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FEB 24 2003
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By 

* * * * *

In the Matter of the Application of) No. H-29680 LA
)
) L-2002100388
DIKRAN MIKAILIAN,)
)
)
Respondent.)

DECISION

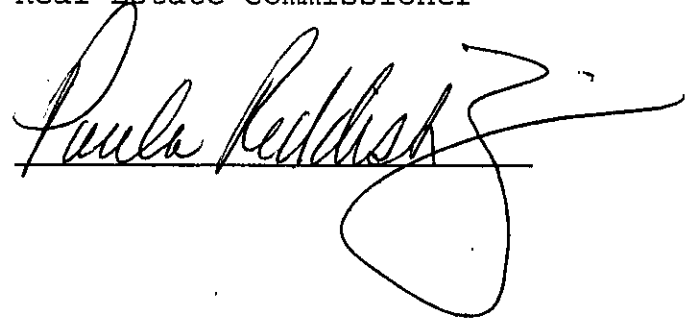
The Proposed Decision dated January 14, 2003, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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 March 17, 2003.

IT IS SO ORDERED February 14, 2003.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:	)	Case No. H-29680 LA
	)	OAH No. L2002100388
DIKRAN MIKAILIAN,	)	
	)	
Respondent.	)	
_____	)	

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on December 17, 2002.

James Peel, Staff Counsel, represented the complainant.

Respondent appeared in person and represented himself.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued and thereafter submitted.

The Administrative Law Judge now finds, concludes, and orders as follows:

FINDINGS OF FACT

- - -

PARTIES AND JURISDICTION

1

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, brought the Statement of Issues in her official capacity.

2

On June 19, 2002, Dikran Mikailian, Respondent herein, applied to the Department of Real Estate of the State of California ("Department") for a real estate salesperson license with the knowledge and understanding that any license issued as a result of the application would be subject to the conditions of *Business and Professions Code §10153.4*.

These proceedings are brought under the provisions of *Business and Professions Code §10100 and Government Code §§11500 through 11528*.

All pre-hearing requirements have been met. Jurisdiction for this proceeding does exist.

FINDINGS
RE
STATEMENT OF ISSUES

On August 26, 1992, in the Municipal Court for the County of Los Angeles, State of California, Respondent was convicted of violating *Penal Code §484* (petty theft), a crime involving moral turpitude and substantially related to the qualifications, functions and duties of a real estate licensee.

In response to Question 25 of his application for a real estate salesperson license, to wit, "Have you ever been convicted of any violation of law?", Respondent answered "No" and, therefore, failed to disclose the conviction referenced in Finding 5.

FINDINGS IN
THE PUBLIC INTEREST

- - -
REHABILITATION
- - -

Respondent committed a crime of theft approximately ten years ago. Thereafter, he has completed probation; met all court-ordered requirements; and on January 15, 1997, the conviction was set aside pursuant to *Penal Code §1203.4*. He has suffered no other convictions, is gainfully employed as a loan processor and is married and has two children. He is a member of the *Saint Gregory Armenian Catholic Church*.

The conduct set forth in Finding 7 is but a start toward a record of substantial and sustained rehabilitation necessary for restricted or unrestricted licensure particularly in light of the following:

- Respondent, well knew he suffered a conviction and lied about the conviction in the application.
- The dishonest conduct set forth in Finding 6 is a recent act of dishonesty and respondent is not yet contrite about same.

- - -
MITIGATION
- - -

Respondent proffered no credible evidence of mitigation to either the crime set forth in Finding 5 or the act of dishonesty set forth in Finding 6.

CONCLUSIONS OF LAW

Cause exists for denial of respondent's application for a real estate salesperson license pursuant to *Business and Professions Code §§480 and 10177(b)* by reason of Finding 5.

Respondent's failure to disclose the conviction set forth in Finding 5 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 which is separate cause to deny respondent's real estate application pursuant to *Business and Professions Code §§475(a)(1), 480(c) and 10177(a)* by reason of Finding 6.

