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FILED
FEB 11 2004
DEPARTMENT OF REAL ESTATE

[Handwritten signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Application of)	No. H-29935 LA
ISMAEL PASTRANO, JR.,)	L-2003030174
Respondent.)	

DECISION AFTER REJECTION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on August 12, 2003. Martha J. Rosett, Counsel, represented the Complainant, Maria Suarez, a Deputy Real Estate Commissioner for the State of California. The Respondent, ISMAEL PASTRANO, JR. (hereinafter "Respondent") appeared in person and was represented by Harold Gun-Lai, Jr., Esq. Oral and documentary evidence and evidence by way of official notice was received and the matter then argued and thereafter submitted.

1 On August 29, 2003, the Administrative Law Judge
2 submitted a Proposed Decision which was not adopted by the Real
3 Estate Commissioner. My Decision is set forth herein.

4 Pursuant to Section 11517(c) of the Government Code of
5 the State of California, Respondent was served with notice of
6 the determination not to adopt the Proposed Decision of the
7 Administrative Law Judge along with a copy of said Proposed
8 Decision. Respondent was notified that the case would be
9 decided upon the record, the transcript of proceedings held on
10 August 12, 2003, and upon any written argument offered by
11 Respondent and Complainant. Respondent submitted written
12 argument on November 18, 2003. Complainant did not submit
13 further argument.

14 I have given careful consideration to the record in
15 this case including the transcript of the proceedings of
16 August 12, 2003. I have also considered the Arguments submitted
17 by Respondent. The following shall constitute the Decision of
18 the Real Estate Commissioner in this proceeding:

19 The Proposed Decision of the Administrative Law Judge,
20 dated August 29, 2003, is hereby adopted as the Decision of the
21 Real Estate Commissioner in the above-entitled matter, with the
22 following additional Finding of Fact:

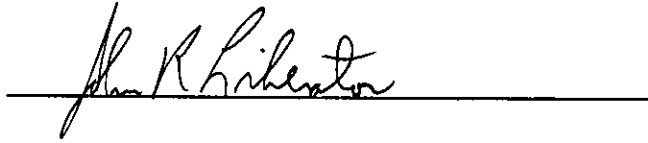
23
24
25 On or about July 31, 2003, in the Superior Court of
26 California, County of San Bernardino, in Case No. FWV018755, an
27

1 amended minute order was issued reflecting that Respondent's
2 initial plea was amended nunc pro tunc to September 27, 1999 to
3 reflect that Respondent's plea to Penal Code Section 32
4 (accessory) is in conjunction with Penal Code Section 10234(d)
5 (discharge of a firearm from a motor vehicle), a misdemeanor,
6 rather than murder, a felony.

7 This Decision shall become effective at 12 o'clock
8 noon on March 2, 2004.

9 IT IS SO ORDERED February 9, 2004.

10 JOHN R. LIBERATOR
11 Acting Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

ISMAEL PASTRANO, JR.

Respondent.

Case No. H-29935 LA

OAH No. L2003030174

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 August 12, 2003.

Martha J. Rosett, Staff Counsel, represented the complainant.

Respondent appeared in person and was represented by Harold Gun Lai, Jr., Attorney.

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

1

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

2

On or about August 19, 2002, pursuant to the provisions of §10153.3 of the *Business and Professions Code* Ismael Pastrano Jr., Respondent, made application 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 said application would be subject to the conditions of *Business and Professions Code* §10153.4.

1

On October 28, 1999, in the San Bernardino County Superior Court, State of California, in Case Number FWV018755, Respondent was convicted of one count of violating *Penal Code* §32 (accessory to attempted murder), a felony and crime of moral turpitude substantially related to the qualifications, functions and duties of a real estate licensee. Respondent was sentenced to three years supervised probation, which included 11 days in jail. On February 14, 2002, the felony was reduced to a misdemeanor. Respondent's plea was set aside and the case was dismissed pursuant to *Penal Code* §1203.4. Respondent was sentenced to one year summary probation.

At the time of the offense Respondent was eighteen years old. He was in the rear seat of a vehicle, occupied by three of his friends, leaving another friend's home. The driver turned the vehicle down a side street and stopped. One of the occupants of the vehicle got out and fired a weapon. The shooter returned to the vehicle and the vehicle fled the scene. Subsequently, the vehicle was stopped by the police and all inside the vehicle, including Respondent, were arrested. Respondent had no knowledge that the shooter intended to use the weapon.

Respondent, initially, did not cooperate with the police during police questioning. After a time Respondent did cooperate with the police and prosecutors. That cooperation resulted in a plea bargain, reducing the crime from a felony to a misdemeanor.

