

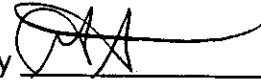
FILED

BEFORE THE
DEPARTMENT OF REAL ESTATE

March 22, 2012

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By 

In the Matter of the Application of)
)
 LARRY DIAMANTE RAPIZ,)
)
 Respondent.)
_____)

NO. H-11235 SF
OAH NO. 2011120267

DECISION


The Proposed Decision dated February 17, 2012, 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 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 APR 12 2012

IT IS SO ORDERED 3/12/12

BARBARA J. BIGBY
Acting Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

LARRY DIAMANTE RAPIZ,

Respondent.

Case No. H-11235 SF

OAH No. 2011120267

PROPOSED DECISION

Administrative Law Judge Karen E. Reichmann, State of California, Office of Administrative Hearings, heard this matter on January 26, 2012, in Oakland, California.

Richard K. Uno, Real Estate Counsel, represented complainant.

Respondent Larry Diamante Rapiz appeared and represented himself.

This matter was submitted for decision on January 26, 2012.

FACTUAL FINDINGS

1. Complainant E. J. Haberer II made the statement of issues in his official capacity as a Deputy Real Estate Commissioner of the State of California.
2. On April 12, 2011, respondent Larry Diamante Rapiz submitted an application to the Department of Real Estate for a real estate salesperson license.
3. On November 1, 2000, respondent was convicted in the Superior Court of California, County of San Francisco, pursuant to a guilty plea, of violating Penal Code section 245, subdivision (a)(1) (assault with a deadly weapon), a felony. Imposition of sentence was suspended and probation was granted for a period of three years, on terms and conditions which included serving 60 days in jail, and attending anger management classes.

The facts and circumstances of the offense are that on May 5, 2000, respondent got into a car accident in San Francisco. He and his passenger got into an altercation with the driver and passenger of the other vehicle. Respondent punched the passenger of the other vehicle in the head, causing injuries.

4. On July 2, 2002, respondent was convicted in the Superior Court of California, County of Alameda, pursuant to a guilty plea, of violating Vehicle Code section 23152, subdivision (b) (driving under the influence of alcohol), a misdemeanor. Imposition of sentence was suspended and respondent was placed on probation for three years, on terms and conditions which included serving 20 days in jail, attending a DUI program and paying fines. Respondent was on probation for the offense described in factual finding 3 when he committed this offense.

The facts and circumstances of the offense were not established. The offense occurred on February 15, 2002.

5. On January 9, 2003, respondent was convicted in the Superior Court of California, County of Alameda, pursuant to his plea of no contest, of violating Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance), a misdemeanor. Imposition of sentence was suspended and respondent was placed on probation for three years. Respondent was on probation for the offenses described in factual findings 3 and 4 when he committed this offense.

This offense occurred on September 18, 2002. Respondent was in possession of steroids.

6. On October 8, 2008, respondent was convicted in the Superior Court of California, County of Santa Clara, pursuant to his plea of nolo contendere, of violating Vehicle Code sections 23152, subdivision (b) (driving under the influence of alcohol), and 14601.5, subdivision (a) (driving with a suspended license), both misdemeanors. Imposition of sentence was suspended and respondent was placed on probation for years, on terms and conditions which included serving 20 days in jail, attending a multiple offenders program, and fines.

The facts and circumstances of the offenses are that on July 12, 2008, respondent was observed by a police officer driving the wrong way on a one-way street. Respondent's blood alcohol content was measured at 0.13 percent.

7. On October 27, 2009,¹ respondent was convicted in the Superior Court of California, County of Alameda, pursuant to a plea, of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol), a misdemeanor, and Penal Code section 245, subdivision (a)(1) (assault with a deadly weapon), a felony. Respondent was on probation for the offense described in factual finding 6 at the time he committed this offense.

The facts and circumstances of the offense are that on April 21, 2008, respondent was driving after having consumed alcohol. He drove his car into the driveway of a fire station in Fremont and was talking on his cell phone. A firefighter approached him and asked him to

¹ The Statement of Issues incorrectly alleges that this offense occurred in 2010.

move his car. The firefighter stood in front of respondent's car. Respondent accelerated his vehicle and struck the firefighter, who fell to the ground. Respondent drove away.

8. Regarding the 2000 conviction for assault with a deadly weapon, respondent acknowledged that he and his passenger got into a fight with the men in the other car. A police officer arrived and struck respondent with a baton. Respondent stated that the police officer lied in the police report to cover up the fact that he struck respondent.

