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FILED
NOV 21 2007
DEPARTMENT OF REAL ESTATE



BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-30297 LA
MARVIN OSWALDO HERNANDEZ,)
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On March 29, 2004, a Decision was rendered herein revoking Respondent's real estate salesperson license but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on or about April 19, 2004, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On July 11, 2006, Respondent petitioned for reinstatement of said real estate salesperson license and the Attorney General of the State of California has been given notice of the filing of said petition.

1
2 I have considered the petition of Respondent and
3 the evidence and arguments in support thereof. Respondent
4 has demonstrated to my satisfaction that Respondent meets
5 the requirements of law for the issuance to Respondent of
6 an unrestricted real estate salesperson license and that
7 it would not be against the public interest to issue said
8 license to Respondent.

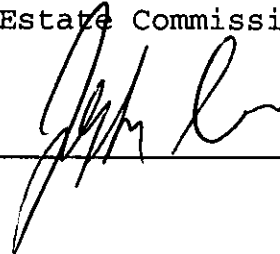
9 NOW, THEREFORE, IT IS ORDERED that Respondent's
10 petition for reinstatement is granted and that a real estate
11 salesperson license be issued to Respondent, if Respondent
12 satisfies the following conditions within nine (9) months
13 from the date of this Order:

- 14 1. Submittal of a completed application and payment
15 of the fee for a real estate salesperson license.
- 16 2. Submittal of evidence of having, since the most
17 recent issuance of an original or renewal real estate license,
18 taken and successfully completed the continuing education
19 requirements of Article 2.5 of Chapter 3 of the Real Estate
20 Law for renewal of a real estate license.

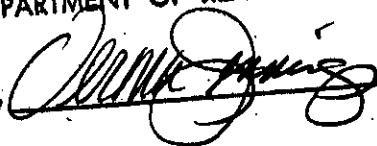
21 This Order shall be effective immediately.

22 Dated: 11-13-07

23 JEFF DAVI
24 Real Estate Commissioner

25 
26 _____
27

FILED
MAR 29 2004
DEPARTMENT OF REAL ESTATE

By 

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-30297 LA
))
MARVIN OSWALDO HERNANDEZ,) L-2003090703
))
))
Respondent.))
))

DECISION

The Proposed Decision dated February 26, 2004, 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 Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on April 19, 2004.

IT IS SO ORDERED March 29, 2004.

JOHN R. LIBERATOR
Acting Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MARVIN OSWALDO HERNANDEZ,

Respondent.

Case No. H-30297 LA

OAH No. L2003090703

PROPOSED DECISION

Administrative Law Judge Michael A. Scarlett, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on January 27, 2004.

James R. Peel, Staff Counsel, represented Complainant Maria Suarez, Deputy Real Estate Commissioner.

Marvin Oswaldo Hernandez (hereinafter "Respondent") was present at hearing and represented himself.

Oral and documentary evidence was received and the matter was submitted on January 27, 2004:

FACTUAL FINDINGS

1. Maria Suarez ("Complainant") made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate ("Department"), State of California.

2. The Department originally issued Respondent a real estate salesperson's license on November 3, 1990. Respondent is presently licensed and has licensing rights under the Real Estate Law. Respondent's real estate salesperson's license expires on November 2, 2006.

3. On May 11, 2001, in the Municipal Court, County of Los Angeles, State of California, Respondent was convicted on his plea of nolo contendere to one count of driving while having a .08% or higher blood alcohol level, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. Respondent also admitted the existence of a prior conviction for driving while having a .08% blood alcohol level in 1999 for which he was still

on probation. Respondent was placed on summary probation for a period of 36 months, ordered to serve 96 hours in Pasadena Municipal Jail, less credit for 48 hours served, pay a fine of \$390.00, pay a penalty of \$663.00, pay \$65.00 in fees, pay \$100.00 in restitution, and perform 30 days community service. Respondent was also ordered to enroll in a program of treatment or counseling pursuant to Vehicle Code section 23161, or an SB38 program. Respondent remains on probation for this offense until May 2004.

