

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**  
FEB - 2 2005  
DEPARTMENT OF REAL ESTATE

\* \* \* \* \*

By 

In the Matter of the Application of ) No. H-30854 LA  
)  
) L-2004060695  
)  
EMRAH ERGENC, )  
)  
)  
Respondent. )

DECISION

The Proposed Decision dated December 20, 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.

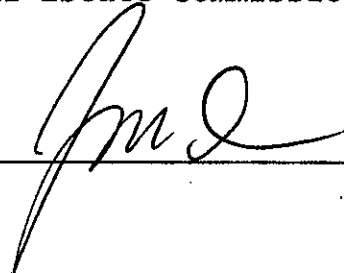
The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a 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 February 22, 2005

IT IS SO ORDERED 1-19-05

JEFF DAVI  
Real Estate Commissioner



BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of:

EMRAH ERGENC

Respondent.

Case No. H-30854 LA

OAH No. L2004060695

**PROPOSED DECISION**

This matter was heard on December 10, 2004, at Los Angeles, California, before Christopher J. Ruiz, Administrative Law Judge, Office of Administrative Hearings, State of California.

Respondent Emrah Ergenc (Respondent) was present and was represented by Ronald P. Rodis, Esq.

Complainant Maria Suarez (Complainant), Deputy Real Estate Commissioner, was represented by James Peel, Counsel for Department of Real Estate (Department).

Oral and documentary evidence was received and the matter was submitted for decision.

**FACTUAL FINDINGS**

1. Complainant brought the Statement of Issues in her official capacity.
2. On October 29, 2002, Respondent applied to the Department for a real estate salesperson license with the knowledge and understanding that any license issued as a result of that application would be subject to the conditions of Section 10153.4 of the Business and Professions Code.
3. In response to Question 25 of said application, to wit, "Have you ever been convicted of any violation of law?", Respondent answered "YES", and disclosed a conviction on 6/16/2000 for violating Health and Safety Code section 11377.<sup>1</sup> Respondent was sentenced to 24 months summary probation, to pay a fine of \$910, and to perform 81 hours of community service. Respondent was also convicted on the same date of the crimes as

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<sup>1</sup> The Statement of Issues did not allege this conviction as a basis for denial of Respondent's application.

stated in Findings 4 and 5.

4. On June 16, 2000, in the Municipal Court, County of Los Angeles, State of California, Case No. 0BH00717, Respondent was convicted of violating Vehicle Code section 14601.1, subdivision (A) (driving with a suspended license).

5. On June 16, 2000, in the Municipal Court of California, County of Los Angeles, Case numbers 6BH00487 and 6BH01356, Respondent was convicted of violating Vehicle Code section 12500, subdivision (A) (unlicensed driver).

6. It was not established that Respondent's failure to reveal the convictions stated in Factual Findings 4 and 5 in his application constitutes the attempted procurement of a real estate license by fraud, misrepresentation or deceit, or by making a material misstatement of fact in said application, or by knowingly making a false statement of fact required to be revealed in said application. Respondent did reveal the most serious conviction. All of the cases were related and Respondent was convicted on the same date, in the same courtroom, before the same judge. He believed the cases were all heard at one time. In fact, revelation of the most serious conviction equated to revelation of all the convictions. Further, Respondent also believed the undisclosed convictions amounted to traffic offenses. Respondent's testimony on this point was credible. He did not try to hide anything. In fact, he revealed the most serious of the convictions.

7. Respondent committed the acts leading to his convictions when he was very young. Respondent came to the United States from Turkey in 1991. He had no real guidance. He appears to be a changed person. He has learned his lesson and has matured. He presently works for Craving's restaurant and volunteers at Aid for Aids. Issuing a restricted license to Respondent would not put the public at risk.

### **LEGAL CONCLUSIONS AND DISCUSSION**

Based upon the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to deny Respondent's application pursuant to Business and Professions Code sections 480, subdivision (a)(1) and 10177, subdivision (b), because Respondent has been convicted of crimes which are substantially related to the qualifications, functions, or duties of a real estate salesperson.

#### **Substantial Relationship**

California Code of Regulations, title 10, section 2910, defines by regulation instances where acts are deemed to be substantially related to the qualifications, functions, or duties of a licensee. Under section 2910, subdivision (a)(10), Respondent's crimes show a willful disregard of the law and are substantially related to the qualifications, functions, or duties of a licensee. Factual Findings 3-5.

2. Cause does not exist to deny Respondent's application for a real estate salesperson license pursuant to Business and Professions Code section 10177, subdivision (b), based on Respondent's convictions. A criminal conviction can form the basis for denial of an application for a real estate salesperson's license if the crime is a felony or a crime involving moral turpitude. Respondent was convicted of misdemeanors which do not rise to the "readiness to do evil" standard required for a finding of moral turpitude. Factual Findings 4-5.

3. Cause does not exist to deny Respondent's application for a real estate salesperson license pursuant to Business and Professions Code 480, subdivision (c), and 10177, subdivision (a), because Respondent's failure to reveal the convictions described in Findings 4-5 do not constitute an attempt to procure a real estate license by fraud, misrepresentation or deceit, or by making a material misrepresentation of fact, or by making a knowing misrepresentation of a material fact, or knowingly omitting to state a material fact, in his real estate license application. Factual Findings 3-6.