9. Regarding the 2008 assault with a deadly weapon conviction, respondent stated that he did not intentionally hit the firefighter and did not realize at the time that he had hit him. He stated that he "clipped" the officer. He acknowledges that he was driving under the influence. Respondent does not believe that he was guilty of assault but pleaded guilty because he did not want to spend more money defending himself.

10. Respondent regrets his criminal history. He lacked guidance growing up and "hung around the wrong people." His most recent criminal incident was an "eye-opener." He realized that he could be spending time in prison and decided that he wanted a different life. He wanted to be in his kids' lives rather than sitting in a cell. He has distanced himself from the people he associated with while he was committing crimes.

11. Respondent is compliant with the terms and condition of his probation. He plans on seeking early termination of probation in October.

12. Respondent stated that he has been sober since December 13, 2008. He attends Alcoholics Anonymous (AA) once or twice a week. He has worked through the 12 steps but continues to revisit them. He had a sponsor who moved, so he is looking for a new one.

13. Respondent is 35 years old. He has two children, ages five and twelve. He shares custody of the children with their mothers. Respondent hopes to be licensed in order to be better able to support his family.

14. Quan Nguyen, respondent's employer, testified at the hearing. Nguyen is the owner of Prime Realty and has been a broker since 2004. Respondent has worked for Nguyen for four years. Respondent coordinates transactions, sets up appointments, and helps with open houses. Respondent disclosed his convictions when he was hired. Nguyen believes that respondent has made changes in his life. Nguyen stated that respondent is well-liked and that there have been no complaints against him. Nguyen is willing to supervise respondent should respondent be granted a restricted license.

15. Respondent's girlfriend, Nancy Astacio, testified at the hearing. She has known respondent since 2007. Astacio has a real estate broker license and works for Intero Real Estate in Fremont. Respondent performs clerical work for her. Astacio described respondent as "very organized and detail-oriented" and believes that he would be "a great

agent." Astacio has not known respondent to drink alcohol since his last criminal offense in 2008. She confirmed that respondent has been attending AA meetings.

16. Complainant alleged in the Statement of Issues that denial of the application was warranted due to respondent's failure to fully disclose his criminal history. This allegation was withdrawn at the hearing.

LEGAL CONCLUSIONS

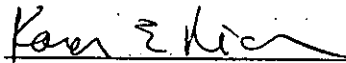
1. Business and Professions Code section 10177, subdivision (b), and section 480, subdivision (a), authorize the Real Estate Commissioner to deny a real estate license to an applicant convicted of an offense which is substantially related to the qualifications, functions, or duties of a real estate licensee. Respondent's convictions for assault with a deadly weapon are substantially related to the qualifications, functions, or duties of a real estate licensee because the underlying conduct consisted of unlawful acts with the threat of doing substantial injury to the person or property of another. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Respondent has incurred three alcohol-related convictions involving driving. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(11).) Respondent's pattern of committing new offenses while on probation demonstrates a willful failure to comply with court orders. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(9).) Respondent's criminal record, viewed as a whole, demonstrates a pattern of repeated and willful disregard of the law. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10).) Therefore, cause exists to deny respondent's application for a real estate salesperson license by reason of the matters set forth in Findings 3 through 7.

2. In California Code of Regulations, title 10, section 2911, the Department has established criteria to be used in evaluating the rehabilitation of an applicant who has committed a criminal offense. Two years have passed since respondent's most recent convictions, and the underlying offenses occurred three years ago. Respondent has seven convictions, including two felony convictions, and he remains on probation. Respondent continued to commit new offenses while on probation for earlier ones. The two felony convictions for assault with a deadly weapon are of particular concern. Respondent minimizes his conduct when discussing these offenses reflecting a failure to fully take responsibility for his actions. To his credit, respondent has abstained from alcohol since December 2008 and has maintained steady employment with Prime Realty. He shares custody of his minor children and appears to be sincere in his efforts to make changes in his life. Although respondent has shown some evidence of rehabilitation, it is insufficient to warrant granting his application at this time, especially in light of the severity of his criminal record, his failure to fully accept responsibility for his two felony assault convictions, and the fact that he remains on probation. More time is needed to assess respondent's rehabilitation. It would be against the public interest to grant respondent a salesperson license, even on a restricted basis.

ORDER

Respondent Larry Diamante Rapiz's application for a real estate salesperson license is denied.