The objective of an administrative proceeding relating to licensing is to protect the public. Such proceedings are not for the primary purpose of punishment: *Fahmy v. MBC* (1995) 38 Cal.App.4th 810, 817; *Ex Parte Brounell* (1778) 2 Cowp. 829, 98 Eng. Rep. 1385. Certain of that public interest is set forth in the rationale of *Harrington v. Department of Real Estate* 214 Cal.App.3rd 394:

... Furthermore, appellant's lack of candor in completing his license application is itself sufficient to sustain a finding that appellant does not yet appreciate the need to speak honestly about and to accept responsibility for one's actions. As the ALJ accurately noted, "One's character trait for honesty and integrity is an important qualification to be a real estate salesperson inasmuch as clients rely on the licensee's integrity in representing them, disclosing important facts about the properties he is privy to and holding monies in a fiduciary capacity." The public exposing itself to a real estate licensee has reason to believe the licensee must have demonstrated a degree of honesty and integrity in order to have obtained a license. (*Golde v. Fox, supra, 98 Cal.App.3rd at p. 178*) Neither the trial court nor the ALJ abused its discretion in concluding appellant failed to demonstrate successful rehabilitation. . .

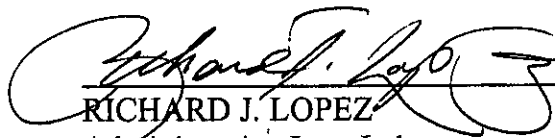
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Applications for a real estate license are signed under penalty of perjury. Applicants certify that all statements are true and complete. The information contained in the application is used by the Department to determine the identity of the applicant and whether the applicant possess the requisite honesty, credibility, truthfulness, and integrity to fulfill the responsibilities of the position. Therefore, complete and accurate disclosure of the requested information is essential for the Department to evaluate applicants. Accordingly, the order which follows is consistent with the rationale of *Harrington, supra*, and consistent with the public interest.

ORDER

The application for the issuance of a real estate license of Dikran Mikailian is hereby denied.

Dated: 14 January 2003


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm

FILED
OCT 30 2002
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of) Case No. H-29680 LA
) L-2002100388
DIKRAN MIKAILIAN,)
)
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, 320 West Fourth Street, Suite 630, Los Angeles, California, on **DECEMBER 17, 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 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: October 30, 2002

DEPARTMENT OF REAL ESTATE

By: James R. Peel
JAMES R. PEEL, Counsel

cc: Dikran Mikailian
Edik Minassian
Sacto.
OAH

RE 500 JRP:lbo

1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Suite 350
4 Los Angeles, CA 90013-1105

5 Telephone: (213) 576-6982
6 -or- (213) 576-6913 (Direct)
7

FILED
SEP 13 2002
DEPARTMENT OF REAL ESTATE

[Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 DIKRAN MIKAILIAN,)
13 Respondent.)

No. H-29680 LA

STATEMENT OF ISSUES

14
15 The Complainant, Maria Suarez, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against DIKRAN MIKAILIAN (Respondent) is informed and alleges in
18 her official capacity as follows:

19 I

20 On or about June 19, 2002, Respondent applied to the
21 Department of Real Estate of the State of California for a real
22 estate salesperson license with the knowledge and understanding
23 that any license issued as a result of that application would be
24 subject to the conditions of Section 10153.4 of the Business and
25 Professions Code.

26 ///

27 ///

1 II

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

6 III

7 On or about August 26, 1992, in the Municipal Court for
8 the County of Los Angeles, State of California, Respondent was
9 convicted of violating Penal Code Section 484 of the penal Code
10 (petty theft), a crime involving moral turpitude and
11 substantially related to the qualifications, functions and duties
12 of a real estate licensee.

13 IV

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

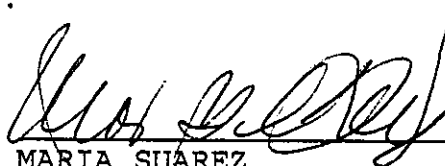
18 V

19 Respondent's failure to disclose the matter set forth
20 in Paragraph III, above, in said application, constitutes the
21 attempted procurement of a real estate salesperson license by
22 misrepresentation, fraud, or deceit, or by making a material
23 misstatement of fact in said application, or knowingly making a
24 false statement of fact required to be revealed in said
25 application, which is cause to deny Respondent's real estate
26 license application under Sections 475(a)(1), 480(c) and 10177(a)
27 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
6 WHEREFORE, the Complainant prays that the above-
7 entitled matter be set for hearing and, upon proof of the charges
8 contained herein, that the Commissioner refuse to authorize the
9 issuance of, and deny the issuance of, a real estate salesperson
10 license to Respondent DIKRAN MIKAILIAN, and for such other and
11 further relief as may be proper in the premises.

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

14
15 

16 MARIA SUAREZ
17 Deputy Real Estate Commissioner
18
19
20
21
22
23

24 cc: Dikran Mikailian
25 Edik Minassian
26 Maria Suarez
27 Sacto
JP

lbo