

FILED
MAY 19 1995
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By C. Bay

In the Matter of the Application of)
)
JERRY IDIBIYE NYINGIFA,)
)
Respondent.)
_____)

No. H-25958 LA
L-9411185

DECISION

The Proposed Decision dated May 8, 1995, 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 of 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 June 8, 1995.

IT IS SO ORDERED

May 15, 1995

JOHN R. LIBERATOR
Interim Commissioner

By:

Betty R. Ludeman

Betty R. Ludeman
Assistant Commissioner
Enforcement

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of)	No. H-25958
Issues Against:)	OAH No. L-9411185
JERRY IDIBIYE NYINGIFA,)	
Respondent.)	AMENDED PROPOSED DECISION

The matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings, Los Angeles, California, on April 27, 1995.

Complainant was represented by Christopher K.D. Leong, Staff Counsel.

Respondent Jerry Idibiye Nyingifa (hereinafter "Respondent") appeared and was represented by Emeka Godfrey Onwualu, Esq.

Evidence was received and the matter deemed submitted on April 27, 1995.¹

The Administrative Law Judges finds the following:

* * * * *

FINDINGS OF FACT

1. Steven J. Ellis made and filed the Statement of Issues in his official capacity as a Deputy Real Estate Commissioner.
2. On May 9, 1994, Respondent executed a Salesperson License Application which he submitted to the Department of Real Estate (hereinafter "Department"). Received by the Department on May 26, 1994, said application is pending.
3. On September 9, 1992, in the Municipal Court of California, County of Los Angeles, Central Arraignment Judicial

¹On May 2, 1995, Complainant's counsel requested, following execution of a Proposed Decision, that the Administrative Law Judge consider modifying Paragraph 4 of the Order from twelve (12) months to eighteen (18) months and deleting continuing education requirements in accordance with Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. Said request was granted on May 8, 1995.

District, in People v. Jerry Idibiye Nyingifa, Case No. 92R16875, Respondent was convicted on his plea of nolo contendere to a violation of Penal Code section 487 (Grand Theft), a misdemeanor and a crime involving moral turpitude and substantially related to the qualifications, functions or duties of a Department licensee. Respondent was placed on summary probation for twenty-four months and ordered, inter alia, to pay a fine of \$300.00 and restitution in the sum of \$1,714.85.

4. The facts and circumstances surrounding the conviction set forth in Finding No. 3 were that Respondent, while a vehicle salesperson licensed by the Department of Motor Vehicles and employed as a sales manager at Felix Chevrolet, had an agreement with an alarm installation business owner. Respondent would sell alarms to vehicle purchasers to be installed by the alarm installation business owner. On one occasion, having accepted payment for the sale and installation of an alarm on a vehicle, the alarm was not installed although the funds were distributed between Respondent and the owner of the alarm installation business.

5. On July 23, 1993, Respondent's vehicle salesperson's license was revoked by the Department of Motor Vehicles in In the Matter of the Accusation of Jerry Idibiye Nyingifa, Case No. S-5098 (OAH No. L-60284) for his conviction as set forth in Finding Nos. 3 and 4.

Rehabilitation Findings

6. On March 31, 1994, Respondent's Petition for relief from his conviction set forth in Finding No. 3 was granted pursuant to Penal Code section 1203.4.

7. Without denying the fact of conviction as set forth in Finding No. 3, Respondent, while claiming that he was unaware that the alarm referenced in Finding No. 4 had not been installed, acknowledges that he should have more responsibly approached his duties as a vehicle salesperson and devoted more attention to detail.

8. As a result of the proceedings referenced in Finding Nos. 3 and 5, Respondent, 39, and the sole support of his wife and ~~two children, ages 5 and 4~~, has gained insight and expresses remorse for the impact of his conduct on his licensed activities, his family and himself.

9. Respondent, but for the incident referenced in Finding No. 4 upon which the discipline set forth in Finding Nos. 3 and 5 ensued, has no other record of discipline despite having devoted eleven years in sales.

