

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Laura B. Orr

* * * * *

In the Matter of the Application of)	No. H-27772 LA
))
JOSE CRUZ,	L-1998080092
))
))
Respondent.)
))

DECISION

The Proposed Decision dated February 24, 1999, 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 April 20, 1999.

IT IS SO ORDERED March 15, 1999.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

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

In the Matter of the Statement of)
Issues Against:)
JOSE CRUZ,)
Respondent.)
_____)

Case No.: H-27772 LA
OAH NO.: 1-1998080092

PROPOSED DECISION

This matter came on regularly for hearing before Barbara Bailey Barnes, Administrative Law Judge Pro Tem of the Office of Administrative Hearings, located at Los Angeles, California on January 28, 1999.

Complainant, Thomas McCrady, was represented by Elliot Mac Lennan, Staff Counsel.

Respondent, Jose Cruz, (hereinafter "Respondent") appeared and was represented by Dennis G. Saab, Attorney at Law.

Oral and documentary evidence was received,¹ and the matter was submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. The Statement of Issues was made by Thomas McCrady, Complainant, who is a Deputy Real Estate Commissioner of the State of California, acting in his official capacity.

¹ The Court accepted the stipulation of counsel for the Complainant and counsel for the Respondent that Respondent's Exhibit A entitled, *Declaration of Jose Cruz in Opposition to the Accusation Against Jose Cruz*, be admitted into evidence and serve as Respondent's direct examination testimony. It should be noted that, although the Department's Exhibit 1 (the formal pleading file admitted into evidence for jurisdictional purposes only) contains notices and other documents which refer to the instant matter as the "Accusation Against Jose Cruz", the Department properly filed this matter as a Statement of Issues on July 24, 1998.

2. On or about April 9, 1998, Respondent filed an application for a real estate salesperson's license. Any license issued as a result of that application would be subject to certain educational requirements of Section 10153.4 of the Business and Professions Code. The Department of Real Estate ("the Department") denied Respondent's application and this matter ensued.
3. On February 14, 1995, in the Superior Court of the State of California, County of Los Angeles, in case number VA 030583, Respondent entered a plea of nolo contendere, to violation of California Health and Safety Code Sections 11359 (possession of a controlled substance, marijuana, for sale), Count I, and 11378 (possession of a controlled substance, methamphetamine, for sale), Count II, felony crimes involving moral turpitude and offenses substantially related to the qualifications, functions and duties of a real estate licensee under Section 2910, Chapter 6, Title 10, of the California Code of Regulations.
4. On March 1, 1995 at the sentencing hearing in case number VA 030583, Respondent was placed on three (3) years formal probation; ordered to serve 180 days in county jail after being given credit for 48 days in custody, ordered to pay a fine of two hundred dollars (\$200), and, among other conditions of the probation grant, ordered to submit to narcotics testing.
5. The facts and circumstances underlying the conviction are as follows: Respondent, befriended a neighbor who Respondent knew was dealing narcotics from the neighbor's home. Respondent began to "hang out" at the neighbor's apartment and one day when the neighbor suspected he had just made a sale to an undercover police officer, the neighbor requested and Respondent agreed to "store" a bag containing narcotics in Respondent's home. The next day police appeared at Respondent's residence with a search warrant and found the bag of narcotics hidden under Respondent's bed. Respondent was arrested and taken to jail.
6. Respondent successfully completed his probation grant; tested clean for narcotics usage during the probationary period and completed payment of his fine. He received an early termination from formal probation and was placed on summary probation on September 15, 1997. On December 4, 1998, the Superior Court granted Respondent's petition to set aside and vacate Respondent's plea; a plea of not guilty was entered and the action dismissed pursuant to Section 1203.4 of the Penal Code of the State of California.
7. Respondent attributes his involvement in the criminal offense to his youth,² naivete and irresponsibility in choosing his associates. Respondent is remorseful for his involvement and has no prior or subsequent arrest history.

²Respondent was nineteen (19) at the time of his arrest.

