

FILED
AUG 12 2004
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Application of) No. H-30869 LA
SERGIO ARMANDO MARTINEZ,) L-2004050643
Respondent.)

DECISION

The Proposed Decision dated July 19, 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 September 1, 2004.

IT IS SO ORDERED August 9, 2004

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

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

**In the Matter of the Application of
SERGIO ARMANDO MARTINEZ,
Respondent.**

**Case No. H-30869 LA
OAH No. L2004050643**

PROPOSED DECISION

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, at Los Angeles, California on July 15, 2004.

Complainant, Maria Suarez, was represented by Martha J. Rosett, Staff Counsel.

Respondent, Sergio Armando Martinez ("Respondent"), was present and was represented by Dennis G. Saab, Attorney at Law.

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

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

1. The Statement of Issues was made by Maria Suarez, Complainant, who is a Deputy Real Estate Commissioner of the State of California, acting in her official capacity.

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2. At the hearing, Respondent stipulated to the truth of the allegations of Paragraphs 1, 2, 3, 4, 5 and 6 of the Statement of Issues except for those portions of Paragraphs 5 and 6 which allege that the crimes referenced in those paragraphs involved moral turpitude, as established by the circumstances of the crimes. The evidence offered at the hearing did not establish that the crimes referenced in Paragraphs 5 and 6, by their circumstances, involved moral turpitude. Accordingly, Paragraphs 1 through 6, are repeated verbatim below and are incorporated herein as factual findings, for except those portions of Paragraphs 5 and 6 alleging moral turpitude, which are omitted as unproven.

1. On or about October 15, 2002, pursuant to the provisions of Section 10153.3 of the Business and Professions Code (hereinafter "Code"), Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license with the with the [sic] knowledge and understanding that any license issued as a result of said application would be subject to the conditions of Section 10153.4 of the Code.

2. In response to Question #25 of his application for a real estate license, to wit, "Have you ever been convicted of any violation of law? Convictions expunged under Penal Code Section 1203.4 must be disclosed. However, you may omit minor traffic citations which do not constitute a misdemeanor or felony offense", [sic] Respondent marked the box, "No". [sic]

3. On or about December 17, 1996, in the Municipal Court of East Los Angeles Judicial District, County of Los Angeles, State of California, in Case No. 6EL05528, Respondent was convicted of violating Vehicle Code Section 12500(A) (unlicensed driver), a misdemeanor which is substantially related to the qualifications, functions and duties of a real estate licensee pursuant to Title 10, Chapter 6 of the California Code of Regulations, Regulation 2910 (a) (7). Respondent was placed on summary probation for one year, the terms and conditions of which included payment of fines and not driving without a license and insurance. On February 25, 1997, Respondent's probation was revoked for failure to pay a fine, and a bench warrant was issued. On June 10, 1997, Respondent's probation was reinstated with the modification that Respondent was ordered to serve 4 days in jail. On or about January 2, 2004, Respondent's conviction was set aside and dismissed pursuant to Penal Code Section 1203.4.

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4. On or about June 10, 1998, in the Municipal Court of Southeast-H.P. Division Judicial District, County of Los Angeles, State of California, in Case No. 8SE03062, Respondent was convicted of violating Penal Code Section 409 (remaining at the scene of a riot), a misdemeanor. Respondent was sentenced to three years summary probation, the terms of which included serving two days in jail and payment of a restitution fine of \$100.00. Probation was terminated early, on August 16, 2000. On May 8, 2003, Respondent's conviction was set aside and dismissed pursuant to Penal Code Section 1203.4.

5. On or about July 6, 1998, in the Municipal Court of Inglewood Judicial District, County of Los Angeles, State of California, in Case No. 8IW03668, Respondent was convicted of violating Vehicle Code Section 14601.1(A) (driving with a suspended license), a crime which . . . is substantially related to the qualifications, functions and duties of a real estate licensee pursuant to Title 10, Chapter 6 of the California Code of Regulations, Regulation 2910 (a) (7). Respondent was sentenced to serve nine days in jail. On May 12, 2003, Respondent's conviction was set aside and dismissed pursuant to Penal Code Section 1203.4.

6. On or about August 16, 2000, in the Municipal Court of Southeast Los Angeles Judicial District, County of Los Angeles, State of California, in Case No. 9SE02182, Respondent was convicted of violating Vehicle Code Section 14601.1 (A) (driving with a suspended license), a misdemeanor and crime which . . . is substantially related to the qualifications, functions and duties of a real estate licensee. Respondent was placed on three years summary probation, the terms and conditions of which included payment of fines and penalties. On October 3, 2000, Respondent's probation was revoked and a bench warrant was issued. On March 12, 2003, Respondent admitted to a violation of probation and probation was continued, with the modification that Respondent perform 16 days of Cal Trans work and file proof of completion by March 12, 2004. On or about November 21, 2003, Respondent filed proof of completion of Cal Trans service.

