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FILED
DEC 4 2003
DEPARTMENT OF REAL ESTATE

By *Laura B. Morse*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-28503 LA
MIGUEL ANGEL RICO,)
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On August 28, 2000, a Decision was rendered herein
revoking the real estate salesperson license of Respondent.

On July 1, 2002, Respondent petitioned for
reinstatement of said real estate salesperson license and
the Attorney General of the State of California has been
given notice of the filing of said petition.

I have considered the petition of Respondent and
the evidence and arguments in support thereof. Respondent
has demonstrated to my satisfaction that Respondent meets
the requirements of law for the issuance to Respondent of
an unrestricted real estate salesperson license and that
it would not be against the public interest to issue said

1 license to Respondent MIGUEL ANGEL RICO.

2 NOW, THEREFORE, IT IS ORDERED that Respondent's
3 petition for reinstatement is granted and that a real estate
4 salesperson license be issued to Respondent if Respondent
5 satisfies the following conditions within nine (9) months
6 from the date of this Order:

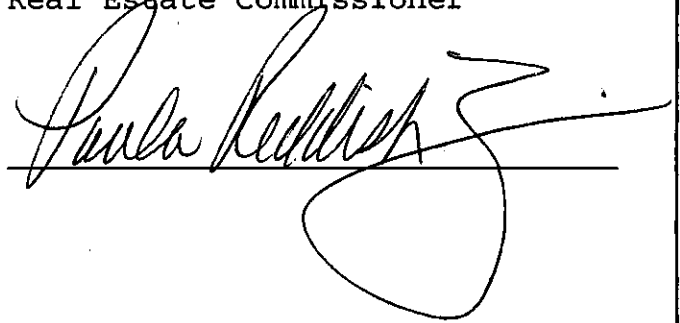
7
8 1. Submittal of a completed application and payment
9 of the fee for a real estate salesperson license.

10 2. Submittal of evidence of having, since the most
11 recent issuance of an original or renewal real estate license,
12 taken and successfully completed the continuing education
13 requirements of Article 2.5 of Chapter 3 of the Real Estate
14 Law for renewal of a real estate license.

15 This Order shall become effective immediately.

16 DATED: December 1, 2003.

17 PAULA REDDISH ZINNEMANN
18 Real Estate Commissioner

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20
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22
23

24 cc: Miguel Angel Rico
25 5200 Corona Avenue
26 Maywood, CA 90270

26 5246 Wood Avenue
27 South Gate, CA 90280

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Jana B. Orone

* * * * *

In the Matter of the Accusation of) No. H-28503 LA
)
MIGUEL ANGEL RICO, aka) L-2000050067
Michael A. Rico and Mike Rico,)
)
)
Respondent.)
_____)

DECISION

The Proposed Decision dated August 3, 2000, 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 Decision suspends or revokes one or more real estate licenses on grounds of knowingly making a false statement of fact required to be revealed in an application for license.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on September 21, 2000.

IT IS SO ORDERED August 28, 2000

PAULA REDDISH ZINNEBANN
Real Estate Commissioner

Paula Reddish Zinnemann

5. a. On August 10, 1998, the Department sent a letter to respondent requesting additional information. One of the items requested was an answer to question number 25, the text of which was reproduced in the letter.

b. Respondent answered the question in the negative.

6. Respondent's answers to question number 25 on the application, as forth in factual finding numbers 4 and 5, are not true in that he had been convicted of a crime, as set forth in factual finding number 7 below.

7. a. On December 7, 1994, in the Municipal Court, Downey Judicial District, County of Los Angeles, State of California, in case number 94M12559, respondent was convicted, following his plea, of violating Penal Code section 484(a) (petty theft).

b. The Court suspended imposition of sentence and placed respondent on summary probation for 36 months on terms and conditions that included payment of a fine in the amount of \$725.

8. The circumstances surrounding the conviction are as follows. Respondent took a music CD disc from a Warehouse retail store without paying for it.

