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MAR 21 2010

DEPARTMENT OF REAL ESTATE

By H. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Application of

HERUBAY AHUMADA,

No. H-30341 LA

Respondent.

ORDER GRANTING UNRESTRICTED LICENSE

On March 18, 2004, a Decision was rendered herein denying the real estate salesperson license of Respondent, 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 May 8, 2004, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On or about May 15, 2009, Respondent petitioned for removal of restrictions of said real estate salesperson license.

I have considered Respondent's petition and the evidence and arguments submitted in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate

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1 salesperson license and that it would not be against the public interest to issue said license to  
2 Respondent.

3 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal  
4 of restrictions is granted and that a real estate salesperson license be issued to Respondent, if  
5 Respondent satisfies the following conditions within twelve (12) months from the date of this

6 Order:  
7

8 1. Submittal of a completed application and payment of the fee for a real estate  
9 salesperson license.

10 2. Submittal of evidence of having, since the most recent issuance of an original  
11 or renewal real estate license, taken and successfully completed the continuing education  
12 requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a license.  
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14 This Order shall be effective immediately.

15 Dated: 3/10/2016

16 JEFF DAVI  
17 Real Estate Commissioner  
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MAR 19 2004

DEPARTMENT OF REAL ESTATE

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STATE OF CALIFORNIA

\* \* \* \* \*

In the Matter of the Application of ) No. H-30341 LA  
)  
) L-2003100591  
HERUBAY AHUMADA, )  
)  
Respondent. )

DECISION

The Proposed Decision dated February 13, 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 application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy of Section 11522 is attached hereto for the information of respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is attached hereto.

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

IT IS SO ORDERED

March 18, 2004

JOHN R. LIBERATOR  
Acting Real Estate Commissioner

John R. Liberator

**DEPARTMENT OF REAL ESTATE**

**STATE OF CALIFORNIA**

In the Matter of the Application of :	)	Case No. H-30341 LA
	)	
HERUBAY AHUMADA	)	OAH No. L-2003100591
	)	
Respondent.	)	
	)	

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**PROPOSED DECISION**

The above-captioned matter was heard on January 13, 2004, at Los Angeles, California. Joseph D. Montoya, Administrative Law Judge, Office of Administrative Hearings, presided. Complainant was represented by Mr. James R. Peel, Staff Counsel, Department of Real Estate. Respondent appeared in propria persona.

Evidence was received, the case argued, and the matter submitted on the hearing date. The Administrative Law Judge hereby makes his findings of fact, conclusions of law, and orders, as follows:

**FINDINGS OF FACT**

1. Complainant Maria Suarez filed the Statement of Issues in the above-captioned proceeding while acting in her capacity as a Deputy Real Estate Commissioner of the Department of Real Estate ("the Department"), State of California.
2. On February 13, 2003, Respondent Herubay Ahumada applied to the Department for a real estate salesperson's license. In that application he disclosed that he had been convicted of a crime in 2002.
3. Specifically, on November 12, 2002, in the Superior Court of California, County of Ventura, in the case *People v. Herubay Ahumada*, case number 2002027370 M A, Respondent was convicted of petty theft in violation of section 484(a) of the Penal Code. The conviction entered on his plea of guilty, and he was thereby convicted of a misdemeanor.

4. The court suspended the imposition of sentence on terms and conditions, including three years probation (unsupervised), service of two days in jail, payment of restitution fines and other fees, as well as terms standard to probation grants, such as the obligation to obey all laws.

5. The facts and circumstances of the crime are that in August 2002, Respondent was at a Macy's store in Ventura, and tried to shoplift a pair of jeans and a belt.

6. Respondent's conviction is for a crime of moral turpitude, per se, substantially related to the duties, qualifications, and functions of a real estate salesperson.

7. Respondent has no other convictions. He attested that at the time of the theft his personal affairs were in considerable turmoil. Then twenty-four years old, he had dropped out of school, and his marriage was unraveling; his wife had told him she wanted a divorce prior to the theft. He was shamed by his crime and by the reaction of his wife and family, but promptly took steps to obtain some help. He entered into a counseling program for shoplifters and completed it prior to entering his plea, and he became involved in his church on a regular basis. Since his conviction he has re-entered school and has been on the Dean's List for three semesters as California State University at Northridge. He now teaches children at his church, and has been recognized for achievement at the University, being elected president of a student group. In the meantime he has been obtaining training from a real estate broker, who recommended that the Department reconsider his license application.

