

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

RICHARD MONTOYA BENAVIDES,

Respondent.

Case No. H-29743 LA

OAH No. L2002120080

PROPOSED DECISION

On February 3, 2003, in Los Angeles, California, Milford A. Maron, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Complainant, Maria Suarez, was represented by Mary E. Work, Staff Counsel.

Respondent, Richard Montoya Benavides, appeared in person and represented himself.

Oral and documentary evidence were offered and the Administrative Law Judge makes the following findings:

1

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

2

Respondent, Richard Montoya Benavides, made application to the Department of Real Estate of the State of California for a real estate salesperson's license on or about November 30, 2001. Said matter is pending.

3

A. On or about November 21, 1997, in the Superior Court of California, Northwest Judicial District, County of Los Angeles, in Case No. 7MT09903, respondent was convicted of violating Section 23152(a) of the Vehicle Code (Driving under the influence of alcohol), a misdemeanor.

B. On or about July 30, 1999, in the Municipal Court of Los Angeles – Van Nuys Judicial District, County of Los Angeles, State of California, in Case No. 9PN00340, respondent was convicted of violating Section 242 of the Penal Code (Battery), a misdemeanor. This involved battery upon a girlfriend.

C. On or about January 11, 2001, in the Superior Court of California, Northwest Judicial District, County of Los Angeles, in Case No. LA036205, respondent was convicted of violating Section 11352(a) of the Health and Safety Code (selling/transporting controlled substance), a felony.

D. On or about January 11, 2001, in the Superior Court of California, Northwest Division, County of Los Angeles, in Case No. SA035469, respondent was convicted of violating Section 11350(a) of the Health and Safety Code (possession of narcotic controlled substance), a felony.

* * * * *

The aforesaid violations are substantially related to the qualifications, functions and duties of a real estate licensee.

4

Respondent has engaged in a pattern of unlawful conduct, due apparently to the abuse of alcohol and drugs. Although he now appears to be making a serious and concerted effort at overcoming his addictions; nevertheless, inadequate time has elapsed since his last convictions.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

Cause for denial of respondent's application exists pursuant to Section 475(a)(2), 480(a)(1) and 10177(b) of the Business and Professions Code.

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WHEREFORE, THE FOLLOWING ORDER is hereby made:

The application of Richard M. Benavides for licensure as a real estate salesperson, is hereby denied.

Dated: Feb 14, 2003



MILFORD A. MARON
Administrative Law Judge
Office of Administrative Hearings

MAM:rfm

SACTO

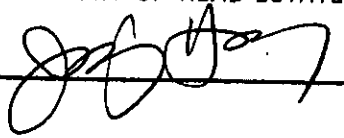
BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of) Case No. H-29743 LA
)
) RICHARD MONTOYA BENAVIDES,) OAH No. L-2002120080
)
)
 _____)
 Respondent

FILED
DEC 18 2002
DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON APPLICATION

By 

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, FEBRUARY 3, 2003, 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.

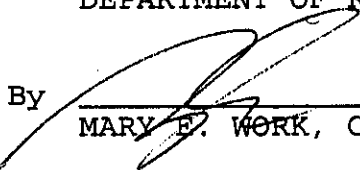
The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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 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

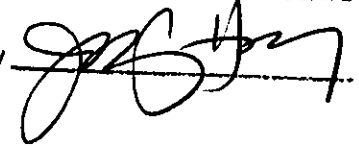
Dated: December 18, 2002

By 
MARY E. WORK, Counsel

cc: Richard Montoya Benavides
Sacto.
OAH

SATO

1 MARY E. WORK, Counsel
SBN 175887
2 Department of Real Estate
320 West 4th Street, Suite 350
3 Los Angeles, CA 90013-1105
4 Telephone (213) 576-6982
-Direct- (213) 576-6916
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FILED
OCT 22 2002
DEPARTMENT OF REAL ESTATE
BY 

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)
RICHARD MONTOYA BENAVIDES,)
Respondent.)
No. H-29743LA
STATEMENT OF ISSUES

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Statement of Issues against RICHARD MONTOYA BENAVIDES (hereinafter "Respondent"), is informed and alleges as follows:

I

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues against Respondent in her 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 30, 2001.

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III

On or about January 11, 2001, in the Superior Court of Los Angeles, Northwest Judicial District, County of Los Angeles, State of California, in Case No. LA036205, Respondent, upon his plea of nolo contendere, was convicted of violating Section 11352(a) of the Health and Safety Code (Sell/Transport Controlled Substance), a felony crime of moral turpitude a felony crime that is substantially related under Section 2910, Title 10, Chapter 6, California Code of Regulations (hereinafter "Regulations") to the qualifications, functions and duties of a real estate licensee.

IV

On or about, January 11, 2001 (date of resentencing), in the Superior Court of Los Angeles, Northwest Division, County of Los Angeles, State of California, in Case No. SA035469, Respondent, upon his plea of guilty, was convicted of violating Section 11350(a) of the Health and Safety Code (Possession of Narcotic Controlled Substance), a felony crime that is substantially related under Section 2910, Title 10, Chapter 6, California Code of Regulations (hereinafter "Regulations") to the qualifications, functions and duties of a real estate licensee.

V

On or about July 30, 1999, in the Municipal Court of Los Angeles - Van Nuys Judicial District, County of Los Angeles, State of California, in Case No. 9PN00340, Respondent, upon his plea of guilty, was convicted of violating Section 242 of the

1 Penal Code (Battery), a misdemeanor crime the facts and
2 circumstances of which involved moral turpitude and are
3 substantially related under Section 2910, Title 10, Chapter 6,
4 California Code of Regulations (hereinafter "Regulations") to the
5 qualifications, functions and duties of a real estate licensee.

6 VI

7 The crimes that Respondent was convicted of, as set
8 forth herein, above, constitute grounds for denial of
9 Respondent's application for a real estate license under Sections
10 475(a)(2), 480(a)(1) and 10177(b) of the Code.

11 FACTS IN AGGRAVATION

12 On or about November 21, 1997, in the Superior Court of
13 Los Angeles - Northwest Judicial District, in Case No. 7MT09903,
14 Respondent was convicted by jury trial, of violating Section
15 23152(a) of the Vehicle Code (Driving Under the Influence of
16 Alcohol), a misdemeanor crime. Respondent was sentenced to 36
17 months of informal probation. During that time, Respondent
18 violated the terms of said probation on numerous occasions and
19 suffered the additional convictions described above in Paragraphs
20 III, IV and V.

21 The Statement of Issues is brought under the provisions
22 of Section 10100, Division 4 of the Business and Profession Code
23 of the State of California and Sections 11500 through 11529 of
24 the Government Code.

25 WHEREFORE, Complainant prays that the above entitled
26 matter be set for hearing and, upon proof of the charges
27 contained herein, that the Commissioner refuse to authorize the

1 issuance of, and deny the issuance of, a real estate salesperson
2 license to Respondent, RICHARD MONTOYA BENAVIDES, and for such
3 other and further relief as may be proper under other provisions
4 of law.

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6 
7 Maria Suarez
8 Deputy Real Estate Commissioner

9 Dated at Los Angeles, California

10 this 19th day of October, 2002.

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20 cc: Richard Montoya Benavides
21 Maria Suarez
22 SACTO
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