4. Criteria have been developed by the Department pursuant to Business and Professions Code section 482, subdivision (a), of the for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding has been initiated on account of a crime committed by the licensee. These criteria, found at California Code of Regulations, title 10, section 2911, are summarized as follows:

- Subsection(a) passage of at least two years since the conviction;
- Subsection(b) restitution;
- Subsection(c) expungement of the conviction;
- Subsection(d) expungement of the requirement to register as an offender;
- Subsection(e) completion of the criminal probation;
- Subsection(f) abstinence from drugs or alcohol that contributed to the crime;
- Subsection(g) payment of any criminal fines or penalties;
- Subsection(h) stability of family life;
- Subsection(i) enrollment in or completion of educational or training courses;
- Subsection(j) discharge of debts to others;
- Subsection(k) correction of business practices causing injury;
- Subsection(l) significant involvement in community, church or private programs for social betterment
- Subsection(m) new and different social and business relationships; and
- Subsection(n) change in attitude from the time of conviction to the present, evidenced by testimony of the applicant and others, including family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns.

5. Respondent has addressed, and satisfied, some criteria of rehabilitation. Respondent is remorseful for his past conduct. His convictions have not been expunged. Respondent has not had any contact with law enforcement since his convictions. He committed the acts leading to his convictions when he was young. His attitude has changed for the bet-

ter. Respondent has show sufficient rehabilitation to justify a restricted license. Respondent will be supervised by a licensed broker. As such, allowing Respondent a restricted license would not endanger public safety. Factual Finding 7.

### 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 Section 10156.5 of the Business and Professions Code. The restricted license issued to the 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 said Code:

1. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in Section 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 timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.
2. Pursuant to Section 10154, if Respondent has not satisfied the requirements for an unqualified license under Section 10153.4, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.
3. 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.

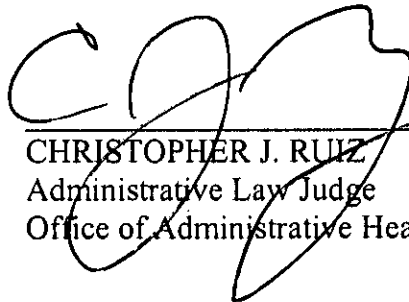
4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until three years have elapsed from the date of issuance of the restricted license to Respondent.

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 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.

DATED: December 20, 2004.



CHRISTOPHER J. RUIZ  
Administrative Law Judge  
Office of Administrative Hearings

Sacto. May

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

**FILED**  
SEP 22 2004  
DEPARTMENT OF REAL ESTATE

*[Signature]*

*In the Matter of the Application of*

EMRAH ERGENC

} Case No. H-30854 LA

} OAH No. L-2004060695

*Respondent*

**CONTINUED  
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 10, 2004**, 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 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: September 22, 2004.

DEPARTMENT OF REAL ESTATE  
By *James R. Peel*  
JAMES R. PEEL, Counsel

cc: Emrah Ergenc/R.P. Rodis Esq.  
Sacto.  
OAH

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

**FILED**  
JUL 21 2004  
DEPARTMENT OF REAL ESTATE  
*[Signature]*

*In the Matter of the Application of*

**EMRAH ERGENC**

} Case No. H-30854 LA

} OAH No. L-2004060695

*Respondent*

**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 September 7, 2004**, 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 not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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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:* July 21, 2004.

By

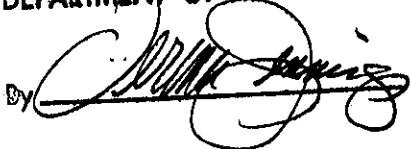
DEPARTMENT OF REAL ESTATE

*[Signature: James L. Peel]*  
JAMES L. PEEL, Counsel

cc: Emrah Ergenc  
Sacto.  
OAH



5/26/04  
Reg

**FILED**  
APR 22 2004  
DEPARTMENT OF REAL ESTATE  
By 

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

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of )	No. H-30854 LA
EMRAH ERGENC )	<u>STATEMENT OF ISSUES</u>
Respondent. )	

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

I

On or about October 29, 2002, Respondent applied 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 that application would be subject to the conditions of Section 10153.4 of the Business and Professions Code.

///

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 "YES", and disclosed a conviction on  
5 6/16/2000 for violating HS 11377.

6 III

7 On or about June 16, 2000, in the Municipal Court,  
8 County of Los Angeles, State of California, Case No. 0BH00717,  
9 Respondent was convicted of violating Vehicle Code Section  
10 14601.1(A) (driving with a suspended license).

11 IV

12 On or about June 16, 2000, in the Municipal Court of  
13 California, County of Los Angeles, Respondent was convicted of  
14 violating Vehicle Code Section 12500(A) (unlicensed driver) in  
15 case numbers 6BH00487 and 6BH01356.

16 V

17 The matters alleged in Paragraphs III and IV involve  
18 moral turpitude and are substantially related to the  
19 qualifications, functions or duties of a real estate licensee.

20 VI

21 Respondent's convictions in the matters referred to in  
22 Paragraphs III and IV are cause under Sections 480(a)(1) and  
23 10177(b) of the Business and Professions Code for denying  
24 Respondent's application for a real estate license.

VII

Respondent's failure to reveal the matters set forth in Paragraphs III and IV in said application constitutes the attempted procurement of a real estate license by fraud, misrepresentation or deceit, or by making a material misstatement of fact in said application, or by knowingly making a false statement of fact required to be revealed in said application; which failure is cause for denying Respondent's application for a real estate license under Sections 480(c) and 10177(a) of the Business and Professions Code of the State of California.

The Statement of Issues is 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.

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, EMRAH ERGENC, and for such other and further relief as may be proper in the premises.

Dated at Los Angeles, California,

this 19th day of April, 2004.

  
Deputy Real Estate Commissioner

cc: Emrah Ergenc  
Maria Suarez  
Sacto.  
TF