

**FILED**

MAR 03 2014

BUREAU OF REAL ESTATE

By *D. Jones*

BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Application of	)	
	)	NO. H-11573 SF
LARRY DIAMANTE RAPIZ,	)	
	)	OAH NO. 2013080836
Respondent.	)	
_____	)	

DECISION

The Proposed Decision dated January 21, 2014, 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. 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 MAR 24 2014

IT IS SO ORDERED 2/27/2014

REAL ESTATE COMMISSIONER

*Wayne S. Bell*  
Wayne S. Bell

BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

LARRY DIAMANTE RAPIZ,

Respondent.

No. H-11573 SF

OAH No. 2013080836

**PROPOSED DECISION**

Administrative Law Judge Perry O. Johnson, Office of Administrative Hearings, State of California, heard this matter on December 19, 2013, in Oakland, California,.

Counsel Truly A. Sughrue, Legal Division, Bureau of Real Estate, represented complainant Robin S. Tanner.

Attorney at Law Edgardo Gonzalez represented respondent Larry Diamante Rapiz, who appeared at the proceeding.

On December 19, 2013, the parties submitted the matter and the record closed.

**FACTUAL FINDINGS**

1. On September 9, 2013, complainant Robin S. Tanner (complainant), in her official capacity as a Deputy Real Estate Commissioner, Bureau of Real Estate, State of California (the bureau), made the Statement of Issues against respondent Larry Diamante Rapiz (respondent).

2. On April 16, 2013, the bureau received respondent's application for a real estate salesperson license. Respondent had signed the application on April 11, 2013.

The application remains pending as the bureau has refused to issue a license to respondent due to his past acts and omissions that appear to disqualify him for licensure.

*Record of Criminal Convictions*

A. OCTOBER 2000-ASSAULT WITH A DEADLY WEAPON

3. On October 6, 2000, in case number 179701-02, in the Superior Court for San Francisco County, respondent was convicted, on his plea of guilty, of violating Penal Code section 245, subdivision (a)(1) (assault with a deadly weapon likely to cause great bodily injury), a felony.

4. The facts and circumstances of respondent's conduct that led to the conviction in October 2000 arose out of his arrest on May 7, 2000.

On that day in May 2000, respondent was a passenger in a vehicle that crashed into another vehicle. After exiting the vehicle, respondent along with the vehicle's driver engaged in an altercation with the other vehicle's driver and passenger. A fight among the men then ensued. During the fight, respondent severely beat the other two men to the point of causing one man to be hospitalized due to respondent's blow to the victim's head.

5. As a consequence of the conviction on October 6, 2000, the court conducted a sentencing hearing on November 1, 2000. At the November 2000 proceeding, the superior court suspended imposition of sentence and placed respondent on probation for a period of three years. The terms and conditions of probation included: that respondent spend 60 days in county jail, with credit of two days for time served. But the superior court recommended that the confinement term could be spent by respondent in the Sheriff's Work Alternative Program; that respondent enroll and complete Anger Management Classes; that respondent not threaten, molest or contact the two crime victims; that respondent pay "out-of-pocket" restitution to the crime victims; and, that respondent pay court imposed fines and fees in an approximate amount of \$500. (The superior court noted that upon respondent's successful completion of the terms and conditions of probation, the felony conviction could be reduced to a misdemeanor conviction record under Penal Code section 17.)

B. July 2002- DRIVING UNDER THE INFLUENCE OF ALCOHOL

6. On July 2, 2002, in case number 197490, on his plea of guilty, respondent was convicted in the California Superior Court in and for Alameda County of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of 0.08 percent or higher), a misdemeanor.

7. The facts and circumstances of respondent's conduct that led to the conviction in July 2002 arose out of his arrest on February 15, 2002.

On that date in February 2002 law enforcement officers stopped the vehicle driven by respondent on a highway on respondent's return to his residence in Fremont. A field sobriety test and other objective factors led to respondent's arrest for drunk driving. At the time of his drunk driving arrest, respondent was despondent due to a recent breakup of a relationship with a girlfriend.

8. As a consequence of the July 2002 conviction, the superior court made a sentencing order involving respondent's conditional, revocable release to the community. The conditional, revocable release involved respondent being subject to a three-year period of probation under certain terms and conditions. The terms and conditions of probation included: respondent's confinement for a term of 20 days, with one day's credit extended to him; but, the court noted that the confinement term could be served through the Alameda County Sherriff's Weekend Work Program. Also, respondent was ordered to pay fines and fees of \$1,400, which were to be paid over 18 months. Further, the court ordered respondent to complete, by January 2, 2003, level one of the "Driving Under the Influence of Intoxicants' School." And, the court revoked respondent's driving privileges for a 90-day period, except that he could drive to and from employment.