8. Respondent is employed part-time as a construction worker and attends adult school. Respondent needs forty (40) units to complete the requirements for his high school diploma. He resides with his fiancée and their child and contributes to their support and to the support of another child by a previous relationship. He attends church and is counseled by his father who is a minister.
9. Before and subsequent to his conviction, Respondent held part-time employment in real estate offices performing general office assistance on both a paid and "volunteer" basis. Respondent is highly recommended by several real estate brokers and /or agents who describe him as honest and as being an asset to any office.
10. Although Respondent successfully completed the 45-hour Real Estate Principles (Resident Lecture) course on February 24, 1997, Respondent has not completed all of the courses required of him pursuant to Business and Professions Code Section 10153.4.

LEGAL CONCLUSIONS

Pursuant to the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists for the denial of Respondent's application for a real estate salesperson's license pursuant to Business and Professions Code sections 480 (a), as that section interacts with section 10177 (b), for conviction of a crime as set forth in Findings 3, 4, 5, and 6.
2. The crimes for which Respondent was convicted, possession for sale of controlled substances, marijuana and methamphetamine (11359 and 11378 of the Health and Safety Code of California), are felonies involving moral turpitude and are substantially related to the qualifications, functions and duties of a real estate licensee. Although Respondent denies that he was actively engaged in the sale of these substances, Respondent takes full responsibility for his actions, attributing his poor judgment to his youthful age at the time of the offense, his irresponsibility in choosing his associates and a lack of thought as to the possible consequences of his actions.
3. Respondent, however, appears to be an excellent candidate for a restricted license. It has been over three (3) years since his conviction and he has incurred no other arrests or convictions. His remorse for his acts appears genuine and he has satisfied most of the criteria of rehabilitation as used by the Department (Title 10, California Code of Regulations, Section 2911). He associates with real estate

professionals and they recommend him highly. Respondent is attending school to complete the requirements for his high school diploma and he is working part-time and supporting a family. He appears to have close familial and community ties and is no longer associating with persons who use or deal in narcotics. There is no evidence that Respondent is a drug user. Rather, Respondent appears to have matured significantly and Respondent is taking steps towards vocational self-improvement. Finally, Respondent's criminal conviction has been set aside and dismissed pursuant to Section 1203.4 of the Penal Code of the State of California.

4. Respondent is amenable to close supervision. The issuance of a properly conditioned restricted license will adequately protect any threat to the public interest.

ORDER

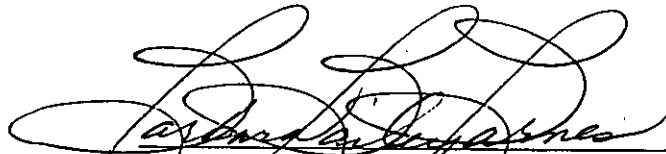
WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson's license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor 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 the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under the authority of Section 10156 of that 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 nolo contendere to a crime which is substantially related to Respondent's fitness or capacity 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 Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision.

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 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.
5. Respondent's real estate salesperson's license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to timely present completion of the two required courses, the restricted license shall be automatically suspended effective (18) months after the date of its issuance. 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 notice to Respondent of lifting the suspension.
6. Pursuant to Section 10154, if Respondent has not satisfied the requirements for an unqualified license under Section 10153.4, 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 until four (4) years after the date of the issuance of the preceding restricted license.

DATED: February 24, 1999


BARBARA BAILEY BARNES,
Administrative Law Judge Pro Tem
Office of Administrative Hearings

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Jan

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILE
JAN 15 1999
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)

Case No. H-27772 LA)

JOSE CRUZ,)

OAH No. L- 1998080092)

Respondent.)

By Laura B. Owen

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 107 South Broadway, 2nd Floor, Los Angeles, California, on JANUARY 28, 1999, at the hour of 1:30 p.m. or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served upon you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of hearing.

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.

