

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JAN - 2 2003
DEPARTMENT OF REAL ESTATE

* * * * *

In the Matter of the Application of)
)
GEORGE MUNOZ,)
)
Respondent.)

No. H-29643 LA
By [Signature]
L-2002090753

DECISION

The Proposed Decision dated December 2, 2002, 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.

Pursuant to Section 11517(b)(3) of the Government Code of the State of California, the Proposed Decision is amended as follows:

Page 3, paragraph number 13, line 1, "salespersons certification" is amended to read "salesperson's certification".

Page 3, paragraph number 13, line 2, "SALESPERSONS CERTIFICATION" is amended to read "SALESPERSON CERTIFICATION".

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 January 22, 2003.

IT IS SO ORDERED

January 2, 2003

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

[Signature]
BY: John R. Liberator
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of/Statement
of Issues Against;

GEORGE MUNOZ,

Respondent.

Case No. H-29643-LA

OAH No. L2002090753

PROPOSED DECISION

On November 5, 2002 in Los Angeles, California, Ann E. Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

James Peel, Counsel, represented the complainant.

Felix Martinez, Attorney at Law, represented respondent, George Munoz.

Evidence was received. The matter was submitted and the record closed.

FACTUAL FINDINGS

1. On August 13, 2002, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, made and filed the Statement of Issues in her official capacity.

2. In making and filing the Statement of Issues, Ms. Suarez acted pursuant to the authority of Business and Professions Code sections 480(a) and 10177(b), which provide, in pertinent part, that the Commissioner may deny issuance of a real estate license and all licensing rights to an applicant or licensee who has been convicted of a crime involving moral turpitude, which bears a substantial relationship to the duties of a real estate salesperson under section 2910, Title 10, of the California Code of Regulations.

3. In making and filing the Statement of Issues, Ms. Suarez acted pursuant to the authority of Business and Professions Code sections 475(a)(1), 480(c) and 10177(a), which provide, in pertinent part, that the Commissioner may deny issuance of a real estate license

and all licensing rights to an applicant or licensee who has made a material misstatement of fact in an Application for licensure.

4. Respondent timely filed a Request for Hearing pursuant to Government Code sections 11504 and 11509. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

Respondent's Criminal Conviction

5. Respondent was convicted on January 30, 1997, in the Municipal Court, County of Los Angeles, Newhall Judicial District, State of California, of a violation of California Penal Code section 487(A)(Grand Theft), a felony. He was sentenced to ninety days in jail, three years of probation, and a fine of \$675.

6. The facts and circumstances of the conviction were that on December 15, 1996, respondent, his wife, and their seventeen-year-old entered a Mervyns Department store. They were with his wife's friend and the friend's sixteen year old son. The group, including the children, stole more than \$400 in merchandise from the store.

7. Respondent's Grand Theft is a crime of moral turpitude within the meaning of Business and Professions Code section 10177(b). Crimes which reveal an applicant's dishonesty involve moral turpitude. *Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1027. Lack of honesty or integrity, such as intentional dishonesty, demonstrates a lack of moral character and satisfies a finding of unfitness to practice a profession. *Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 305.

8. Respondent's Grand Theft bears a substantial relationship to the qualifications, functions and duties of a real estate licensee. A real estate salesperson is entrusted with and responsible for the real property and funds of clients. Stealing property and dishonesty are acts directly contrary to the duties of the real estate licensee.

Respondent's Application for Licensure

9. On January 22, 2002, respondent filed an Application for a Real Estate Salesperson License (hereafter "Application") with the Department. The Application directed the applicant to "carefully read and provide detailed answers to questions # 24-26." The Application described in detail what circumstances constitute a criminal conviction. The directions defined "conviction" of a crime as "including a verdict of guilty by a judge or jury, a plea of guilty or of nolo contendere.." The directions continued with the following admonition "All convictions must be disclosed whether or not the plea or verdict was set aside, the conviction against you was dismissed, or expunged or if you have been pardoned. Convictions occurring while you were a minor must be disclosed unless the record of the conviction has been sealed.."

10. Question number 25 asked the following:

HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER YOU MAY OMIT MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE. (emphasis in original)

11. Question number 25 included two boxes, one marked "NO" and the other marked "YES." The question instructed that if the answer to number 25 is "YES," the applicant should complete question number 27. Question number 27 instructed the applicant to fill in various items of information regarding any violations, including court of violation, arresting agency, date of conviction, type of conviction, code section violated, code violated, disposition and case number.

12. Respondent checked question number 25 with a "No" answer. He left Question number 27 blank. He did not disclose his Grand Theft conviction.

