

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By [Signature]

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|---------------------------------------|----------------|
| In the Matter of the Application of) | No. H-28609 LA |
| ERNESTO RUIZ ARCEO,) | L-2000070022 |
| Respondent(s).) | |

DECISION

The Proposed Decision dated October 10, 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 application for a real estate salesperson license is denied. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on December 6, 2000

IT IS SO ORDERED

November 13, 2000.

PAULA REDDISH ZINNEBANN
Real Estate Commissioner

Paula Reddish

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

ERNESTO RUIZ ARCEO,

Respondent.

DRE Case No. H-28609 LA

OAH No. L 2000070022

PROPOSED DECISION

This matter came on regularly for hearing before Felix W. Loya, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on September 19, 2000. Complainant Thomas McCrady was represented by Chris Leong, Staff Counsel. Respondent Ernesto Ruiz Arceo ("Respondent") was present and represented himself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. The Statement of Issues was filed by Thomas McCrady in his official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate of the State of California (the "Department").
2. Respondent filed an application for a real estate salesperson license with the Department on January 28, 2000, subject to Business and Professions Code, section 10153.4(c).
3. The Department issued a statement of issues in regard to Respondent's application. Respondent requested a hearing and the instant hearing ensued.
4. On December 19, 1996, Respondent was convicted in Los Angeles County Municipal Court, Central Judicial District, State of California in Case No. 6CR24068 on a plea of nolo contendere for one count of the criminal offense of grand theft of property over \$400 in violation of Penal Code section 487(a), a misdemeanor involving moral turpitude substantially related to the qualifications, functions, and duties of a real estate licensee under the criteria set forth in California Code of Regulations, Title 10, section 2910.

5. On December 19, 1996, imposition of sentence on Respondent was suspended and Respondent was placed on twenty-four months' summary probation subject to certain terms and conditions including the completion of 45 days of Cal Trans community service or 60 days in jail, payment of \$811 in fines, penalties and attorney's fees and full restitution to the victim.

6. The facts and circumstances of Respondent's conviction were that, on December 5, 1995, he took \$1,100 in cash that he had received as insurance premiums from persons applying for insurance policies in the course of his duties as an employee of a bank. Respondent's employment duties with the bank included receiving completed automobile insurance policy applications and premium payments from persons seeking insurance. He typically turned the premium payments in to the bank with the application at the end of the day or on the following day.

a. On December 4, 1995, Respondent accepted an application for automobile insurance from an applicant who also gave him \$400 cash in payment of all or part of the premium. Respondent was subsequently unable to confirm such basic information as the applicant's telephone number, and as a result, Respondent did not submit the application to the bank. On the following day, December 5, 1995, the same applicant returned to the bank seeking insurance benefits on the grounds that he had sustained a covered loss in the one-day interim. Respondent returned the \$400 to the applicant and told the applicant that no insurance had been issued.

b. Apparently the applicant complained to the bank and the bank told Respondent that he would be held responsible for any loss the bank sustained as a result of the applicant's purported covered accident. The bank also gave Respondent the choice of quitting his employment or being fired for his conduct. In addition, the bank refused to pay Respondent some \$6,000 to \$7,000 in commissions that Respondent had earned but not received from his sale of insurance up to the date of termination.

c. On December 5, 1995, Respondent had \$1,100 in cash in his possession as the result of other applications for insurance that he had received since the day before. Instead of turning the \$1,100 over to the bank as he usually did, Respondent kept the \$1,100 as a partial offset against the commissions the bank owed him. Respondent's former supervisor called Respondent several times after December 5, 1995 and demanded that Respondent return the \$1,100 to the insurance applicants from whom he had received the funds, but Respondent refused to do unless the bank paid him the commissions it owed him.

7. Respondent paid all fines and penalties owed under his criminal probation by June 1997 and completed all of his hours of Cal Trans community service by January 1998. On January 20, 1999, the court granted Respondent's petition to set aside and vacate his conviction under Penal Code section 1203.4 for fulfillment of the conditions of probation for the entire period thereof.

