

By

* * * * *

Respondent .

IT IS SO ORDERED

Paula Pedersen

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

**In the Matter of the Application of
JORGE HUGO ROJAS,
Respondent.**

**Case No. H-29164 LA
OAH No. L2001090101**

PROPOSED DECISION

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California on November 5, 2001.

Complainant, Thomas McCrady, was represented by Mary E. Work, Staff Counsel.

Respondent, Jorge Hugo Rojas ("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 made by Thomas McCrady, Complainant, who is a Deputy Real Estate Commissioner of the State of California, acting in his official capacity.

///

///

2. On or about November 20, 2000, Respondent submitted an application to the Department of Real Estate ("the Department") for a real estate salesperson license on the condition that any license issued as a result of that application would be subject to completion of certain educational requirements as set forth in Business and Professions Code section 10153.4. Since submitting his application, he has completed the educational requirements for licensure. The Department denied Respondent's application and this matter ensued.

3. On April 23, 1996, in Municipal Court of Santa Monica Judicial District, County of Los Angeles, State of California, in Case No. SA024818, Respondent was convicted, on his plea of nolo contendere, of violation of Penal Code section 459 (Burglary), a felony involving moral turpitude and a crime substantially related to the qualifications, functions and duties of a real estate licensee.

4. Respondent was sentenced to three days incarceration with three days credit for time served (including one day for good time/work time). He was placed on formal probation for a period of three years under various terms and conditions including performance of 250 hours of community service and payment of a \$200.00 fine. On March 3, 2000, the Court ordered the charge reduced to a misdemeanor, a plea of not guilty entered, and the case dismissed pursuant to Penal Code section 1203.4.

5. The facts and circumstances underlying the conviction are that Respondent used a tire iron to break into another person's van. The van's owner heard the car alarm activate and ran toward the van where he saw someone rummaging around in the cargo area. Respondent ran from the van and entered a car being driven by a friend. The incident was witnessed from the air by a police helicopter officer. Several police cars chased the car in which Respondent was riding and eventually stopped it.

6. Respondent disputes the above facts. He claims that he was asleep in his friend's car when his friend got into an altercation with the van owner. The friend wanted to retaliate against the van owner and, to that end, prevailed on Respondent to break the van's right passenger window. When Respondent did so, the tire iron he used for the job flew into the van. He then opened the right passenger door, entered the van and retrieved the tire iron. Police did not pursue his friend's car.

7. Respondent's version is not credible. (1) Even if the tire iron had entered the van from the right passenger window, it is difficult to imagine how it could have landed in the rear cargo area. (2) Evidence of the car and helicopter chase was derived from the Arrest Report which was admitted without objection. Even if one were to view such reports with skepticism, it is extremely unlikely that an arresting officer would confabulate the car chase involving several police units and a police helicopter since such a story could be easily checked and discredited if it were not true.

8. Respondent has not seen the friend with whom he was arrested since the day he committed the burglary.

9. On his application for a real estate salesperson's license, Respondent declined to answer the question as to whether he had ever used any other names. However, he attached a copy of a criminal history record from the California Department of Justice, Bureau of Criminal Identification and Information. That record listed ten different names Respondent has used (including the one under which he filed the instant application.). On March 23, 2001, the Department forwarded a request for additional information to Respondent. Included in that request was an inquiry as to whether Respondent had used other names and, if so, the identification of those names. Respondent answered affirmatively to the question but submitted only four of the ten names.

10. At the hearing, Respondent took the position that he had only used four, rather than ten names since the other six names were variations of the original four.

11. On December 1, 1999, Respondent applied to the California Department of Motor Vehicles for a vehicle salesperson license. On December 30, 1999, the Department of Motor Vehicles denied the application due to Respondent's April, 1996 burglary conviction. Respondent did not seek an administrative hearing because the felony was still on his record.

12. Between 1996 and 2000, Respondent had worked as an unlicensed vehicle salesperson along with another licensed individual. Respondent bought cars at auction and resold them on the other individual's used car lot. Respondent ceased that activity when the business closed in December of 2000.

13. Respondent is a divorced father of two children with whom he shares a good relationship. He is not involved in any church or community activities.

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 pursuant to Business and Professions Code sections 475(a), 480(a), and 10177(b), for conviction of a crime, as set forth in Findings 3, 4, 5, 6 and 7.

2. Cause exists for the denial of respondent's application pursuant to Business and Professions Code sections 498 and 10177(a), for failure to reveal other names on an application, as set forth in Findings 9 and 10.

3. Cause exists for the denial of respondent's application pursuant to Business and Professions Code section 10177(f), for denial of a license by another agency of this state, as set forth in Finding 11.

Despite showing some promising signs of rehabilitation (i.e., dismissal of charges pursuant to Penal Code section 1203.4, different social contacts, and good familial relationships), Respondent is not sufficiently rehabilitated to justify the issuance of a real estate salesperson license. The crime of which he was convicted involved moral turpitude. His plea of nolo contendere to the burglary charge stands as conclusive evidence of his guilt. (Arneson v. Fox (1980) 38 Cal.3d 440, 449.) However, even under Respondent's version of what occurred, he violated the law by breaking the window of a car solely to avenge a wrong allegedly done against a friend.

Further, Respondent has a lengthy history of bending or breaking the law in order to achieve his own ends. For example, he worked as an unlicensed vehicle salesperson not only before he applied for a vehicle salesperson license and during the pendency of his application, but after his license was denied as well, stopping only when the business closed. He also used a variety of false names.