DATED: 7-17-2012

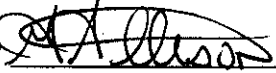


KAREN E. REICHMANN
Administrative Law Judge
Office of Administrative Hearings

November 2, 2011

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

DEPARTMENT OF REAL ESTATE

By 

Telephone: (916) 227-0789
(916) 227-2380 (Direct)

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of)	
)	H-11235 SF
LARRY DIAMANTE RAPIZ,)	
)	<u>STATEMENT OF ISSUES</u>
Respondent.)	
)	

The Complainant, E. J. HABERER, II, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against LARRY DIAMANTE RAPIZ, (Respondent) is informed and alleges as follows:

1

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

2

Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about April 12, 2011.

3

In response to Question 27A of said application, to wit: "Complete one line for each violation and provide explanation below. If you are unable to provide this information, provide all the requested information you can obtain, with an explanation for the missing

1 information". Respondent wrote "see attached" and failed to attach anything that would answer
2 this question. Upon further inquiry by a deputy commission, Respondent concealed and failed to
3 disclose the conviction for violating Section 14601.5(a) of the Vehicle Code, described in
4 Paragraph 7, below.

5 4

6 On or about November 1, 2000, in the Superior Court of the State of California,
7 County of San Francisco, Case No. 17970-02, Respondent was convicted of violating Section
8 245(a) (1) of the California Penal Code (Assault With a Deadly Weapon/Likely to Cause Great
9 Bodily Injury), a felony and a crime that bears a substantial relationship under Section 2910,
10 Title 10, Chapter 6 of the California Code of Regulations (the Regulations), to the qualifications,
11 functions, or duties of a real estate licensee.

12 5

13 On or about July 2, 2002, in the Superior Court of the State of California, County
14 of Alameda, Case No. 197490, Respondent was convicted of violating Section 23152 (b) of the
15 California Vehicle Code (Driving Under the Influence of Alcohol or a Drug), a misdemeanor and
16 a crime that bears a substantial relationship under Section 2910 of the Regulations to the
17 qualifications, functions, or duties of a real estate licensee.

18 6

19 On or about January 9, 2003, in the Superior Court of the State of California,
20 County of Alameda, Case No. 200249, Respondent was convicted of violating Section 11377 (a)
21 of the California Health and Safety Code (Possession of a Controlled Substance), a misdemeanor
22 and a crime that bears a substantial relationship under Section 2910 of the Regulations to the
23 qualifications, functions, or duties of a real estate licensee.

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25 On or about October 8, 2008, in the Superior Court of the State of California,
26 County of Santa Clara, Case No. CC 815893, Respondent was convicted of violating Section
27 23152 (b) of the California Vehicle Code (Driving Under the Influence of Alcohol or a Drug),

1 and Section 14601.5(a) of the California Vehicle Code (Driving With a Suspended License), both
2 misdemeanors and a crimes that bear a substantial relationship under Section 2910 of the
3 Regulations to the qualifications, functions, or duties of a real estate licensee.

4 8

5 On or about October 27, 2010, in the Superior Court of the State of California,
6 County of Alameda, Case No. 1147609, Respondent was convicted of violating Section 23152
7 (a) of the California Vehicle Code (Driving Under the Influence of Alcohol or a Drug), a
8 misdemeanor and Section 245(a) (1) of the California Penal Code (Assault With a Deadly
9 Weapon/Likely to Cause Great Bodily Injury), a felony, both crimes that bear a substantial
10 relationship under Section 2910 of the Regulations to the qualifications, functions, or duties of a
11 real estate licensee.

12 9

13 Respondent's criminal convictions, described in Paragraphs 4 through 8, above
14 constitute cause for denial of Respondent's application for a real estate salesperson license
15 pursuant to the provisions of Sections 480(a) (Conviction of Crime) and 10177(b) (Further
16 Grounds for Disciplinary Action-Conviction of Crime) of the Code

17 7


18 Respondent's failure to reveal in said application the conviction for violating
19 Section 14601.5(a) of the Vehicle Code, set forth in Paragraph 7, above, constitutes the
20 procurement of or attempt to procure a real estate license by fraud, misrepresentation, or deceit,
21 or by making a material misstatement of fact in said application, which failure is cause for denial
22 of Respondent's application for a real estate salesperson license pursuant to the provisions of
23 Sections 480 (c) (False Statement) and 10177(a) (Attempt to Procure License Through Fraud,
24 etc.) of the Code.

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27 /

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

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6 
7 E. J. HABERER, II
Deputy Real Estate Commissioner

8 Dated at Oakland, California
9 this 27 day of October, 2011.

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