8. The following factors, indicating rehabilitation, exist:
- a. Respondent is remorseful, has learned his lesson, and will not engage in such business practices in the future.
 - b. Respondent has not had any other problems with the law.
 - c. A real estate broker indicated on Respondent's real estate salesperson application that he is willing to hire Respondent notwithstanding Respondent's 1996 conviction.
 - d. More than three years have passed since Respondent's conviction and more than two and a half years have passed since Respondent completed his probation.
 - e. Respondent's conviction was set aside under Penal Code section 1203.4 over one and a half years ago following his completion of the terms of probation and payment of all fines and penalties.

9. The following factors, indicating mitigation, exist:

- a. Respondent was financially threatened in late 1995 when the bank forced him to sever his employment relationship with it and refused to pay Respondent the substantial commissions owed him at the time.
- b. Respondent had not previously run afoul of the law.
- c. Respondent is an immigrant and is not necessarily familiar with the laws of this country.
- d. Respondent is married and has two children. At the time he committed the crime for which he was convicted, his wife was not working and he was the family's sole source of income. Respondent is still married and is supporting his wife and children.

10. Factors in aggravation are that Respondent was 39 years old at the time of the incident and should have known that the premiums were not his to use as offsets against amounts owed to him by the bank. He should have realized that the premiums were intended to secure insurance for the persons who had submitted insurance applications to him with the money. It is also no excuse that Respondent was not familiar with the laws of the State of California or that his conduct was criminal in nature. Moreover, a real estate salesperson is expected to handle substantial deposits of money and to know how to handle such sums responsibly and legally at all times.

11. The Department has established criteria for rehabilitation from the denial of a license based upon conviction of a crime, found at California Code of Regulations, Title 10, section 2911, which are summarized as follows:

a. Subsection (a), requiring the passage of at least two years since the conviction, or more if there is a history of unlawful acts, is met here in that Respondent was convicted more than three and a half years ago, completed his probation requirements over two and a half years ago, and has not had any other involvement with the law;

b. Subsection (b), restitution: although it may be inferred that Respondent made full restitution for his crime from the fact that that he obtained an order setting aside his conviction on the grounds that he had fulfilled the conditions of probation and restitution was a condition of his probation, there is no direct evidence that Respondent paid any, much less full, restitution for his crime;

c. Subsection (c) suggests expungement of the conviction: Respondent had his conviction set aside in January 1999;

d. Subsection (d), requiring completion of the criminal probation: Respondent has complied with this criterion;

e. Subsection (e), abstinence from drugs or alcohol that contributed to the crime, does not apply because it is not alleged and there is no evidence that any drugs or alcohol contributed to the crime;

f. Subsection (f), payment of any fines: Respondent has complied with this requirement;

g. Subsection (g), stability of family life and fulfillment of parental responsibility: Respondent has complied with this criterion in that he is still married and is supporting his children;

h. Subsection (h), enrollment in or completion of educational or training courses: Respondent testified that he had taken and passed the real estate test eight months earlier, although there is evidence that he had not completed the educational requirements of Business and Professions Code section 10153.4(c) and there was no evidence that he had taken any courses in good business practices in the handling of monies paid to a professional, such as a real estate salesperson, for a service or commodity;

i. Subsection (i), discharge of debts to others, does not apply except to the extent that Respondent did or did not pay restitution;

j. Subsection (j), correction of business practices leading to the conviction: Respondent has testified that he is remorseful and learned his lesson about

handling funds with which he has been entrusted, but he did not produce any witnesses or documents to support his testimony;

k. Subsection (k), involvement in community, church or private programs for social betterment: there was no evidence regarding this criterion;

l. Subsection (l), new and different social and business relationships: there was no evidence regarding this criterion, although Respondent did testify that he has worked for Countrywide Home Loans as a home loan consultant since March 2000 and that Countrywide is aware of his conviction, but he did not produce any witnesses or documents to support his testimony;

m. Subsection (m), change in attitude from the time of conviction to the present: Respondent has testified that he has learned his lesson and will not repeat his mistake, but he did not produce any witnesses or documents to support his testimony.

LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing Factual Findings, the Administrative Law Judge makes the following Legal Conclusions:

1. Cause exists for denial of Respondent's application for a real estate salesperson license under Business and Professions Code sections 480(a)(1) and 10177(b) for conviction of a crime involving moral turpitude substantially related to the qualifications, functions, or duties of the licensed activity as set forth in Findings 4 through 6.