9. Respondent committed the drunk driving criminal act in February 2002 while he was on probation due to an earlier conviction in October 2000 for assault with a deadly weapon. His offense in 2002 entailed a willful failure to comply with a court order. And his criminal act in 2002 demonstrated a pattern of repeated and willful disregard of law.

C. JANUARY 2003-POSSESSION OF A CONTROLLED SUBSTANCE

10. On January 9, 2003, in case number 200249, on his plea of no contest, respondent was convicted in the Superior Court for Santa Clara County of violating Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance-steroids), a misdemeanor.

11. The facts and circumstances of respondent's conduct that led to the conviction in January 2003 arose out of his arrest on September 18, 2002.

On that date in September 2002, law enforcement officers found respondent to possess an undisclosed amount of steroids. Respondent had believed that the liquid, which consisted of six-ounces in volume, was legally sold through companies such as GNC. However, the ingredients in the product, which were secured by respondent through the mail, were illegal for the public to possess in the State of California.

12. Respondent committed the criminal act, which led to the January 2003 conviction, while he was on probation at a time following the July 2002 conviction for drunk driving and the October 2000 conviction for assault with a deadly weapon.

Also respondent's offense in September 2002 entailed a willful failure to comply with court orders relating to two earlier convictions. And his criminal act in September 2002, demonstrated a pattern of repeated and willful disregard of law.

13. As a consequence of the January 2003 conviction, the superior court made a sentencing order involving a conditional, revocable release of respondent to the community. The period of the conditional release entailed a three-year period of probation under certain terms and conditions. The superior court imposed a one-day jail term, but respondent received credit for time served. Also, the superior court ordered respondent to pay fines and fees in an amount of \$330. And respondent was directed to submit to drug testing if so directed by a law enforcement officer as well as to comply with other general terms and conditions of probation.

D. October 2008- DRIVING UNDER THE INFLUENCE OF ALCOHOL AND DRIVING WITH A SUSPEND LICENSE

14. On October 8, 2008, in case number CC815893, on his plea of nolo contendere, respondent was convicted in the California Superior Court in and for Santa Clara County, of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of 0.08 percent or higher), a misdemeanor, and Vehicle Code section 14601.5, subdivision (a) (unlawfully driving when one's privilege to drive is suspended or revoked for refusing chemical test or driving with excessive blood alcohol), a misdemeanor.

15. The facts and circumstances of respondent's conduct that led to the convictions in October 2008 arose out of his arrest on July 12, 2008.

On that date in July 2008, while attending a wedding party, respondent consumed too much champagne. He was arrested on his return trip to his residence.

16. As a consequence of the October 2008 conviction, the superior court suspended imposition of sentence and placed respondent on court (informal) probation for a three-year period. The terms and conditions of probation included respondent's spending 21 days in county jail; however, the superior court permitted respondent to complete a work furlough as the means of confinement. Also, the superior court imposed upon respondent fines and fees in an approximate amount of \$1,500. And, the superior court directed respondent to enroll in the Multiple Offender Drunk Driver Counseling Program within 30 days of the court proceeding.

E. OCTOBER 2009-DRIVING UNDER THE INFLUENCE OF ALCOHOL  
AND ASSAULT WITH A DEADLY WEAPON

17. On October 27, 2009, in case number H47609, on his plea of no contest, in the California Superior Court in and for Alameda County, respondent was convicted of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol or a drug), a misdemeanor, and Penal Code section 245, subdivision (a)(1) (assault with a deadly weapon likely to cause great bodily injury), a felony.

18. The facts and circumstances of respondent's conduct that led to the convictions in October 2009 arose out of his arrest on April 21, 2008. (Approximately three months would elapse before respondent's July 2008 arrest that would result in the October 2008 conviction, which is described in Factual Findings 14 through 16, above.)