13. The Application concludes with a "salesperson's certification." The heading on the certification states "SALESPERSON'S CERTIFICATION – Please Read Carefully." (emphasis in original) The certification begins with the attestation "I certify under penalty of perjury under the laws of the State of California that the foregoing answers and statements given in this Application are true and correct..." Respondent signed the certification under penalty of perjury, falsely attesting that his answers on the Application were truthful and that he had no criminal convictions.

Respondent's Testimony

14. Respondent explained his reasons why he did not disclose his criminal conviction. Respondent testified that he was offered a job at ReMax as an associate if he got his real estate license. He was pleased to have passed the real estate exam. He was telling everyone at the office that he passed the test. Another agent, Juan, offered to help him fill out the Application. While Juan was filling out the Application, Juan asked him if he had ever been convicted of a crime. Respondent said "No" because he would have been embarrassed if Juan knew the truth. He was also afraid that rumors would get started in the office and everyone would know about the conviction. Respondent did not change the "No" answer later when he had left the office. Respondent never read the Application questions about criminal convictions. Respondent signed the Application three days after his sponsoring broker signed it.

15. Respondent's explanation for his failure to disclose his conviction was not exculpating. Respondent had the duty to read the Application and to fill it out appropriately prior to signing it. Respondent chose to allow his co-worker to fill the Application out incorrectly. He chose not to correct the Application before he submitted it to the

Department. Respondent signed the Application under penalty of perjury knowing it contained false information.

16. Respondent testified in respect to his criminal offense. He testified that his wife, his child, and his wife's friend and child were shopping at Mervyns when security guards accused the group of theft. Respondent admitted that he stole a pair of tennis shoes and left his own shoes at the store. His wife admitted to the security guards that the group had planned to steal merchandise together. Respondent testified at hearing that he was not aware that the others were shoplifting. He was unpersuasive.

Factors in Mitigation, Aggravation and Rehabilitation

17. In order to determine whether it is appropriate to deny respondent a real estate salesperson's license or to issue him a restricted license, it is necessary to weigh and balance factors in aggravation, mitigation, justification and rehabilitation. There was no mitigation established for the crime. In aggravation, respondent was thirty-six years old at the time of the offense.

18. Title 10, California Code of Regulations section 2912 sets forth the criteria developed by the Department of Real Estate pursuant to Business and Professions Code section 482(b) for evaluating rehabilitation of a licensee following a criminal conviction.

The following facts were established with regard to respondent's rehabilitation:¹

- a. More than two years have passed from the date of respondent's last conviction to the date of his Application for a salesperson license. However, when an applicant has a lengthy history of criminal acts, a longer period of time is necessary.

Five and a half years have passed since respondent's criminal conviction.

- b. Respondent paid court ordered restitution.
- c. Respondent's conviction has not been set aside or expunged.
- e. Respondent's probationary term expired and he was discharged from probation.
- f. Abstinance from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.

This item is inapplicable to respondent.

¹ The paragraph lettering corresponds to the pertinent sub-section of section 2912.

g. Respondent paid the monetary penalties imposed by the court in relation to his criminal conviction.

h. Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.

Respondent presented evidence that he has a stable family life and he is fulfilling family financial obligations.

i. Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

Respondent has completed courses necessary for his real estate license. He has taken classes in Windows computer training and Excel training. He works for ReMax as an assistant handling phone calls and paperwork. He has been offered a job at ReMax should he be granted a license.

j. Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

This item is not applicable to respondent.

k. Correction of business practices resulting in injury to others or with the potential to cause such injury.

This item is not applicable to respondent.

l. Significant or conscientious involvement in community, church or privately sponsored programs designed to provide social benefits or to ameliorate social problems.

Respondent is involved in his church and participated in soccer prior to his position with ReMax.

m. New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

Respondent did not present evidence on this aspect of rehabilitation, except to testify that he remains married to his wife.

n. Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

Respondent submitted many letters of reference attesting to his hard work, excellent parenting, and his honesty and integrity. Respondent is remorseful about his theft. There is little doubt that he would have been granted a real estate license if he had exhibited honesty and integrity when making representations to the Department. However, he denied that he knew his party was shoplifting when they went to Mervyns. He deliberately omitted information about his criminal conviction from his Application, and he indicated instead that he had no criminal conviction. He made these misrepresentations under penalty of perjury. Unfortunately, respondent has not completely rehabilitated himself.

LEGAL CONCLUSIONS

1. The Board established cause for denial of respondent's real estate salesperson license and all licensing rights, pursuant to Business and Professions Code sections 480(a) and 10177(b), by reason of his criminal conviction, as set forth in Factual Findings 5, 6 and 16.

2. Respondent's criminal offense is a crime of "moral turpitude" within the meaning of Business and Professions Code section 10177(b), as set forth in Factual Finding 7.

3. Respondent's criminal offense bears a substantial relationship to the qualifications, functions and duties of a real estate licensee, as set forth in Factual Finding 8.