10. More than two years have elapsed since the conduct and conviction referenced in Finding Nos. 3 and 4.

11. Consistent with his petition as referenced in

Finding No. 6, Respondent, having successfully completed probation, paid the fine and restitution referenced in Finding No. 3.

12. At all times relevant, Respondent displayed candor in the Department proceedings, including full disclosure of his conviction in his application referenced in Finding No. 2.

13. Respondent is partially rehabilitated (Finding Nos. 6 - 12).

* * * * *

DETERMINATION OF ISSUES

Pursuant to the foregoing Findings of Fact, the Administrative Law Judge makes the following Determination of Issues:

1. Cause exists to deny the application of Respondent for a Department license for conviction of a crime pursuant to the provisions of Business and Professions Code sections 480 and 10177(d) as set forth in Finding Nos. 3 and 4.

2. Cause exists to deny the application of Respondent for a Department license for revocation of a license pursuant to the provisions of Business and Professions Code section 10177(f) as set forth in Finding No. 5.

3. The key concern in arriving at a disciplinary recommendation is the degree to which the public needs protection from Respondent. Mephram v. State Bar (1986) 42 Cal.3d 943, 948; In the Matter of Rodriguez (1993) 2 Cal. State Bar Ct. Rptr. 480, 501.

Respondent, by his subsequent conduct as referenced in Finding Nos. 6 - 12, has undertaken conscientious efforts towards rehabilitation. (See In the Matter of Kirwan (1994) 2 Cal. State Bar Ct. Rptr. 692, 699; In the Matter of Brown (1993) 2 Cal. State Bar Ct. Rptr. 309, 317-318.)

The objective of this proceeding is to protect the public, the profession, maintain professional integrity, its high standards, and preserve public confidence in the real estate profession and its professionals. ~~These proceedings are not for~~ the primary purpose of punishing an individual, including Respondent. (Camacho v. Youde (1979) 95 Cal.App.3d 161, 165).

One of the purposes of section 10177 of the Business and Professions Code is to insure that real estate salespersons will be honest, truthful and of good reputation. (Arneson v. Fox (1980) 28 Cal.3d 440, 451). Respondent has established his partial rehabilitation (Finding No. 13). Accordingly, giving due consideration to the facts and circumstances underlying the Accusation as set forth in Finding Nos. 3 - 4, and the criteria of rehabilitation provided in section 2912, Title 10, California Code of Regulations, the public interest will not be adversely affected by the issuance of

a properly conditioned license to Respondent.

* * * * *

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The application of Respondent Jerry Idibiye Nyingifa for an unrestricted real estate salesperson license is denied; provided, however, a restricted real estate salesperson's license shall be issued to Respondent pursuant to sections 10156.5, 10156.6 and 10156.7 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 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 revoked 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. Respondent shall obey all laws, including 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. The restricted license issued to Respondent may be suspended following 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, the Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

4. Respondent shall, within eighteen (18) months of the delivery or mailing of Respondent's restricted license, submit evidence satisfactory to the Real Estate Commissioner of successful completion, at an accredited institution, of two of the courses listed in section 10153.2 of the Business and Professions Code, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension. If Respondent has not satisfied the requirements for an unqualified

license within eighteen (18) months of the issuance of the restricted license, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to section 10153.4 of the Business and Professions Code until four years after the date of the issuance of the preceding restricted license.

5. Respondent shall submit to each employer licensed by the Department and with any application for license under any subsequent employing broker, or any application for transfer to a new employing broker, a statement, signed by the prospective employing real estate broker, on a form approved by the Department of Real Estate which shall certify:

A. That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

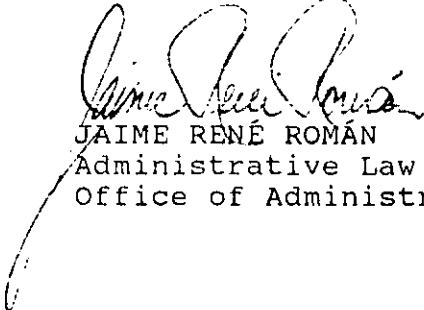
B. That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

6. 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 shall order suspension of Respondent's license until Respondent passes the examination.