8. In approximately mid-2003 he obtained a job in a local jewelry store, on a part-time basis. He informed his employer of his conviction, and they took a chance on him, entrusting him with access to the inventory and money.

9. Respondent's wife testified on his behalf. She described a somewhat troubled individual prior to his conviction, and a person who has made substantial and real changes since that time, such that their marriage has turned around. He has had a significant change in attitude toward life and toward his responsibilities since his arrest.

10. Respondent and his wife were credible in their demeanor while testifying, giving no hint of prevarication, but rather having a sincere manner throughout.

### **LEGAL CONCLUSIONS**

1. Cause exists to deny the requested license pursuant to sections 480(a) and 10177(b) of the Business and Professions Code ("the Code"), in that Respondent has been convicted of a crime of moral turpitude, substantially related to the duties, functions and qualifications of a real estate licensee. This Conclusion is based on Factual Findings 3, 4, 5, and 6, Title 10, California Code of Regulations ("CCR"), section 2910(a)(1) and 2910(a)(8).

2. Notwithstanding his conviction, there are some mitigating facts, based on Factual Findings 7 and 9.

3. There is evidence of rehabilitation within the meaning of Code sections 480(b) and 482, and CCR section 2911, sufficient to justify the issuance of a restricted license, based on Factual Findings 7, 8, 9, and 10. Although it has been less than two years since the conviction, and Respondent remains on probation, he has paid his fines and penalties. (Section 2911(g).) Importantly, his family life has turned around and is stable, a factor looked to by section 2911(h). He has made significant and conscientious efforts to be involved in his church and community, and has formed new relationships, such as in his student-body activities. (Section 2911(l) and (m).) He has sought and obtained training, counseling, education, and has excelled in doing so. (Section 2911(i).) He has shown a definite change in attitude from that which existed at the time of his crime, per section 2911(n).

4. In all the circumstances, it appears that a restricted license would adequately protect the public.

#### Discussion and Rationale:<sup>1</sup>

As pointed out by Complainant's counsel, a key issue in this case is the passage of time, as the crime occurred about eighteen months ago, and the conviction is only one year old. The regulations look to a passage of two years, but do not make that a dispositive factor. The undersigned has seen other cases where a petty thief has been able to obtain an early termination of probation with a showing not nearly as strong as that made here by the Respondent.

The record indicates that Respondent's crime was an impulsive and aberrant act. He has no other criminal record, and whatever problems his wife had with him before his arrest, she did not indicate dishonesty as one of them. At the same time he has shown a rather concerted and positive effort at rehabilitation, which has been very successful on several levels. On balance, it does not appear that he would resort to dishonesty again, as indicated by his employment at the jewelry store. A restricted license should be sufficient to protect the public.

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<sup>1</sup> The section that follows is within the ambit of Government Code section 11425.50(d), and meant to provide a discussion of legal issues raised as well as key evidence, and a rationale for the findings, conclusions, and proposed order. So far as stated, it is intended to augment credibility findings. However, the evidence and authorities referenced are not necessarily the only ones relied on in reaching the decision.

## ORDER

Respondent's application for a real estate salesperson's license is denied; provided, however, that a restricted real estate salesperson's license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code upon his application for such a restricted license. The restricted license issued to Respondent shall be subject to all of the provision 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 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 the Respondent's fitness or capacity as a real estate licensee;

(B) The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulation of the Real Estate Commissioner or conditions attaching to the restricted license.

2. 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 three (3) years have elapsed from the issuance of the restricted license to the Respondent.

3. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his decision herein or by separate written orders issued while the restricted license is in effect, such information concerning Respondent's activities for which a real estate license is required, as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which Respondent has engaged during the period covered by the report.