On that date in April 2008, following a lunch with friends, all of whom had consumed alcoholic beverages, respondent drove his vehicle on a route across the grounds of a Santa Clara Fire Department station as a short cut in returning to his workplace. An off-duty fire fighter angrily approached the vehicle operated by respondent. And as he shouted for respondent to drive away from the fire department station's grounds, the man pounded on the hood of the vehicle, which alarmed respondent. Respondent stepped on the accelerator of the vehicle, which lunged forward to graze the man's leg. The man fell to the ground and claimed an injury due to the contact with the vehicle driven by respondent. Local law enforcement officers arrested respondent for drunk driving and assaulting the off-duty fire fighter with his motor vehicle

19. As a consequence of the October 2009 conviction, the court suspended imposition of sentence and placed respondent on formal probation for a period of five years. Terms and conditions of probation included an order that respondent spend 10 days in jail, with credit of four days given for served; but, the superior court imposed a period of confinement that could be served through the Sheriff's Weekend Work program. Also, the superior court ordered respondent to pay fines and fee in an amount exceeding \$2,000. And, the court directed respondent to enroll and complete an 18-month-long, Multiple-Offender Drinking Driver program.

*Past Denial of Licensure*

20. Effective April 12, 2012, in Case No. H-11235 SF, through a decision by the Department of Real Estate, respondent's earlier application, dated approximately April 12, 2011, for licensure as a real estate license, was denied. The denial was based upon factual findings and legal conclusions establishing respondent's violation of Business and Professions Code section 480, subdivision (a), and 10177, subdivision (b), as set out in a written decision issued in February 2012.

*Witnesses in Mitigation and Rehabilitation*

QUAN NGUYEN

21. Quan Nguyen (Mr. Nguyen) offered compelling evidence on behalf of respondent.

Mr. Nguyen has been a licensed real estate broker for nine years.

He is the owner and chief executive officer of Prime Realty and Financial Services, which is based in San Francisco. Mr. Nguyen's real estate broker's staff consists of five real estate salespersons.

Mr. Nguyen has known respondent for approximately five years. During 2008 respondent began working as an administrative assistant for Prime Realty and Financial Services. Respondent's work consists of aiding real estate salespersons in the office with the escrow closing processes. In performing services with Mr. Nguyen's office, respondent holds the title of "transaction coordinator." Mr. Nguyen noted that respondent occupies a position of trust within the real estate broker's office.

Before respondent joined the real estate broker's office, he disclosed to Mr. Nguyen in detail his record of criminal convictions. Over the years that respondent has been associated with the real estate broker, Mr. Nguyen knows of no misconduct in any area on respondent's part.

Mr. Nguyen has never observed respondent to consume any alcoholic beverage.

The real estate broker has no doubt that respondent will make a very good real estate salesperson. Mr. Nguyen hopes to make respondent the sixth real estate salesperson associated with Prime Realty and Financial Services. And Mr. Nguyen will accept respondent, into his real estate broker's office, as a holder of a restricted salesperson license.

ANTONIO ZAPIEN

22. Antonio Zapien (Mr. Zapien) provided the record with credible testimonial evidence in support of respondent's application for licensure.

Mr. Zapien has been respondent's sponsor in the Alcoholics Anonymous (AA) 12-Step program. He has "worked" respondent through all 12 steps of AA.

Mr. Zapien knows that since 2008, respondent has diligently maintained his sobriety. The men have been in close contact over the years, except for a two or three-month period when Mr. Zapien considered moving away from the region.

Mr. Zapien, who has been acquainted with respondent since the time they each attended the same high school, has become respondent's good friend since their association with AA.

Mr. Zapien admires respondent's close family ties and the latter's devotion to his two daughters.

In addition to the close family ties held by respondent, Mr. Zapien is aware of respondent's close group of friends, who are great supports in respondent's quest to avoid alcoholic beverages.

LADSILO DIAMANTE RAPIZ, JR.

23. Ladsilo Diamante Rapiz, Jr. (Mr. Rapiz) is respondent's older brother.

Although he is a web technician for Oracle Corporation, Mr. Rapiz works part-time as a licensed real estate salesperson.

Mr. Rapiz proclaims that respondent does not drink any alcoholic beverages. He asserts that respondent has not consumed alcoholic beverages since July 2008.

In the view of Mr. Rapiz, respondent projects a very professional image and respondent has an unrelenting ambition to become a real estate salesperson. Respondent has turned his life around according to his older brother.

Mr. Rapiz described in detail respondent's close bounds with his two daughters and other family members. His family provides respondent with great stability in his life.

#### *Matters in Mitigation and Respondent's Background*

24. Respondent is approximately 37 years old. He manifests an image of maturity and sobriety.

25. Respondent graduated from high school in 1994.

26. Over the years since graduating from high school, respondent has held a number of jobs in diverse consumer sales areas, including as a call center telephone sales aide and as a grocery store clerk. Also in the past, respondent has worked as a sheet metal machinist.