Since the time of the conviction Respondent, now twenty-two years of age has matured. As part of the maturation process he has begun the process of rehabilitation as reflected in the Findings which follow.

Respondent did have the crime expunged and his probation was terminated early in February, 2002. He has met all court-ordered requirements and has suffered no other conviction.

Four years have passed since the conviction. Respondent has suffered no other conviction. Upon application of Respondent the conviction was set aside; a plea of not guilty was ordered and the case was dismissed pursuant to *Penal Code* §1203.4.

Respondent has a change in attitude from that which existed at the time of the crime. That change was demonstrated by the testimony of Respondent together with a number of character letters from family members, colleagues, a sponsoring broker and others familiar with Respondent's crime and with his subsequent attitude and behavioral patterns.

Over the last four years respondent has either been employed or pursuing formal education or doing both at the same time. He has attended the Business Division of Mt. San Antonio College and successfully completed courses in Real Estate Economics; Real Estate Finance and Mortgage Loan Brokering. Since June, 2003 respondent has worked for a sponsoring broker at Loan Master Mortgage, inc. as a personal assistant handling mailroom activity. He has so worked with industry, diligence, trustworthiness and honesty.

The rehabilitation set for in Findings 7 through 10 is substantial rehabilitation from a crime of great gravity. Respondent did demonstrate that, at present, he is a socially and professionally responsible person.

CONCLUSIONS OF LAW

This proceedings is brought under the provisions of §10100, Division 4 of the *Business and Professions Code and Government Code §§11500 through 11528*.

Respondent's conviction, as set forth in Finding 3 constitutes grounds for denial of Respondent's application for a real estate license pursuant to *Business and Professions Code §§480(a) and 1077(b)*. However, by reason of Finding 11, Respondent did establish sufficient rehabilitation in accordance with *California Code of Regulations §2911* to allow licensure on a restricted status.


ORDER

Respondent's application for a real estate salesperson license is denied; provided,
however, a restricted real estate salesperson license shall be issued to Respondent pursuant to
§10156.5 of the Business and Professions Code. The restricted license issued to the
Respondent shall be subject to all of the provisions of §10156.7 of the *Business and*
Professions Code and to the following limitations, conditions and restrictions imposed under
authority of §10156.6 of said Code:

1. The license shall not confer any property right in the privileges to be
exercised, and the Real Estate Commissioner may by appropriate order suspend the
right to exercise any privileges granted under this restricted license in the event of:
 - (a) The conviction of Respondent (including a plea of nolo contendere) of
a crime which is substantially related to Respondent's fitness or capacity as a
real estate licensee; or
 - (b) The receipt of evidence that Respondent has violated provisions of the
California Real Estate Law, the Subdivided Lands Law, Regulations of the
Real Estate Commissioner or conditions attaching to this restricted license.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted
real estate license nor the removal of any of the conditions, limitations or restrictions
attaching to the restricted license until two years have elapsed from the date of
issuance of the restricted license to Respondent.
3. With the application for license, or with the application for transfer to a new
employing broker, Respondent shall submit a statement signed by the prospective
employing real estate broker on a form RE 2552 (Rev. 4/88) approved by the
Department of Real Estate which shall certify as follows:
 - (a) That the employing broker has read the Decision which is the basis for
the issuance of the restricted license; and
 - (b) That the employing broker will carefully review all transaction
documents prepared by the restricted licensee and otherwise exercise close
supervision over the licensee's performance of acts for which a license is
required.

4. Respondent shall within eighteen (18) months of the issuance of the restricted license under the provisions of §10153.4 of Business and Professions Code, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in §10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to present satisfactory evidence of successful completion of said courses, the restricted license shall be automatically suspended effective eighteen (18) months after issuance until Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to the respondent of lifting of the suspension.

Dated: August 29, 2003


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:lp

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FILED
SEP 26 2003
DEPARTMENT OF REAL ESTATE

[Handwritten signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 ISMAEL PASTRANO, JR.,) No. H-29935 LA
13) L-2003030174
14 Respondent.)

15 NOTICE

16 TO: ISMAEL PASTRANO, JR., Respondent, and HAROLD GUN LAI, JR.,
17 his Counsel.

18 YOU ARE HEREBY NOTIFIED that the Proposed Decision
19 herein dated August 29, 2003, of the Administrative Law Judge is
20 not adopted as the Decision of the Real Estate Commissioner. A
21 copy of the Proposed Decision dated August 29, 2003, is attached
22 for your information.