4. On February 24, 1999, in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, State of California, Respondent was convicted on his guilty plea of one count of driving while having a .08% or higher blood alcohol level, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. Respondent was placed on summary probation for a period of three years, ordered to pay a fine of \$390.00 or to serve 13 days in county jail, pay a penalty of \$561.00, and pay fees and assessments in the amount of \$145.00. Respondent was also ordered to enroll and successfully complete a three month licensed "First Offender" alcohol and other drug education and counseling program. His driver's license was restricted to driving to and from work for 90 days. On May 23, 2001, Respondent stipulated to a violation of probation as a result of his May 11, 2001 conviction for driving while intoxicated, as indicated in Paragraph 3 above. Respondent was ordered to serve 10 days in county jail, after which his probation was reinstated under the same terms and conditions ordered February 1999. In February 2002, Respondent's probation terminated for this offense.

5. Respondent's two convictions involving the consumption or use of alcohol while driving renders the two convictions substantially related to the qualifications, functions, and duties of a real estate salesperson.

6. Respondent is 40 years old and has been married for 18 years. He has a 15 year old daughter and an eight year old son. Respondent has owned his home since 1993 and is the primary income earner in his household. He has an undergraduate college degree and a Masters Degree in Business Administration from California State University Los Angeles.

7. Respondent is currently employed as the Director of Logistics for ConAgra Foods in Las Palma, California. He has held that position since 2000. Respondent also has worked for Feria and Associates in Covina, California as a real estate salesperson since 2001.

8. At hearing, Respondent admitted he was wrong for driving under the influence of alcohol. He appeared sincere when he stated he that has had a problem with alcohol and is trying to overcome the problem. Although Respondent is not enrolled in an Alcoholic Anonymous "12-Step Program," he attends Alcoholic Anonymous meetings once per month. Respondent avoids friends and situations in which he would be tempted to take a drink of alcohol.

9. On April 5, 1999, Respondent completed the "First Offender Program" ordered by the court as a condition of probation for his first conviction. On July 24, 2001, he enrolled in the 18-month Twin Palms Recovery Center program pursuant to an order of the

court as a condition of his probation for his May 11, 2001 conviction. Respondent successfully completed the Twin Palms program on November 25, 2002. On November 11, 2001, Respondent also successfully completed the 30 days of community service ordered by the court in May 2001. Respondent currently has full driver's license privileges and vehicle insurance.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's real estate salesperson's license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), by reason of Findings 3, 4, and 5.

Respondent's convictions are "substantially related to the qualifications, functions or duties" of a Department licensee. Title 10, California Code of Regulations, Section 2910, subdivision (a)(11) provides that "Two or more convictions involving the consumption or use of alcohol or drugs, when at least one of the convictions involves driving and the use or consumption of alcohol or drugs" is a criterion of substantial relationship.

2. There is sufficient evidence of rehabilitation to warrant issuing Respondent a restricted real estate salesperson's license pursuant to Title 10 of the California Code of Regulations, section 2912, the Department's Disciplinary Guidelines, by reason of Findings 6 through 8.

Title 10 of the California Code of Regulations, section 2912, contains the Department's Disciplinary Guidelines for rehabilitation criteria to be considered when denying a license application. Respondent has satisfied several of the Disciplinary Guidelines' criteria including: (1) it has been more than two years since his most recent criminal conviction; (2) he has paid the restitution and fines ordered by the court and completed his community service; (3) although he has not completed probation, his probation will expire in May 2004; (4) he has not used any alcohol since 2001; (5) Respondent has new and different social relationships in that he avoids past friends and situations in which he would be enticed to consume alcohol; and (6) he has changed his attitude as is evidenced by his significant efforts at attending and completing programs for alcohol recovery.