In approximately 2007, he became friends with a real estate salesperson. Respondent's friend paid respondent to organize documents relating to real estate transactions. The real estate transaction work intrigued him. His friend led respondent



to meet Mr. Nguyen who informed respondent of his ownership of Prime Realty and Financial Services

27. Respondent has two daughters, who are now 15 years and 7 years of age.

*Matters in Rehabilitation*

28. Following the July 2008 DUI arrest, which resulted in his October 2008 conviction, respondent has not consumed any amount of alcoholic beverage.

29. Respondent's last criminal conviction occurred in October 2009, which was more than four years before the hearing in this matter.

The underlying offenses, which led to the October 2009 convictions, occurred in April 2008, which was five years before the date of respondent's current application for licensure.

30. As to respondent's last convictions during October 2009, which involved a felony, respondent has taken proactive steps to remedy that past criminal act. The five-year term of formal probation was reduced to four years. And on January 18, 2013, in case number H47609, the Alameda County Superior Court issued an order, pursuant to Penal Code section 17, that reduced the felony conviction to a misdemeanor.

31. On November 15, 2013, the Alameda County Superior Court issued an order, pursuant to Penal Code section 1203.4, that expunged and dismissed the record of conviction in case number H47609, which pertained to respondent's convictions in October 2009.

32. On December 11, 2013, the San Francisco Superior Court issued orders, pursuant to Penal Code section 17 and 1203.4, that reduced the felony conviction and expunged the same in case number 179701-02, which had been entered against respondent on November 1, 2000.

33. Respondent offered proof that he has personal stability by reason of his family life and the fulfillment of his parental and familial responsibilities.

Respondent resides in a house in Newark, along with his mother, grandmother, an uncle, and an aunt, so as to constitute a household consisting of five adults.

Respondent provides financial support for his two daughters. His daughters, reside half their time with their respective mothers. But, his daughters spend 50 percent of their time with respondent at his family home in Newark.

34. Respondent has received the benefit of AA counseling regarding the effects that result from abuse of alcoholic beverages. Respondent views his experience with AA as a great blessing to him. Currently, he interacts, at least by telephone, with his AA sponsor, Mr. Zapien two times each week. Currently he attends actual AA meetings once or two times each week.

Respondent has abstained from the use of alcoholic beverages for more than five and one-half years.

35. Respondent provided documentary proof that he has significant and conscientious involvement in community, religious or privately sponsored programs designed to provide social benefits or to ameliorate social problems.

He offered a letter, dated July 18, 2013, by Jami Hiller, the English as a Second Language (ESL) Program Coordinator with the Hayward Public Library. The letter noted respondent's provision of 184 community service hours as a volunteer tutoring ESL students, who speak Tagalog, a language spoken in the Philippines. He had volunteered consistently two days per week at a rate of not less than two hours for each session of tutoring that he performed. The letter described respondent as being punctual, professional and reliable.

Also, a letter, dated February 10, 2010, by the Program Director for Tri-Cities League of Volunteers, showed that respondent performed community services in the amount of 100 hours as part of a court ordered community service program.

36. Respondent has the respect and admiration of several persons. He offered four letters<sup>1</sup> from persons who support his application for licensure. One letter proclaims a view that respondent is committed to being free from abuse of alcoholic beverages and asserts that respondent "would never break his sobriety." Another letter sets out the respondent is a man of "good moral character," who has the qualities to be a good real estate professional. A third letter observes that respondent is "a very sincere and . . . motivated man who is determined in his future. And a fourth letter states that respondent "is the kind of person who doesn't settle for a standard answer given by a robotic teacher . . . . Respondent never has a bad word to say about anyone, and his kindness and generosity are unparalleled."

37. Respondent established at the hearing that he has formulated a changed attitude towards his past misbehavior and criminal conduct. He has a new circle of friends. He does not consume any alcoholic beverages. Also he is devoted to his two

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<sup>1</sup> A letter, dated October 3, 2013, by Quan Nguyen; a letter, dated October 1, 2013, by Nancy Astacio, a real estate broker with Intero Real Estate Services; a letter, dated October 2, 2013, by Lad Rapiz, Jr.; a letter, dated October 16, 2013, by Rosie D. Rapiz, respondent's mother.

children and family. And he fervently and credibly proclaims that he exerts utmost effort to avoid any circumstances that might lead to the chance of criminal conduct.