4. During the period that the restricted license is in effect Respondent shall obey all laws, rules, and regulations governing the rights, duties, and responsibilities of a real estate licensee in the State of California, and shall remain in compliance with the terms and conditions of his criminal probation.

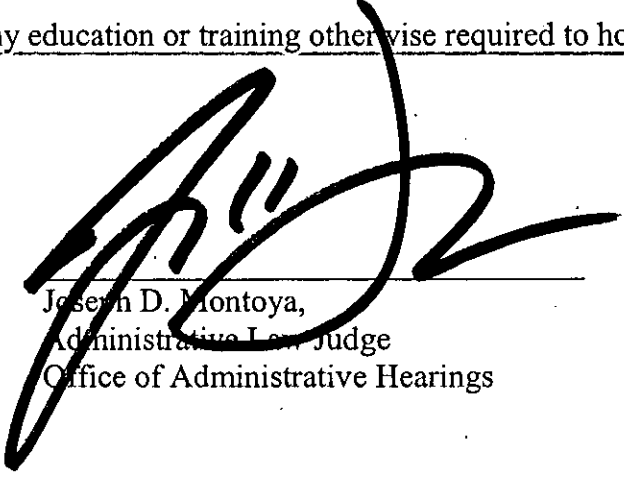
5. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department which shall certify as follows:

(A) That the employing broker has read the Decision which is the basis for issuing 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.

6. Respondent shall complete any education or training otherwise required to hold such a conditional license.

February 13, 2004



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Joseph D. Montoya,  
Administrative Law Judge  
Office of Administrative Hearings



SACTO.

**FILED**  
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DEPARTMENT OF REAL ESTATE

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

By 

*In the Matter of the Application of*

HERUBAY AHUMADA

*Respondent*

} Case No. H-30341 LA

} OAH No. L-2003100591

**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 January 13, 2004,** at the hour of **10:00 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 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:* November 13, 2003

DEPARTMENT OF REAL ESTATE

By

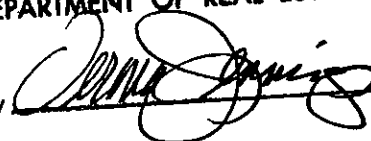
  
JAMES R. PEEL, Counsel

cc: Herubay Ahumada  
Adobe Holdings, Inc.  
Sacto./OAH

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)

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SEP 18 2003  
DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Application of ) No. H-30341 LA  
12 HERUBAY AHUMADA, )  
13 Respondent. )  
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STATEMENT OF ISSUES

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

20 I

21 On or about February 13, 2003, Respondent applied to  
22 the Department of Real Estate of the State of California for a  
23 real estate salesperson license with the knowledge and  
24 understanding that any license issued as a result of that  
25 application would be subject to the conditions of Section 10153.4  
26 of the Business and Professions Code.

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1 II

2 On or about November 12, 2002, in the Superior Court of  
3 California, County of Ventura, Respondent was convicted of  
4 violating Penal Code Section 484(a) (Petty Theft).

5 III

6 Said crime involves moral turpitude and is  
7 substantially related to the qualifications, functions or duties  
8 of a real estate licensee.

9 IV

10 Respondent's conviction in the matter referred to in  
11 Paragraph II is cause under Sections 480(a)(1) and 10177(b) of  
12 the Business and Professions Code for denying Respondent's  
13 application for a real estate license.

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15 The Statement of Issues is brought under the provisions  
16 of Section 10100, Division 4 of the Business and Professions Code  
17 of the State of California and Sections 11500 through 11528 of  
18 the Government Code.

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1 WHEREFORE, the Complainant prays that the above-  
2 entitled matter be set for hearing and, upon proof of the charges  
3 contained herein, that the Commissioner refuse to authorize the  
4 issuance of, and deny the issuance of, a real estate salesperson  
5 license to Respondent, HERUBAY AHUMADA, and for such other and  
6 further relief as may be proper in the premises.

7 Dated at Los Angeles, California,

8 this 15th day of September, 2003.

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11 MARIA SUAREZ  
12 Deputy Real Estate Commissioner  
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23 cc: Herubay Ahumada  
24 Adobe Holdings Inc.  
25 Maria Suarez  
26 Sacto.  
27 EME