2. The factors set forth in Finding 8 reveal that Respondent has taken significant steps toward rehabilitation and the factors set forth in Finding 9 indicate that he may have simply exercised poor judgment and that he is not likely to repeat his mistake. Respondent meets almost all of the criteria set forth in California Code of Regulations, Title 10, section 2911. However, the factors in aggravation set forth in Finding 10, the absence of clear evidence as to whether or not Respondent has paid full restitution and the fact that there were no character witnesses to support Respondent's testimony about feeling remorse and having learned a lesson as to how to handle other people's money in a business dispute, as set forth in Finding 11, indicate that Respondent has not carried his burden of proving that he is substantially rehabilitated or that he would not commit a similar act in his role as a real estate salesperson out of ignorance of the law or of his duties under the law to his or other salesperson's clients. Therefore, it would not be in the public interest to issue Respondent a license, even a restricted license, until more time has passed and Respondent can more clearly establish his rehabilitation.

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3. Respondent may reapply for a license one year after the effective date of this Decision pursuant to Business and Professions Code section 486.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The application for a real estate salesperson's license of respondent Ernesto Ruiz Arceo is denied.

Dated: October 10, 2000


FELIX W. LOYA
Administrative Law Judge
Office of Administrative Hearings

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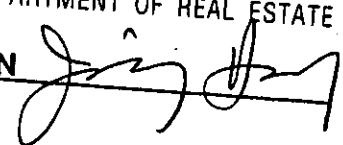
BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of) Case No. H-28609 LA
)
 ERNESTO RUIZ ARCEO,) OAH No. L-2000070022
)
)
 _____)
 Respondent (s)

FILED
 JUL 25 2000
 DEPARTMENT OF REAL ESTATE

NOTICE OF CONTINUOUS HEARING ON APPLICATION



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, Suite 630, Los Angeles, CA 90013-1105 on TUESDAY, SEPTEMBER 19, 2000, 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. 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 his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: July 25, 2000

By CHRIS LEONG
 CHRIS LEONG, Counsel

cc: Ernesto Ruiz Arceo
 Century 21 Paul & Associates Realty, Inc.

Sacto.

OAH

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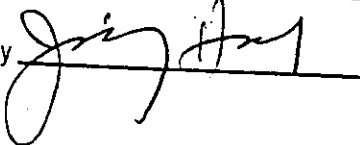
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CHRIS LEONG, Counsel (SBN 141079)
Department of Real Estate
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Los Angeles, California 90013-1105

Telephone: (213) 576-6982
-or- (213) 576-6910 (Direct)

FILED
JUN 13 2000

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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|---------------------------------------|----------------------------|
| In the Matter of the Application of) | |
| ERNESTO RUIZ ARCEO,) | NO. H-28609 LA |
| Respondent.) | <u>STATEMENT OF ISSUES</u> |

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against ERNESTO RUIZ ARCEO (Respondent), alleges as follows:

I

Respondent made application to the Department of Real Estate of the State of California for a conditional real estate salesperson license on or about January 28, 2000.

II

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

III

On or about December 19, 1996, in the Municipal

1 Court of Los Angeles, Central Arraignment Judicial District,
2 County of Los Angeles, California, case number 6CR24068,
3 Respondent was convicted of violating California Penal Code
4 Section 487(A) (Grand theft property over \$400), a misdemeanor
5 and a crime involving moral turpitude which is substantially
6 related under Section 2910, Title 10, Chapter 6, California
7 Code of Regulations, to the qualifications, functions or duties
8 of a real estate licensee.

9 IV

10 The crime of which Respondent was convicted, as
11 alleged above in Paragraph III above, is cause for the denial
12 of Respondent's application for a real estate license under
13 Sections 480(a)(1) and 10177(b) of the California Business and
14 Professions Code.

15 WHEREFORE, the Complainant prays that the above-
16 entitled matter be set for hearing and, upon proof of the
17 charges contained herein, that the Commissioner refuse to
18 authorize the issuance of, and deny the issuance of, a real
19 estate salesperson license to Respondent, and for such other and
20 further relief as may be proper in the premises.

21 Dated at Los Angeles, California
22 this 13th day of June, 2000.

23 
24 _____
25 Deputy Real Estate Commissioner

26 cc: Ernesto Ruiz Arceo
27 Century 21 Paul & Associates Realty, Inc.
Thomas McCrady
Sacto.
RTG