23 In accordance with Section 11517(c) of the Government
24 Code of the State of California, the disposition of this case
25 will be determined by me after consideration of the record herein
26 including the transcript of the proceedings held on August 12,

27 ///

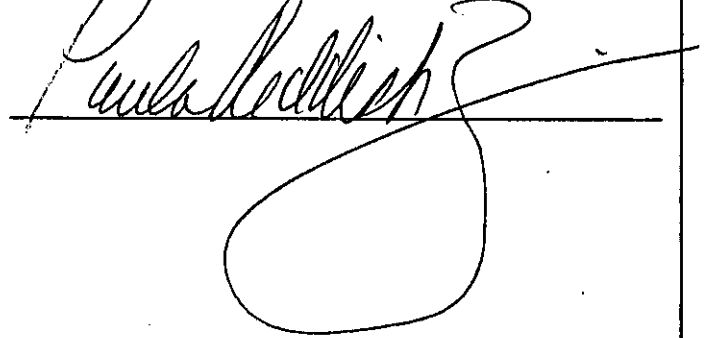
1 2003, and any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of August 12, 2003, at the Los Angeles office
6 of the Department of Real Estate unless an extension of the time
7 is granted for good cause shown.

8 Written argument of Complainant to be considered by me
9 must be submitted within 15 days after receipt of the argument of
10 Respondent at the Los Angeles office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: September 27, 2003, 2003

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15 PAULA REDDISH ZINNEMANN
16 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

ISMAEL PASTRANO, JR.

Respondent.

Case No. H-29935 LA

OAH No. L2003030174

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 August 12, 2003.

Martha J. Rosett, Staff Counsel, represented the complainant.

Respondent appeared in person and was represented by Harold Gun Lai, Jr., Attorney.

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

1

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

2

On or about August 19, 2002, pursuant to the provisions of §10153.3 of the *Business and Professions Code* Ismael Pastrano Jr., Respondent, made application 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 said application would be subject to the conditions of *Business and Professions Code* §10153.4.

3

On October 28, 1999, in the San Bernardino County Superior Court, State of California, in Case Number FWV018755, Respondent was convicted of one count of violating *Penal Code §32* (accessory to attempted murder), a felony and crime of moral turpitude substantially related to the qualifications, functions and duties of a real estate licensee. Respondent was sentenced to three years supervised probation, which included 11 days in jail. On February 14, 2002, the felony was reduced to a misdemeanor. Respondent's plea was set aside and the case was dismissed pursuant to *Penal Code §1203.4*. Respondent was sentenced to one year summary probation.

4

At the time of the offense Respondent was eighteen years old. He was in the rear seat of a vehicle, occupied by three of his friends, leaving another friend's home. The driver turned the vehicle down a side street and stopped. One of the occupants of the vehicle got out and fired a weapon. The shooter returned to the vehicle and the vehicle fled the scene. Subsequently, the vehicle was stopped by the police and all inside the vehicle, including Respondent, were arrested. Respondent had no knowledge that the shooter intended to use the weapon.

5

Respondent, initially, did not cooperate with the police during police questioning. After a time Respondent did cooperate with the police and prosecutors. That cooperation resulted in a plea bargain, reducing the crime from a felony to a misdemeanor.

6

Since the time of the conviction Respondent, now twenty-two years of age has matured. As part of the maturation process he has begun the process of rehabilitation as reflected in the Findings which follow.

7

Respondent did have the crime expunged and his probation was terminated early in February, 2002. He has met all court-ordered requirements and has suffered no other conviction.

8

Four years have passed since the conviction. Respondent has suffered no other conviction. Upon application of Respondent the conviction was set aside; a plea of not guilty was ordered and the case was dismissed pursuant to *Penal Code §1203.4*.

2

Respondent has a change in attitude from that which existed at the time of the crime. That change was demonstrated by the testimony of Respondent together with a number of character letters from family members, colleagues, a sponsoring broker and others familiar with Respondent's crime and with his subsequent attitude and behavioral patterns.

Over the last four years respondent has either been employed or pursuing formal education or doing both at the same time. He has attended the Business Division of Mt. San Antonio College and successfully completed courses in Real Estate Economics; Real Estate Finance and Mortgage Loan Brokering. Since June, 2003 respondent has worked for a sponsoring broker at Loan Master Mortgage, inc. as a personal assistant handling mailroom activity. He has so worked with industry, diligence, trustworthiness and honesty.

The rehabilitation set for in Findings 7 through 10 is substantial rehabilitation from a crime of great gravity. Respondent did demonstrate that, at present, he is a socially and professionally responsible person.

CONCLUSIONS OF LAW

This proceedings is brought under the provisions of §10100, Division 4 of the *Business and Professions Code and Government Code §§11500 through 11528*.