9. a. Respondent's conviction unfavorably reflects on his honesty and truthfulness, traits that the legislature and the courts have deemed desirable in real estate licensees. See: Golde v. Fox, 98 Cal.App.3d 167 (1979). Accordingly, the conviction is for a crime which is substantially related to the qualifications, functions, and duties of a real estate salesperson.

b. Additionally, respondent's conviction is substantially related to the qualifications, functions, and duties of a real estate salesperson by reason of Title 10, California Code of Regulations, section 2910(b), in that it involves an unlawful act for financial benefit.

10. Respondent explained that he was confused by the question, even after asking a coworker for help with the Department's letter. This explanation lacks credibility.

11. Respondent knew that the answers he provided to question number 25, as set forth in factual finding numbers 4 and 5, were not true.

12. The conviction is a material fact in that it constitutes grounds for denial of the license application because it is a relatively recent conviction that is substantially related to the qualifications, functions, and duties of a real estate licensee.

13. Respondent successfully completed probation. He has not suffered any other criminal conviction.

14. He displayed appropriate remorse over the actions that led to his conviction. The conviction occurred while he was in high school and he does not associate with others involved in the incident.

15. Respondent enjoys selling residential real estate and has been successful during his brief career. Sergio Perelli, the sales manager at his present employer, testified at the hearing about respondent's ability and good character; in his opinion, respondent is very honest.

16. Respondent submitted two letters from former employers attesting to his qualities and competence.

LEGAL CONCLUSIONS

1. Section 498 provides that "[a] board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact."

2. Under section 10177(a), grounds for denial or discipline of a real estate license are established by the following:

“(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or any salesperson, by fraud, misrepresentation or deceit, or by making any material misstatement of fact in an application for a real estate license, license renewal or reinstatement.”

3. As set forth in factual finding numbers 3 through 12, respondent knowingly failed to disclose his conviction, a material fact, which failure constitutes grounds to suspend or revoke his license pursuant to both section 498 and section 10177(a).

4. Respondent nevertheless argues that under Jones v. Maloney, 166 Cal.App.2d 80 (1951), and DeRasmo v. Smith, 15 Cal.App.3d 601 (1971), failure to disclose the conviction is not material because had the conviction been revealed it would have been insufficient to deny licensure. However, those cases are distinguishable.

In Jones, the applicant failed to disclose two misdemeanor convictions not involving theft or financial gain (“disturbing the peace and resisting an officer” and “disturbing a public assemblage”), which convictions had occurred approximately 9 and 19 years before. Thus, unlike those in the Jones case, respondent’s conviction is neither remote nor minor.

In DeRasmo, the conviction was void by reason of subsequent appellate court action, a fact that provided both a basis for the conclusion that the conviction could not be used as the basis of discipline and for the applicant’s good faith belief that he did not need to disclose such conviction. In contrast, respondent’s conviction can still form the basis for discipline and he does not have a credible explanation for his failure to disclose it on the application.

The more recent case of Madrid v. Department of Real Estate, 152 Cal.App.3d 454 (1984), is more persuasive and more analogous to the instant one. There an applicant failed to disclose a five-year-old conviction for fraud involving a bingo game. The Court cited findings by the administrative law judge, subsequently adopted by the Department, rejecting respondent’s claims of confusion and lack of recollection and finding that respondent knowingly made a material misstatement of fact in the application. It also cited the following conclusions by the Department:

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

Respondent’s failure to reveal the criminal conviction alleged above in said application for licensure constitutes the procurement of a real estate license by fraud, misrepresentation or deceit, or by making a material misstatement of fact in said application, which failure is cause for suspension or revocation of respondent’s real estate license under Sections 490 and 10177(a) of the Business and Professions Code.’ ”

Madrid, supra at 460. In reference to the foregoing conclusions by the Department, the Court stated: “[t]his is merely another way of stating that the license would not have been granted had the conviction been disclosed.” Ibid.

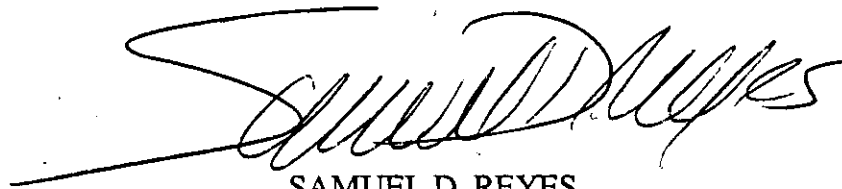
Accordingly, respondent’s arguments lack merit.