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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: JAN 15 1999

DEPARTMENT OF REAL ESTATE

By: Elliott MacLennan
ELLIOTT MACLENNAN, Counsel

cc: Jose Cruz
Dennis G. Saab, Esq.
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FILED
NOV - 3 1998
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

* * * *

In the Matter of the Application of)
JOSE CRUZ,)
Respondent(s))

Case No. H-27772 PA
OAH No. L-1998080092

Jama P. Ojima

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, 107 South Broadway, 2nd Floor, Los Angeles, California, JANUARY 21, 1999 at the hour of 9:00 a.m. or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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 and pay for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: NOV - 3 1998

DEPARTMENT OF REAL ESTATE

By: E. M. L.
ELLIOTT MAC LENNAN, Counsel

cc: Jose Cruz
Sacto.
OAH

FILED
SEP 8 1998

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Application of) Case No. H-27772 ^{By LA} Laura B. Crane
JOSE CRUZ,) OAH No. L-1998080092
Respondent(s))

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, 107 South Broadway, 2nd Floor, Los Angeles, California, OCTOBER 29, 1998 at the hour of 9:00 a.m. or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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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 and pay for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: SEP 8 1998

DEPARTMENT OF REAL ESTATE

By: [Signature]
ELLIOTT MAC LENNAN, Counsel

cc: Jose Cruz
Sacto.
OAH

[Handwritten signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
AUG 13 1998
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)
JOSE CRUZ,)
Respondent.)

Case No. H-27772 LA
OAH No. L- 1998080092

By *Jane B. [Signature]*

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 107 South Broadway, 2nd Floor, Los Angeles, California, on SEPTEMBER 8, 1998, at the hour of 9:00 a.m. or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served upon you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of hearing.

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.

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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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: AUG 13 1998

DEPARTMENT OF REAL ESTATE

By: *[Signature]*
ELLIOTT MAC LENNAN, Counsel

cc: Jose Cruz
Sacto.,
OAH

Santa Fe

ELLIOTT MAC LENNAN, Counsel
State Bar No. 66674
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

FILED
JUL 24 1998
DEPARTMENT OF REAL ESTATE

By *Laura B. Orna*

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THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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In the Matter of the Application of)
JOSE CRUZ,)
Respondent.)

No. H- 27772 LA
STATEMENT OF ISSUES

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against JOSE CRUZ aka Jose Angel Cruz ("respondent") is informed and alleges in his official capacity as follows:

I

Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about April 9, 1998, with the knowledge and understanding that any license issued as a result of that application would be subject to the conditions of Sections 10153.4 of the Business and Professions Code.

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II

On March 1, 1995, in Superior Court of the State of California, County of Los Angeles, respondent was convicted by a plea of nolo contendere to one count of a violation of California Health & Safety Code Section 11359 (Possess controlled substance for sale - marijuana), and to one count of a violation of California Health & Safety Code Section 11378 (Possess controlled substance for sale - methamphetamine), felony crimes, involving moral turpitude by its facts and circumstances and substantially related under Section 2910, Title 10, California Code of Regulations (Regulations) to the qualifications, functions or duties of a real estate licensee.

III

The facts as alleged, as described in Paragraph II above, constitutes cause for denial of his application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

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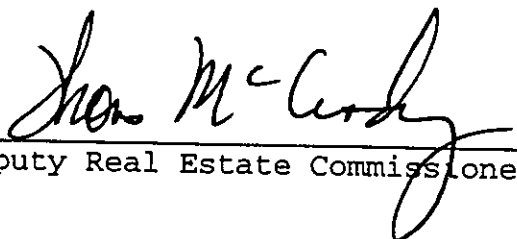
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1 These proceedings are brought under the provisions of
2 Section 10100, Division 4 of the Business and Professions Code of
3 the State of California and Sections 11500 through 11528 of the
4 Government Code.

5 Dated at Los Angeles, California
6 this 24th day of July, 1998.

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8 _____
9 Deputy Real Estate Commissioner

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25 cc: Jose Cruz
26 Sacto.
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