On this record, there is sufficient evidence to conclude that Respondent has rehabilitated himself such that the public's interest would not be harmed if he were issued a properly restricted real estate salesperson's license.

ORDER


All licenses and licensing rights of Respondent Marvin Oswaldo Hernandez under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the

appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

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DATED: February 26, 2004


MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings

SACTO

FILED
NOV - 4 2003

DEPARTMENT OF REAL ESTATE

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

By [Signature]

In the Matter of the Accusation of

MARVIN OSWALDO HERNANDEZ

Respondent

} Case No. H-30297 LA
} OAH No. L-2003090703

NOTICE OF HEARING ON ACCUSATION

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 January 27, 2004**, at the hour of **11:00 a.m.**, or as soon thereafter as the matter can be heard, upon the Accusation 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.

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: November 4, 2003

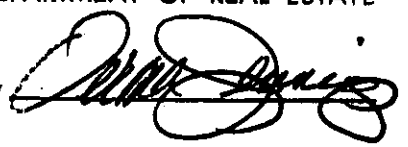
By [Signature]
JAMES R. PEEL, Counsel

cc: M. O. Hernandez
Javier R. Feria
Sacto./OAH

5/20/03

1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Ste. 350
4 Los Angeles, California 90013-1105
5 Telephone: (213) 576-6982
6 -or- (213) 576-6913 (Direct)

FILED
AUG 28 2003
DEPARTMENT OF REAL ESTATE

By 

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-30297 LA
12 MARVIN OSWALDO HERNANDEZ,) ACCUSATION
13 Respondent.)
14

15 The Complainant, Maria Suarez, a Deputy Real Estate
16 Commissioner of the State of California, for cause of accusation
17 against MARVIN OSWALDO HERNANDEZ alleges as follows:

18 I

19 The Complainant, Maria Suarez, a Deputy Real Estate
20 Commissioner of the State of California, makes this Accusation in
21 her official capacity.

22 II

23 MARVIN OSWALDO HERNANDEZ (hereinafter referred to as
24 Respondent) is presently licensed and/or has license rights under
25 the Real Estate Law (Part 1 of Division 4 of the Business and
26 Professions Code, hereinafter referred to as the "Code").
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III

At all times herein mentioned, Respondent was licensed by the Department of Real Estate of the State of California ("Department") as a real estate salesperson.

IV

On or about May 11, 2001, in the Municipal Court, County of Los Angeles, State of California, Respondent was convicted of violating Vehicle Code Section 23152(b) (Driving While Having a .08% or Higher Blood Alcohol), a crime involving moral turpitude.

V

The crime of which Respondent was convicted bears a substantial relationship to the qualifications, functions or duties of a real estate licensee.

VI

Respondent's criminal conviction is cause under Code Sections 490 and 10177(b) for suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

IN AGGRAVATION

VII

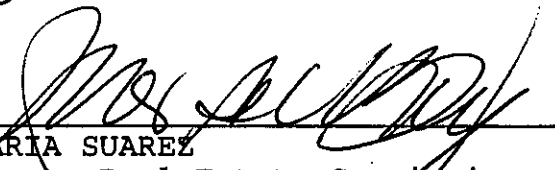
On or about February 24, 1999, in the Municipal Court, County of Los Angeles, State of California, Respondent was convicted of violating Vehicle Code Section 23152(b) (Driving While Having a .08% or Higher Blood Alcohol).

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against the licenses and license rights of Respondent
5 MARVIN OSWALDO HERNANDEZ under the Real Estate Law (Part 1 of
6 Division 4 of the Business and Professions Code) and for such
7 other and further relief as may be proper under other applicable
8 provisions of law.

9 Dated at Los Angeles, California,

10 this 25th day of August, 2003.

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14 MARIA SUAREZ
Deputy Real Estate Commissioner

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23
24 cc: Marvin Oswaldo Hernandez
25 Javier R. Feria
26 Maria Suarez
Sacto.
27 AE