5. All evidence presented in mitigation or rehabilitation has been considered. Nevertheless, respondent failed to appreciate the importance of honesty or the seriousness of his failure to disclose the conviction. Perhaps the passage of time and added maturation will help him in this regard. In light of the foregoing factual findings and legal conclusions, the order that follows is necessary for the protection of the public.

ORDER

All licenses and licensing rights of respondent Miguel Angel Rico, aka Michael
A. Rico and Mike Rico, under the Real Estate Law are revoked.

DATED: 8/3/00

A handwritten signature in black ink, appearing to read 'Samuel D. Reyes', written over a horizontal line.

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILE
JUN 12 2000
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)
Case No. H-28503 LA)
MIGUEL ANGEL RICO,)
OAH No. L-2000050067)
)
)
)
Respondent(s).)

By *Laura B. Crow*

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 the Office of Administrative Hearings, 320 West Fourth Street, 6th Floor, Suite 630, Los Angeles, California, on JULY 6, 2000, 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.

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: 6/12/00

DEPARTMENT OF REAL ESTATE
By: *Martha J. Rosett*
MARTHA J. ROSETT, Counsel

cc: Miguel Angel Rico
All Casa Realty Group, Inc.
Sacto.
OAH

facts flag

MARTHA J. ROSETT, Counsel (SBN 142072)
Department of Real Estate
320 West Fourth Street, #350
Los Angeles, CA 90013

(213) 576-6982
(213) 576-6914

FILED
APR 19 2000
DEPARTMENT OF REAL ESTATE

By *K. Muderhold*

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DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	No. H-28503 LA
MIGUEL ANGEL RICO, aka, "Michael)	A C C U S A T I O N
A. Rico," and, "Mike Rico,")	
Respondent.)	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against MIGUEL ANGEL RICO, aka, "Michael A. Rico," and "Mike Rico," (hereinafter "Respondent") is informed and alleges as follows:

I

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

II

On or about July 21, 1998, Respondent, pursuant to the provisions of Section 10153.3 of the Business and Professions Code, (hereinafter "Code"), made application to the

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

6 III

7 In response to Question 25 of said application, to
8 wit: "Have you ever been convicted of any violation of law?"
9 Respondent did not mark any box, and did not list any
10 convictions. Relying on the representations made in this
11 application, the Department issued Respondent a Conditional
12 Real Estate Salesperson license on or about September 23, 1998.

13 IV

14 On or about December 7, 1994, in the Los Angeles
15 County Municipal Court, Downey Judicial District, in Case
16 Number 94M12559, Respondent was convicted on his plea of guilty
17 to one count of violating Penal Code Section 484(A) (theft), a
18 crime of moral turpitude substantially related to the
19 qualifications, functions and duties of a real estate licensee.

20 V

21 Respondent's failure to accurately reveal the
22 conviction set forth in Paragraph IV above in his application
23 for a real estate license constitutes the procurement of a real
24 estate license by fraud, misrepresentation, deceit or by making
25 a material misstatement of fact and omitting material facts in
26 said application, which procurement is cause for suspension,
27 revocation or other restriction of Respondent's license and/or

1 license rights under Sections 498 and 10177(a) of the Code.

2 WHEREFORE, Complainant prays that a hearing be
3 conducted on the allegations of this Accusation and that upon
4 proof thereof, a decision be rendered imposing disciplinary
5 action against all licenses and/or license rights of MIGUEL
6 ANGEL RICO, under the Real Estate Law and for such other and
7 further relief as may be proper under applicable provisions of
8 law.

9 Dated at Los Angeles, California
10 this 19th day of April, 2000.

11
12 THOMAS MC CRADY
13 Deputy Real Estate Commissioner
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22 cc: MIGUEL ANGEL RICO
23 Sacto.
24 EC
25 All Casa Realty Group Inc.
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