sober for six years, and they are confident that he will not start drinking again. Respondent acts as a mentor and role model for two cousins, ages 13 and 8, whose fathers are in jail or on drugs. Respondent has taken them camping and on other outings.

24. Respondent is sincerely remorseful for his criminal convictions, and he is committed to a sober, healthy and law-abiding lifestyle. He believes he has become a much more mature person in the last six years.

LEGAL CONCLUSIONS

1. Under Business and Professions Code section 480, subdivision (a), and section 10177, subdivision (b), a real estate license application may be denied if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of a real estate licensee. Conviction of a felony is a separate ground for denial under the latter code section.

California Code of Regulations, title 10, section 2910, sets forth the criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. A crime is deemed to be substantially related if it involves "[d]oing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator . . ." (subd. (a)(8)), "[c]onduct which demonstrates a pattern of repeated and willful disregard of law" (subd. (a)(10)), or "[t]wo or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs" (subd. (a)(11)).

2. Findings 2, 6, 8, 10, 12 & 14: Respondent's DUI convictions in 1987, 1988, 1991, 1999, 2000 and 2004 were for crimes substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivisions (a)(10) and (a)(11). Cause exists to deny his license application under Business and Professions Code section 480, subdivision (a), and section 10177, subdivision (b).

3. Finding 4: Respondent's 1988 robbery conviction was for a felony and a crime substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivisions (a)(8) and (a)(10). Cause exists to deny his license application under Business and Professions Code section 480, subdivision (a), and section 10177, subdivision (b).

4. Finding 12: Respondent's 2000 conviction for violating Penal Code section 148, subdivision (a)(1) (resisting a peace officer) was for a crime substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(10). Cause exists to deny his license

application under Business and Professions Code section 480, subdivision (a), and section 10177, subdivision (b).

5. Although respondent has a record of DUI convictions spanning almost two decades, his last arrest in May 2003 marked a turning point in his life. Respondent stopped drinking and has remained sober for over six years. He is not involved in a 12-step program, but he is strongly motivated to support his mother's recovery from alcoholism and be a role model for her. Respondent has been off criminal probation for over two years, and he has been an honest, trustworthy and reliable employee. Respondent has established that he is sufficiently rehabilitated that it would not be contrary to the public interest to grant him a restricted real estate license.

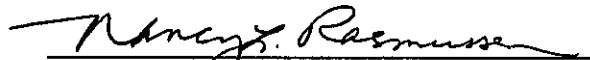
ORDER

The application of respondent Randall Ruben Ramirez for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to him pursuant to Business and Professions Code section 10156.5. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that 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. Respondent's conviction, including by 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. 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 the restricted license.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or 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 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 real estate license is required.

DATED: October 5, 2009


NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings

1 RICHARD K. UNO, Counsel (SBN 98275)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-2380

FILED

JUN 15 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 RANDALL RUBEN RAMIREZ,) H-10701 SF
13 Respondent.) STATEMENT OF ISSUES
14)

15 The Complainant, JOE M. CARRILLO, , a Deputy Real Estate Commissioner of
16 the State of California, for Statement of Issues against RANDALL RUBEN RAMIREZ
17 (Respondent), is informed and alleges as follows:

18 1

19 Complainant makes this Statement of Issues against Respondent in his official
20 capacity.

21 2

22 Respondent made application to the Department of Real Estate of the State of
23 California for a real estate salesperson license on or about September 17, 2008.

24 3

25 On or about March 24, 1987, in the Municipal Court of the State of California,
26 County of Alameda, Case No. 213821, Respondent was convicted of violating Section 23152(a)
27 of California Vehicle Code (Driving Under the Influence of Alcohol or a Drug), a misdemeanor

1 and a crime that bears a substantial relationship under Section 2910, Title 10, Chapter 6 of the
2 California Code of Regulations (the Regulations), to the qualifications, functions or duties of a
3 real estate licensee.

4 5

5 On or about June 14, 1988, in the Municipal Court of the State of California,
6 County of Alameda, Respondent was convicted of violating Section 211 of the California Penal
7 Code (Robbery), a felony and a crime that bears a substantial relationship under Section 2910 of
8 the Regulations to the qualifications, functions or duties of a real estate licensee.

9 6

10 On or about August 16, 1988, in the Municipal Court of the State of California,
11 County of Alameda, Respondent was convicted of violating Section 23152(a) of the California
12 Vehicle Code (Driving Under the Influence of Alcohol or a Drug), a misdemeanor and a crime
13 that bears a substantial relationship under Section 2910 of the Regulations to the qualifications,
14 functions or duties of a real estate licensee.

15 7

16 On or about July 18, 1991, in the Municipal Court of the State of California,
17 County of Santa Cruz, Case No. 41-06385, Respondent was convicted of violating Section
18 23152(a) of the California Vehicle Code (Driving Under the Influence of Alcohol or a Drug), a
19 misdemeanor and a crime that bears a substantial relationship under Section 2910 of the
20 Regulations to the qualifications, functions or duties of a real estate licensee.

21 8

22 On or about June 30, 1999, in the Municipal Court of the State of California,
23 County of Sacramento, Case No. 99-T02867, Respondent was convicted of violating Section
24 23153(a) of the California Vehicle Code (Driving Under the Influence of Alcohol or a
25 Drug/Causing Bodily Injury), a misdemeanor and a crime that bears a substantial relationship
26 under Section 2910 of the Regulations to the qualifications, functions or duties of a real estate
27 licensee.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

9

On or about August 30, 2000, in the Municipal Court of the State of California, County of Santa Clara, Case No. CC082728, Respondent was convicted of violating Section 148(a) (1) of the California Penal Code (Resisting Arrest), and Section 23152(a) of the California Vehicle Code (Driving Under the Influence of Alcohol or a Drug), both misdemeanors and crimes that bear a substantial relationship under Section 2910 of the Regulations to the qualifications, functions or duties of a real estate licensee.

10

On or about April 14, 2004, in the Superior Court of the State of California, County of Alameda, Case No. 366461, Respondent was convicted of violating Section 23152(a) of the California Vehicle Code (Driving Under the Influence of Alcohol or a Drug), a misdemeanor and a crime that bears a substantial relationship under Section 2910 of the Regulations to the qualifications, functions or duties of a real estate licensee.

11

PRIOR ADMINISTRATIVE PROCEEDINGS

Effective October 15, 2004, in Case No. H-8883 SF before the Department, the Real Estate Commissioner denied Respondent's application for a real estate salesperson license pursuant to Sections 480(a) and 10177(b) of the Code

12

Respondent's criminal convictions, described in Paragraphs 3 through 10, above, constitute cause for denial of Respondent's application for a real estate salesperson license pursuant to the provisions of Sections 480(a) and 10177(b) of the Code.

///
///
///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

WHEREFORE, 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 under other provisions of law.



JOE M. CARRILLO
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 12 day of June, 2009.