In addition, Respondent has failed to take responsibility for his own actions. He has shown no signs of remorse other than during closing argument when he claimed to be remorseful in response to Complainant's argument that he was not. He denies burglarizing the van in 1996 and being chased by several police units and a police helicopter, instead telling a version of the incident that is not credible. He also claims that the ten names he has used for improper purposes were actually variations of only four names, without recognizing (1) the inability of an agency to identify Respondent and his various names using an alphabetical system, and (2) the dishonesty involved in using any false name for an improper purpose. In fact, as late as March of this year, Respondent listed only four of his ten names for the Department when given a second chance to list all ten.

In light of the above, Respondent is not eligible for a real estate salesperson license at this time.

///

///

///

///

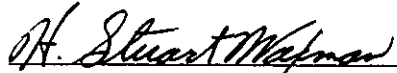
///

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's application for a real estate salesperson license is denied.

DATED: November 6, 2001



H. STUART WAXMAN

Administrative Law Judge

Office of Administrative Hearings

STATE OF CALIFORNIA

In the Matter of the Application of) Case No. H-29164 LA
)
JORGE HUGO ROJAS,) OAH No. L-2001090101
)
)
)
 _____)
Respondent(s)

FILED
SEP 14 2001
DEPARTMENT OF REAL ESTATE

NOTICE OF 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 **MONDAY, NOVEMBER 5, 2001,** 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 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: September 14, 2001

By MARY E. WORK, Counsel

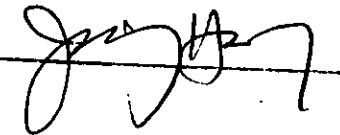
cc: Jorge Hugo Rojas
✓ Sacto.
OAH

6/2/10

MARY E. WORK, Counsel
SBN 175887
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, CA 90013-1105

Telephone (213) 576-6982
-Direct- (213) 576-6916

FILED
AUG 7 2001
DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)
Jorge Hugo Rojas,)
Respondent.)

No. H-29164 LA

STATEMENT OF ISSUES

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of Statement of Issues against JORGE HUGO ROJAS (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 Statement of Issues against Respondent in his official capacity.

II

Respondent made application to the Department of Real Estate of the State of California (hereinafter "Department") for a real estate salesperson license on or about November 20, 2000, with the knowledge and understanding that any license issued

1 would be subject to the conditions of Section 10153.4 of the
2 Business and Professions Code (hereinafter "Code").

3
4 FIRST CAUSE OF ACTION
(CRIMINAL CONVICTION FOR CRIME OF MORAL TURPITUDE)

5 III

6
7 On or about April 23, 1996, in the Municipal Court of
8 Santa Monica Judicial District, County of Los Angeles, State of
9 California, in case no. SA024818, Respondent was convicted upon
10 his plea of nolo contendere to one violation of Penal Code
11 Section 459 (felony burglary), a crime of moral turpitude
12 substantially related to the qualifications, functions or duties
13 of a real estate licensee.

14 IV

15 The crime for which Respondent was convicted as set
16 forth above in Paragraph III constitutes grounds for denial of
17 Respondent's application for a real estate license under Section
18 475(a), 480(a) and 10177(b) of the Code.

19 SECOND CAUSE OF ACTION
(FAILURE TO REVEAL OTHER NAMES USED ON APPLICATION)

20 V

21 In response to Question No. 18 of said license
22 application, to wit: "Have you ever used any other names (i.e.,
23 maiden, aka's, etc.)?" Respondent failed to list other names
24 that he has used, including, but not limited to: "Alonso
25 Orlando," "Daniel R. Pérez," "William Suarez," and "Daniel Perez-
26 Rosas."

1
2 VI

3 Respondent's failure to provide other names he has used
4 constitutes the procurement of a real estate license by fraud,
5 misrepresentation or deceit or by making a material misstatement
6 of fact. This is cause for denial of Respondent's real estate
7 salesperson license under Section 498 and 10177(a) of the Code.
8

9 THIRD CAUSE OF ACTION
(DENIAL OF LICENSE BY ANOTHER AGENCY OF THIS STATE)

10 VII

11 On or about December 30, 1999, Respondent's application
12 to the Department of Motor Vehicles for a license as a
13 salesperson was denied. Respondent's denial of license was based
14 on Respondent's felony conviction as is described above in
15 Paragraph III.

16 VIII

17 The denial of Respondent's license by another agency,
18 as described above, is grounds for denial of Respondent's
19 application for a real estate salesperson license pursuant to
20 Section 10177(f) of the Code.

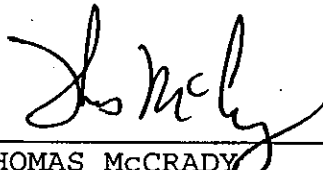
21 These proceedings are brought under the provisions of
22 Section 10100, Division 4 of the Business and Professions Code of
23 the State of California and Section 11500 through 11529 of the
24 Government Code.

25 ////

26 ////

1 WHEREFORE, Complainant prays that the above entitled
2 matter be set for hearing and, upon proof of the charges
3 contained herein, that the Commissioner refuse to authorize the
4 issuance of, and deny the issuance of, a real estate salesperson
5 license to Respondent, JORGE HUGO ROJAS, and for such other and
6 further relief as may be proper under other provisions of law.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27


THOMAS McCRADY
Deputy Real Estate Commissioner

Dated at Los Angeles, California,
this 7th day of August, 2001.

cc: Jorge Hugo Rojas
Thomas McCrady
✓ SACTO
ST