3. The facts and circumstances underlying the convictions for being an unlicensed driver and for driving with a suspended license are that Respondent was the sole support of his family and it was necessary for him to drive to work.

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4. The facts and circumstances underlying the conviction for remaining at the scene of a riot are that Respondent and some friends were eating in a restaurant at the time the World Cup Soccer Games were being played. As they exited the restaurant, their attention was directed to some news cameras and they approached, believing a celebration was being filmed. Unbeknownst to them, a riot was taking place. The police had ordered the area cleared while they were eating in the restaurant. They had not heard, and were unaware of the order to clear the area.

5. Respondent failed to disclose his convictions on his application for licensure because he misunderstood the question and believed the question called for the disclosure only of felonies. When a real estate broker informed him of his error, Respondent contacted the Department of Real Estate ("Department"), admitted his mistake, and forwarded his records.

6. Respondent is married and the father of two children. He is active in his church and, until he moved from the City of Bell Gardens, was the Chairman of the Commission of Education for the City of Bell Gardens.

7. Respondent considers his crimes "huge mistakes" that were based on his immaturity at that time. He is certain they will not be repeated. He now considers himself a mature, motivated, and goal-oriented individual who comports himself in a professional manner. That assessment was strongly corroborated by his co-workers in the Century 21 Realty office where he works in recruiting and marketing, performing tasks which do not require a real estate license.

8. The broker by whom Respondent is presently employed is prepared to hire and supervise Respondent should he be granted licensure. That company employs two managers. Both managers are also willing to supervise Respondent.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists for the denial of Respondent's application pursuant to Business and Professions Code sections 480, subdivision (a) for conviction of a crime, as set forth in Finding 2, subparagraphs 3 through 6.

2. Cause exists for the denial of Respondent's application pursuant to Business and Professions Code sections 480, subdivision (c) and 10177, subdivision (a), for making a false and material misrepresentation of fact, as set forth in Finding 2, subparagraphs 2 through 6.

Even Respondent's most recent conviction is fairly remote in time, and he has satisfied a substantial majority of the Department's Criteria of Rehabilitation as set forth in California Code of Regulations, title 10, section 2911. More troubling however, is Respondent's failure to disclose his four convictions on his license application. The language in Question #25 was clear and unambiguous. It called for the disclosure of all convictions, and did not expressly or impliedly exclude misdemeanors. In *Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518, the Court stated:

Disciplinary procedures provided for in the Business and Professions Code, such as section 10177, subdivision (d), are to protect the public not only from conniving real estate salesmen but also from the uninformed, negligent, or unknowledgeable salesman.

Respondent's misunderstanding of Question #25's unambiguous language raises concerns regarding his ability to read, understand and properly complete far more complex forms required in the real estate industry. However, those concerns notwithstanding, real estate salespersons, like all professionals, are not expected to perform perfectly in every way and at all times. Mistakes do occasionally occur. When this one occurred, Respondent immediately did all he could to correct it, by contacting the Department, explaining his error, and then providing the Department with the records it would require to determine his eligibility for licensure. Respondent is to be credited for those efforts. It is questionable whether a similar mistake, made by a licensee, and handled by the licensee in a similar manner, would result in the outright revocation of his/her license. Given the "preponderance of the evidence" standard of proof applicable to this case, it would be inequitable to impose the corresponding penalty of outright license application denial for the same conduct.

In light of all of the facts and circumstances, the public should be adequately protected by the issuance of a properly conditioned restricted license.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

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 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
the 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 or the removal of any of the conditions, limitations or restrictions
attaching to the restricted license until three (3) 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 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.

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4. Respondent shall within eighteen (18) months of the issuance of the restricted license under the provisions of Section 10153.4 of the Business and Professions Code, 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 present satisfactory evidence of successful completion of said courses, the restricted license shall be automatically suspended effective eighteen (18) months after issuance of the restricted license. Said suspension shall not be lifted until Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.

DATED: July 19, 2004



H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of) Case No. H-30869 LA
)
 SERGIO ARMANDO MARTINEZ,) OAH No. L-2004050643
)
)
 _____)
 Respondent(s)

FILED
JUN 21 2004
DEPARTMENT OF REAL ESTATE

NOTICE OF 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 THURSDAY, JULY 15, 2004, 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: June 21, 2004

By Martha J. Rosett
MARTHA J. ROSETT, Counsel

cc: Sergio Armando Martinez
Dennis G. Saab, Esq.
Richard Cecil Thornton
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
APR 29 2004
DEPARTMENT OF REAL ESTATE

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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-30869 LA
12)
13 SERGIO ARMANDO MARTINEZ,) STATEMENT OF ISSUES
14)
15 Respondent.)

16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, for Statement of Issues
18 against SERGIO ARMANDO MARTINEZ, aka Sergio Armando Martinez, Jr.
19 (hereinafter "Respondent"), alleges in her official capacity as
20 follows:

21 1.