4. The Board established cause for denial of respondent's real estate salesperson license and all licensing rights, pursuant to Business and Professions Code sections 475(a)(1), 480(c), and 10177(a), by reason of his failure to disclose his criminal conviction on his Application, as set forth in Factual Findings 9 through 15, inclusive.


5. Respondent bears the burden of proving that he is no longer a risk to the public and that he is currently suitable for licensure as a real estate salesperson. As set forth in Factual Findings 9 through 18, inclusive, respondent has not met that burden.

As set forth in Factual Findings 9 through 18, inclusive, respondent has not accepted full responsibility for his offense. Respondent has also committed an act of dishonesty in his recent Application for licensure. For these reasons, it is not now in the public interest to grant respondent a restricted license.

ORDER

The Application of George Munoz for a Real Estate Salesperson License is DENIED.

Dated: December 21, 2002

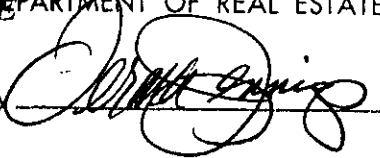


ANN E. SARLI
Administrative Law Judge
Office of Administrative Hearings

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FILED
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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
By 

In the Matter of the Application of

GEORGE MUNOZ

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}

Case No. H-29643 LA

OAH No. L-2002090753

Respondent

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, 320 West 4th Street, Suite 350, Los Angeles, California, on Tuesday, November 5, 2002, 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. 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.

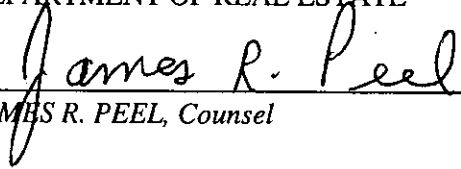
The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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.

Dated: October 17, 2002.

DEPARTMENT OF REAL ESTATE

By 
JAMES R. PEEL, Counsel

George Munoz
F.J. Martinez Esq./J.C. Cardenas
Sacto./OAH

5/14/02

JAMES R. PEEL, Counsel (SBN 47055)
Department of Real Estate
320 West Fourth Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982
-or- (213) 576-6913 (Direct)

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	No. H-29643 LA
GEORGE MUNOZ,	<u>STATEMENT OF ISSUES</u>
Respondent.	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against GEORGE MUNOZ (Respondent) is informed and alleges in her official capacity as follows:

I

On or about January 29, 2002, Respondent applied to the Department of Real Estate of the State of California for a real estate salesperson license with the knowledge and understanding that any license issued as a result of that application would be subject to the conditions of Section 10153.4 of the Business and Professions Code.

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II

In response to Question 25 of said application, to wit, "Have you ever been convicted of any violation of law?", Respondent answered "No" and failed to disclose the matter set forth in Paragraph III.

III

On or about January 30, 1997, in the Municipal Court of Newhall Judicial District, County of Los Angeles, State of California, Respondent was convicted of violating Section 487(A) of the Penal Code (Grand Theft), a felony involving moral turpitude, and substantially related to the qualifications, functions or duties of a real estate licensee.

IV

The matter described in Paragraph III constitutes cause for denial of Respondent's application for a real estate salesperson license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

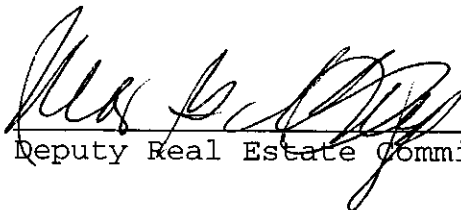
V

Respondent's failure to disclose the matter set forth in Paragraph III, above, in said application, constitutes the attempted procurement of a real estate salesperson license by misrepresentation, fraud, or deceit, or by making a material misstatement of fact in said application, or knowingly making a false statement of fact required to be revealed in said application, which is cause to deny Respondent's real estate license application under Sections 475(a)(1), 480(c) and 10177(a) of the California Business and Professions Code.

1 The Statement of Issues is brought under the provisions
2 of Section 10100, Division 4 of the Business and Professions Code
3 of the State of California and Sections 11500 through 11528 of
4 the Government Code.

5 WHEREFORE, the Complainant prays that the above-
6 entitled matter be set for hearing and, upon proof of the charges
7 contained herein, that the Commissioner refuse to authorize the
8 issuance of, and deny the issuance of, a real estate salesperson
9 license to Respondent, GEORGE MUNOZ, and for such other and
10 further relief as may be proper in the premises.

11 Dated at Los Angeles, California,
12 this 13th day of August, 2002.

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16 Deputy Real Estate Commissioner
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25 cc: George Munoz
26 Jesus Cruz Cardenas
27 Maria Suarez
Sacto.
KA