Respondent's conviction, as set forth in Finding 3 constitutes grounds for denial of Respondent's application for a real estate license pursuant to *Business and Professions Code §§480(a) and 1077(b)*. However, by reason of Finding 11, Respondent did establish sufficient rehabilitation in accordance with *California Code of Regulations §2911* to allow licensure on a restricted status.

ORDER


Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to §10156.5 of the *Business and Professions Code*. The restricted license issued to the Respondent shall be subject to all of the provisions of §10156.7 of the *Business and Professions Code* and to the following limitations, conditions and restrictions imposed under authority of §10156.6 of said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:
 - (a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or
 - (b) The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to Respondent.
3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 2552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:
 - (a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and
 - (b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

Not
adopted

4. Respondent shall within eighteen (18) months of the issuance of the restricted license under the provisions of §10153.4 of *Business and Professions Code*, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in §10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to present satisfactory evidence of successful completion of said courses, the restricted license shall be automatically suspended effective eighteen (18) months after issuance until Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to the respondent of lifting of the suspension.

Dated: August 29, 2003


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:lp

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of) Case No. H-29935 LA
)
ISMAEL PASTRANO, JR.,) OAH No. L-2003030174
)
_____)
Respondent(s)

FILED
JUN 27 2003
DEPARTMENT OF REAL ESTATE

NOTICE OF CONTINUED 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, AUGUST 12, 2003, at the hour of 11:00 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.

Dated: June 27, 2003

DEPARTMENT OF REAL ESTATE
By Martha J. Rosett
MARTHA J. ROSETT, Counsel

cc: Ismael Pastrano, Jr.
Harold Gun Lai, Jr., Esq.
Countrywide Lenders Corp./Robert Alvin Coberly, Sr.
Sacto.
OAH

SAC

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of) Case No. H-29935 LA
)
ISMAEL PASTRANO, JR.,) OAH No. L-2003030174
)
 _____)
 Respondent(s)

FILED
 MAR 25 2003
 DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON APPLICATION

 CZ

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 FRIDAY, MAY 9, 2003, 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: March 25, 2003

By *Martha J. Rosett*
 MARTHA J. ROSETT, Counsel

cc: Ismael Pastrano, Jr.
 Giardinelli & Associates/John V. Giardinelli
 Countrywide Lenders Corp./Robert Alvin Coberly, Sr.
 ✓ Sacto.
 OAH

1 MARTHA J. ROSETT, Counsel (SBN 142072)
2 Department of Real Estate
3 320 West Fourth St. #350
4 Los Angeles, CA 90013

4 (213) 576-6982
5 (213) 576-6914

FILED
FEB - 6 2003
DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Application of) No. H-29935 LA
12 ISMAEL PASTRANO, JR.,)
13 Respondent.)
14)
15)

STATEMENT OF ISSUES

16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, for Statement of Issues
18 against ISMAEL PASTRANO, JR., aka Ismael Pastrano (hereinafter
19 "Respondent"), alleges in her official capacity as follows:

20 1.

21 On or about August 19, 2002, pursuant to the provisions
22 of Section 10153.3 of the Business and Professions Code
23 (hereinafter "Code"), Respondent made application to the
24 Department of Real Estate of the State of California for a real
25 estate salesperson license with the knowledge and understanding
26 that any license issued as a result of said application would be
27 subject to the conditions of Section 10153.4 of the Code.

2.

On or about October 28, 1999, in the San Bernardino County Superior Court, State of California, in Case Number FWV018755, Respondent was convicted of one count of violating Penal Code Section 32 (accessory to attempted murder), a felony and crime of moral turpitude substantially related to the qualifications, functions and duties of a real estate licensee. Respondent was sentenced to three years supervised probation, which included 11 days in jail. On February 14, 2002, the felony was reduced to a misdemeanor. Respondent's plea was set aside and the case was dismissed pursuant to Penal Code Section 1203.4. Respondent was sentenced to one year summary probation.

3.

Respondent's conviction, as set forth in Paragraph 2, constitutes grounds for denial of Respondent's application for a real estate license pursuant to Code Sections 480(a) and 10177(b).

These proceedings are brought under the provisions of Section 10100, Division 4 of the Business and Professions Code of the State of California and Sections 11500 through 11528 of the Government Code.

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WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate salesperson license to Respondent ISMAEL PASTRANO, JR. and for such other and further relief as may be proper under the law.

Dated at Los Angeles, California
this 9th day of January, 2003


Deputy Real Estate Commissioner

cc: Ismael Pastrano, Jr.
Sacto.
Maria Suarez
Capital Mortgage, R.A. Coberly, Sr.
AW