22 On or about October 15, 2002, pursuant to the
23 provisions of Section 10153.3 of the Business and Professions
24 Code (hereinafter "Code"), Respondent made application to the
25 Department of Real Estate of the State of California for a real
26 estate salesperson license with the with the knowledge and
27 understanding that any license issued as a result of said

1 application would be subject to the conditions of Section 10153.4
2 of the Code.

3 2.

4 In response to Question #25 of his application for a
5 real estate license, to wit, "Have you ever been convicted of any
6 violation of law? Convictions expunged under Penal Code Section
7 1203.4 must be disclosed. However, you may omit minor traffic
8 citations which do not constitute a misdemeanor or felony
9 offense", Respondent marked the box, "No".

10 3.

11 On or about December 17, 1996, in the Municipal Court
12 of East Los Angeles Judicial District, County of Los Angeles,
13 State of California, in Case No. 6EL05528, Respondent was
14 convicted of violating Vehicle Code Section 12500(A) (unlicensed
15 driver), a misdemeanor which is substantially related to the
16 qualifications, functions and duties of a real estate licensee
17 pursuant to Title 10, Chapter 6 of the California Code of
18 Regulations, Regulation 2910(a)(7). Respondent was placed on
19 summary probation for one year, the terms and conditions of which
20 included payment of fines and not driving without a license and
21 insurance. On February 25, 1997, Respondent's probation was
22 revoked for failure to pay a fine, and a bench warrant was
23 issued. On June 10, 1997, Respondent's probation was reinstated
24 with the modification that Respondent was ordered to serve 4 days
25 in jail. On or about January 2, 2004, Respondent's conviction
26 was set aside and dismissed pursuant to Penal Code Section
27 1203.4.

1 4.

2 On or about June 30, 1998, in the Municipal Court of
3 Southeast-H.P Division Judicial District, County of Los Angeles,
4 State of California, in Case No. 8SE03062, Respondent was
5 convicted of violating Penal Code Section 409 (remaining at the
6 scene of a riot), a misdemeanor. Respondent was sentenced to
7 three years summary probation, the terms of which included
8 serving two days in jail and payment of a restitution fine of
9 \$100.00. Probation was terminated early, on August 16, 2000. On
10 May 8, 2003, Respondent's conviction was set aside and dismissed
11 pursuant to Penal Code Section 1203.4.

12 5.

13 On or about July 6, 1998, in the Municipal Court of
14 Inglewood Judicial District, County of Los Angeles, State of
15 California, in Case No. 8IW03668, Respondent was convicted of
16 violating Vehicle Code Section 14601.1(A) (driving with a
17 suspended license), a crime which by its circumstances involved
18 moral turpitude and is substantially related to the
19 qualifications, functions and duties of a real estate licensee
20 pursuant to Title 10, Chapter 6 of the California Code of
21 Regulations, Regulation 2910(a)(7). Respondent was sentenced to
22 serve nine days in jail. On May 12, 2003, Respondent's
23 conviction was set aside and dismissed pursuant to Penal Code
24 Section 1203.4.

25 6.

26 On or about August 16, 2000, in the Municipal Court of
27 Southeast Los Angeles Judicial District, County of Los Angeles,

1 State of California, in Case No. 9SE02182, Respondent was
2 convicted of violating Vehicle Code Section 14601.1(A) (driving
3 with a suspended license), a misdemeanor and crime which by its
4 circumstances involved moral turpitude and is substantially
5 related to the qualifications, functions and duties of a real
6 estate licensee. Respondent was placed on three years summary
7 probation, the terms and conditions of which included payment of
8 fines and penalties. On October 3, 2000, Respondent's probation
9 was revoked and a bench warrant was issued. On March 12, 2003,
10 Respondent admitted to a violation of probation and probation was
11 continued, with the modification that Respondent perform 16 days
12 of Cal Trans work and file proof of completion by March 12, 2004.
13 On or about November 21, 2003, Respondent filed proof of
14 completion of Cal Trans service.

15 7.

16 Respondent's convictions, as set forth in Paragraphs 5
17 and 6 above constitute grounds to deny his application for a real
18 estate license pursuant to Code Sections 480(a) and 10177(b).

19 8.

20 Respondent's failure to disclose any of the convictions
21 set forth in Paragraphs 3, 4, 5 and 6 in his application for a
22 real estate license constitutes grounds to deny his application
23 pursuant to Code Sections 480(c) and/or 10177(a).

24 These proceedings are brought under the provisions of
25 Section 10100, Division 4 of the Business and Professions Code of
26 the State of California and Sections 11500 through 11528 of the
27 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 SERGIO ARMANDO MARTINEZ and for such other and further relief as may be proper under the law.

Dated at Los Angeles, California
this 27th day of April, 2004.


Deputy Real Estate Commissioner

cc: Sergio Armando Martinez
Richard Cecil Thornton
Sacto.
Maria Suarez
EE