38. Respondent has taken, and passed, the bureau's examination for licensure on two occasions. It appears that he has completed the requisite courses of study in order to acquire that basic knowledge necessary to be deemed a competent real estate professional.

#### *Ultimate Finding*

39. The weight of the evidence supports the determination that it would not be against the public interest for the bureau to issue respondent a real estate salesperson license on a restricted basis.

### LEGAL CONCLUSIONS

#### *Record of Criminal Convictions*

1. Business and Professions Code section 480, subdivision (a), provides that the bureau may deny a license on the ground that the applicant has "been convicted of a crime . . . [that] . . . is substantially related to the qualifications, functions or duties of the business . . . for which (an) application is made."

Business and Professions Code section 10177, subdivision (b), establishes that the bureau may deny the issuance of a license to an applicant who has "[e]ntered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee . . . ."

Criteria for substantial relationship between respondent's past convictions with the qualifications, functions, or duties of a real estate licensee are grounded in California Code of Regulations, title 10, section 2910, subdivisions (a)(8), (a)(9) (a)(10) and (a)(11).

California Code of Regulations, title 10, section 2910, subdivision (a)(8), prescribes a criterion for substantial relationship as: "doing of any unlawful act with . . . the threat of doing substantial injury to the person or property of another." When respondent willfully drove a motor vehicle on, at least, three occasions while under the influence of alcoholic beverages or intoxicating substances, his conduct involved a threat of injury to the person or property of others. And respondent has two convictions for assault with a deadly weapon that involved inflicting injuries upon others.

California Code of Regulations, title 10, section 2910, subdivision (a)(9), sets forth a criterion for substantial relationship as "contempt of court or willful failure to comply with a court order." Respondent experienced arrests at different times while he was on probation due to earlier convictions. His conduct entailed his failure to comply with court orders as set out in Factual Findings 9 and 12.

California Code of Regulations, title 10, section 2910, subdivision (a)(10), sets forth a criterion for substantial relationship as: "conduct which demonstrates a pattern of repeated and willful disregard of law." Respondent sustained convictions on five distinct dates over a span of less than nine years from November 2000 to October 2009. Respondent's three convictions that involve driving after having consumed intoxicating drinks, his conviction for possession of a controlled substance, namely a steroid, and his second assault with a deadly weapon, show respondent to have exhibited a pattern of repeated and willful disregard of law.

California Code of Regulations, title 10, section 2910, subdivision (a)(11), provides a criterion for substantial relationship as: "two or more convictions involving the consumption or use of alcohol . . . ." Due to the drunk driving convictions on July 2, 2002, October 8, 2008, and October 27, 2009, respondent sustained three convictions with regard to being under the influence of alcohol while operating a motor vehicle.

2. Cause exists to deny licensure to respondent under Business and Professions Code section 10177, subdivision (b), together with Code section 480, subdivision (a), by reason of the matters set forth in Factual Findings 3, 6, 10, 14, and 17.

#### *Determination Regarding Respondent's Rehabilitation*

3. The witnesses in mitigation and rehabilitation, matters in mitigation and respondent's background, and the matters in rehabilitation as set forth in Findings 21 through 37 have been considered in making the following order.

4. *In re Menna* (1995) 11 Cal.4th 975, 991, establishes that rehabilitation may be determined, in part, by demonstrating sustained lawful conduct over an extended period of time.

Respondent has conscientiously pursued life as a mature, restrained and law-abiding citizen for the past several years since his last conviction in October 2009. By his commitment to sobriety, as well as his strong work record as an aide in a real estate broker office, his community services, the strong support of his two young daughters and commitment to his family, respondent has attained the level of personal integrity and good character necessary to hold a real estate salesperson license as issued through the bureau. Accordingly, in this matter, sufficient time has passed, and respondent has demonstrated that he has exerted great effort to chance his circumstances, so that a

determination can be made with regard to respondent's rehabilitation. Hence, the public interest will not be jeopardized with respondent holding a restricted license for two years. And after the passage of two years, respondent will be in a position for receipt of full, unrestricted licensing rights with the bureau.

#### ORDER

The application for a real estate salesperson license of respondent Larry Diamante Rapiz is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code. 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 said 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) The conviction of respondent (including 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) The 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 this restricted license.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor 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 RE 552 (Rev. 4/88) 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 license is required.

DATED: January 21, 2014

A handwritten signature in black ink, appearing to read 'Perry O. Johnson', is written over a horizontal line. The signature is stylized and cursive.

PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings