

JUL 18 1990

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY C. B. G. /

* * * *

In the Matter of the Application of)

No. H- 24097 LA

ZEFERINO FARIAS,

L- 50135

Respondent.

DECISION

The Proposed Decision dated June 15, 1990
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 of Section 11522 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 or rehabilitation presented by the respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is attached hereto.

This Decision shall become effective at 12 o'clock
noon on August 7, 1990:

IT IS SO ORDERED

JAMES A. EDMONDS, JR.
Real Estate Commissioner

BY: John R. Liberator
Chief Deputy Commissioner

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement)	
of Issues Against:)	
)	
)	Agency No. H-24097-LA
)	
ZEFERINO FARIAS,)	
)	OAH No. L-50135
)	
Respondent.)	
_____)	

PROPOSED DECISION

On May 24, 1990, Richard E. Ranger, Administrative Law Judge with the Office of Administrative Hearings, State of California, heard this case at Los Angeles.

Marjorie P. Mersel, Counsel, represented the Department of Real Estate.

Zeferino Farias, respondent, represented himself without counsel.

Evidence was received, the issues were argued, and the case was submitted for decision.

FINDINGS OF FACT

1. On December 4, 1989, respondent filed an application with the Department of Real Estate (Department) for a real estate salesperson license. In his application, respondent was asked in Question no. 25 whether he had ever been convicted of any violation of law. Respondent answered, "No." Respondent's answer to question no. 25 was not true.

2. On December 15, 1989, the Department issued conditional real estate salesperson license no. 01056232 to respondent in the employ of an El Monte real estate broker, and on March 13, 1990 respondent's license was suspended indefinitely pending final determination after a hearing.

3. On March 13, 1990, a hearing was initiated by the Department upon filing a statement of issues against respondent.

4. Respondent did not disclose in his application for license an offense which resulted in a misdemeanor case against him in 1988. On September 12, 1988, in the Municipal Court of the Whittier Judicial District, County of Los Angeles, State of California, in case no. 88M04296, respondent pled guilty to a misdemeanor charge of violating Penal Code section 484(a) (Petty theft). Proceedings were thereafter suspended and respondent was placed on summary probation for eighteen (18) month on terms and conditions, including a fine, 6 days in jail (credit for time served), no further violations of law, and obedience to all further orders of the court. Respondent complied with the terms and conditions of his probation.

5. The facts and circumstances of respondent's offense are that in August 1988, respondent owned a 1981 Mustang vehicle which needed front brake pads. He was employed as a pizza delivery man at the time and used his own vehicle for deliveries. Prior to August 25, 1988, respondent had been warned by his pizza company supervisor that he would be fired if he did not get the brakes repaired on his automobile. On the foregoing date, during the evening, respondent and a friend had a few beers at respondent's home. Sometime after 11:00 p.m., respondent got in his (respondent's) Mustang, cruised a Whittier neighborhood, and found a Mustang like his parked on the street. He jacked up the front end of the Mustang, removed a wheel, and attempted to remove the front brake pads from the vehicle. The owner came out, however, and caught respondent in the act. Respondent ran away and walked back to his home, a distance of about five blocks. Respondent left his own Mustang at the scene of the attempted theft and upon arrival at his home, police officers were there waiting for him.

6. Respondent's failure to disclose his 1988 offense is not without excuse. He first answered "Yes" to question no. 25 of his real estate application but then "whited out" the "yes" answer and checked the "no" box after he made a records inquiry and received information that his conviction could not be found. He assumed it was not recorded, or had been expunged.

7. Currently, respondent is employed as a subscription salesman with the Los Angeles Times in Orange County. He has been so employed for about one year. He was previously employed by United Parcel Service as a loader/sorter for about six months. He is 22 years old and was 20 years old at the time of his offense. He is a high school graduate with a 3.0 GPA and a scholastic achievement award. Respondent is highly recommended by his employing broker who believes respondent to be trustworthy despite his "mistake" in 1988.

8. There is no evidence of prior or subsequent offenses by respondent.

DETERMINATION OF ISSUES

A. Cause exists to deny respondent's application for license pursuant to Business and Professions Code sections 480(c) and 10177(a) by reason of finding nos. 1 and 4.

B. Cause exists to deny respondent's application pursuant to Business and Professions Code sections 480(a) and 10177(b) by reason of finding nos. 4 and 5.

C. In light of extenuation, mitigation and evidence of rehabilitation, it would not be against the public interest to issue a probationary license to respondent on terms and conditions:

ORDER

The application of respondent Zeferino Farias for an unrestricted real estate salesperson's license is denied. However, a restricted real estate salesperson's license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if respondent applies therefor within thirty (30) days from the effective date of this decision. The restricted license issued to respondent shall be subject to all 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 the 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 guilty or of nolo contendere to a crime which bears a substantial relation to respondent's qualifications, functions or duties 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 submit such evidence of successful course completion as the Real Estate Commissioner may require, the failure of which shall result in the automatic suspension of respondent's restricted license.


4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker which shall certify:

(1) That the employing real estate broker has read the Decision of the Commissioner which granted the right to a restricted license; and,

(2) That the employing real estate broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the date of issuance of the restricted license to respondent.

DATED: JUNE 15, 1990


RICHARD E. RANGER
Administrative Law Judge

RER:btm

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

MAY 14 1990

DEPARTMENT OF REAL ESTATE

BY *Sylvia Williams*

In the Matter of the Application of

ZEFERINO FARIAS,

Case No. H-24097 LA

OAH No. L-NONE ASSIGNED

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 _____

OFFICE OF ADMINISTRATIVE HEARINGS, 314 W. First St., Los Angeles, CA

on the 24th day of May, 19 90, at the hour of 1:30 p.m., or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by 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 are 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. The interpreter must be approved by the hearing officer conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the hearing officer directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: May 14, 1990

By *Marjorie P. Mersel*
MARJORIE P. MERSEL, Counsel

cc: Zeferino Farias
Manuel T. Carrillo
OAH
Sacto
VHL

SACTO
FLAG

DEC 13 1989

DEPARTMENT OF REAL ESTATE
Sylvia Williams

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Application of) No. H-24097 LA
ZEFERINO FARIAS,)
Respondent.)

ORDER SUSPENDING REAL ESTATE LICENSE

TO: ZEFERINO FARIAS, Respondent
10714 Balfour Street
Whittier, California 90606

On December 4, 1989, the above-named respondent filed with the Department of Real Estate of the State of California (hereinafter referred to as the Department) an application for a real estate salesperson license. In response to a question in said application, to wit: "Have you ever been convicted of any violation of law? (You may omit any traffic violation where the disposition was a fine and the amount of the fine was \$100 or less.)", respondent answered "No".

On December 15, 1989, the Department issued a real estate salesperson license to respondent, subject to the

1 conditions of Section 10153.4 of the Business and Professions
2 Code, and in reliance upon the aforesaid answer of respondent.

3 On March 13, 1990, in Case No. H-24097 LA, a State-
4 ment of Issues signed by a Deputy Real Estate Commissioner of
5 the State of California was filed charging respondent with
6 having procured a real estate license by fraud, misrepresentation
7 or deceit and with knowingly having made a false statement of
8 fact required to be revealed in the application for such license.

9
10 NOW, THEREFORE, IT IS ORDERED under authority of
11 Section 10177.1 of the Business and Professions Code of the State
12 of California that the real estate salesperson license heretofore
13 issued to respondent and the exercise of any privileges there-
14 under is hereby suspended pending final determination made after
15 a hearing on the aforesaid Statement of Issues, a copy of which
16 is attached hereto.

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1 IT IS FURTHER ORDERED that all license certificates
2 and identification cards issued by the Department of Real Estate
3 which are in the possession of respondent be immediately sur-
4 rendered by personal delivery or by mailing in the enclosed
5 self-addressed envelope to:

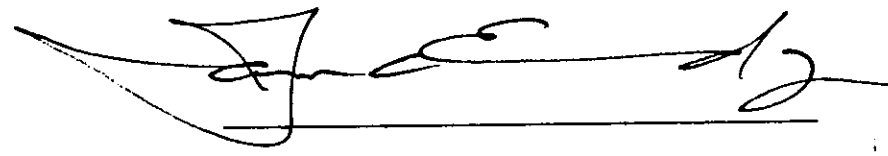
6 DEPARTMENT OF REAL ESTATE
7 107 South Broadway, Room 8107
8 Los Angeles, California 90012

8 This Order shall be effective immediately.

9 Dated: 3-13-90.

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JAMES A. EDMONDS, JR.
Real Estate Commissioner



MARJORIE P. MERSEL, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012
(213) 620-4790

MAR 13 1990

DEPARTMENT OF REAL ESTATE

BY *Sylvia Williams*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Application of)
ZEFERINO FARIAS,)
Respondent.)

No. H-24097 LA

STATEMENT OF ISSUES

The Real Estate Commissioner, in conformity with
Section 10152, Division 4, Business and Professions Code of the
State of California, requires further proof of the honesty and
truthfulness of ZEFERINO FARIAS, in connection with respondent's
application for a real estate salesperson license, filed on
December 4, 1989, and in relation thereto will consider the
following:

I

ZEFERINO FARIAS (hereinafter referred to as respondent)
was issued a real estate salesperson license on or about
December 15, 1989, following respondent's application therefor,
on or about December 4, 1989. Respondent, pursuant to the
provisions of Section 10153.3 of the Business and Professions

1 Code, made application to the Department of Real Estate of the
2 State of California for a real estate salesperson license with
3 the knowledge and understanding that any license issued as a
4 result of said application would be subject to the conditions of
5 Section 10153.4 of the Business and Professions Code.

6 II

7 In response to Question 25 of said license application,
8 to wit: "Have you ever been convicted of any violation of law?
9 (You may omit any traffic violation where the disposition was a
10 fine and the amount was \$100 or less.)", respondent marked the
11 answer box denoting "No".

12 III

13 On or about September 12, 1988, in the Municipal Court
14 of Whittier Judicial District, County of Los Angeles, State of
15 California, respondent was convicted of violating Penal Code
16 Section 484(a) (petty theft), a crime involving moral turpitude.

17 IV

18 The crime of which respondent was convicted bears a
19 substantial relationship to the qualifications, functions or
20 duties of a real estate licensee.

21 V

22 Respondent's failure to reveal the conviction against
23 him as set forth in Paragraph II, above, in said application
24 constitutes the procurement of a real estate license by fraud,
25 misrepresentation or deceit, or by making a material misstate-
26 ment of fact in said application, which failure is cause for
27 denial of respondent's application for a real estate license

1 under Sections 480(c) and/or 10177(a) of the Business and
2 Professions Code of the State of California.

3 VI

4 Respondent's criminal conviction, as alleged in
5 Paragraph III, above, warrants denial of respondent's application
6 for a real estate license under Sections 480(a) and/or 10177(b)
7 of the Business and Professions Code of the State of California.

8
9 These proceedings are brought under the provisions
10 of Section 10100, Division 4 of the Business and Professions
11 Code of the State of California and Sections 11500 through 11528
12 of the Government Code.

13 Dated at Los Angeles, California
14 this 13th day of March, 1990.

Edward T. Chito

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17 Deputy Real Estate Commissioner

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24 cc: Zeferino Farias
25 Manuel T. Carrillo
26 Sacto
27 VHL