7. Respondent shall, at his own expense, report in writing to the Department as the Commissioner shall direct 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.

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

Dated: May 8, 1995


JAIME RENÉ ROMÁN
Administrative Law Judge
Office of Administrative Hearings

SAC

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of)
)
 JERRY IDIBIYE NYINGIFA,)
)
)
 _____)
 Respondent(s)

Case No. H-25958 LA
OAH No. L-11185

FILED
MAR - 8 1995
DEPARTMENT OF REAL ESTATE

NOTICE OF CONTINUED HEARING ON APPLICATION *C. Leong*

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 314 W. First Street, Los Angeles, CA 90012 on THURSDAY, APRIL 27, 1995, 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. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal 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 Administrative Law Judge 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 Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: March 8, 1995

By *Christopher K.D. Leong*
CHRISTOPHER K.D. LEONG, Counsel

cc: Jerry Idibiye Nyingifa
Emeka Godfrey Onwualu, Esq.
Century 21 Hawthorne Realty
Sacto.
OAH

CEB

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

In the Matter of the Application of) Case No. H-25958 LA
JERRY IDIBIYE NYINGIFA,) OAH No. L-11185
Respondent (s))

FILED
DEC - 6 1994

NOTICE OF HEARING ON APPLICATION DEPARTMENT OF REAL ESTATE

To the above-named Respondent (s):

By C. Leong

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 314 W. First Street, Los Angeles, CA 90012 on WEDNESDAY, JANUARY 25, 1995, at the hour of 10:00 A.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. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal 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 Administrative Law Judge 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 Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: December 6, 1994

By Christopher K. D. Leong
CHRISTOPHER K.D. LEONG, Counsel

cc: Jerry Idibiye Nyngifa
Century 21 Hawthorne Realty/James T. Wilson
Emeka Godfrey Onwualu, Esq.
Sacto.
OAH

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1 CHRISTOPHER K.D. LEONG, Counsel
2 Department of Real Estate
3 107 South Broadway, Room 8107
4 Los Angeles, California 90012
5
6 (213) 897-3937

FILED
OCT - 4 1994
DEPARTMENT OF REAL ESTATE

By *C. Song*

8 DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * * *

11 In the Matter of the Application of) No. H-25958 LA
12 JERRY IDIBIYE NYINGIFA,) STATEMENT OF ISSUES
13 Respondent.)
14 _____)

15 The Complainant, Steven J. Ellis, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against JERRY IDIBIYE NYINGIFA (hereinafter "Respondent"), is
18 informed and alleges as follows:

19 I

20 The Complainant, Steven J. Ellis, a Deputy Real Estate
21 Commissioner of the State of California, makes this Statement of
22 Issues against Respondent in his official capacity.

23 II

24 Respondent made application to the Department of Real
25 Estate of the State of California for a real estate salesperson
26 license on or about May 26, 1994.

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III

On or about September 9, 1992, in the Municipal Court of Los Angeles, Central Arraignment Judicial District, County of Los Angeles, State of California, Respondent was convicted of violation of Section 487.1 of the California Penal Code (hereinafter "PC") (Grand theft).

IV

Respondent's criminal conviction, as alleged above, in Paragraph III, is cause for the denial of Respondent's application for a real estate license under Sections 10177(b) and 480 of the California Business and Professions Code (hereinafter "Code").

V

On or about June 23, 1993, before the Department of Motor Vehicles, State of California, (hereinafter "DMV") and after given due process protection, Respondent's vehicle salesperson license was revoked in DMV case number S-5098. This case was heard before the Office of Administrative Hearings in case number L-60284. The basis of the revocation was Respondent's violation of Sections 11703(d) and 11806(d) of the California Vehicle Code.

VI

Respondent's revocation, as alleged above, in Paragraph V, is cause for the denial of Respondent's application for a real estate license under Section 10177(f) of the Code.

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

Dated at Los Angeles, California
this 4th day of October, 1994.

STEVEN J. ELLIS
Deputy Real Estate Commissioner

cc: Jerry Idibiye Nyngifa
Century 21 Hawthorne Realty/James T. Wilson
Sacto.
CGT