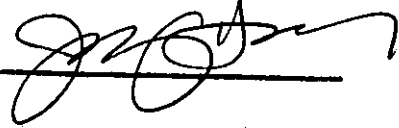


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FILED
DEC 20 2004

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)

NICHOLAS ANDREW BENAVIDES)

NO. H-30904 LA
L-2004060361

Respondent.)

STIPULATION AND WAIVER

AND

DECISION AFTER REJECTION

I, NICHOLAS ANDREW BENAVIDES, Respondent herein,
acknowledge that I have received and read the Statement of
Issues filed by the Department of Real Estate on May 13, 2004,
and the Statement to Respondent sent to me in connection with
the Statement of Issues.

I hereby admit that the allegations contained in
Paragraphs I through IV of the Statement of Issues filed against
me are true and correct and constitute a basis for the denial of
my real estate salesperson license application.

1 I further acknowledge that the Real Estate
2 Commissioner held a hearing on this Statement of Issues on
3 September 1, 2004, before the Office of Administrative Hearings
4 for the purpose of proving the allegations therein. I was
5 present at the hearing in which I was represented by
6 administrative advocate and participated therein. Further, I
7 have had an opportunity to read and review the Proposed Decision
8 of the Administrative Law Judge.

9 I understand that pursuant to Government Code Section
10 11517(c), the Real Estate Commissioner has rejected the Proposed
11 Decision of the Administrative Law Judge. I further understand
12 that pursuant to the same Section 11517(c), the Real Estate
13 Commissioner may decide this case upon the record, including the
14 transcript, without taking any additional evidence, after
15 affording me the opportunity to present written argument to the
16 Real Estate Commissioner.

17 I further understand that by signing this Stipulation
18 and Waiver, I am waiving my right to obtain a dismissal of the
19 Statement of Issues through proceedings under Government Code
20 Section 11517(c) if this Stipulation and Waiver is accepted by
21 the Real Estate Commissioner. However, I also understand that
22 I am not waiving my rights to further proceedings to obtain a
23 dismissal of the Statement of Issues if this Stipulation and
24 Waiver is not accepted by the Real Estate Commissioner.

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1 I hereby request that the Real Estate Commissioner in
2 his discretion deny my real estate salesperson license
3 application and issue to me a restricted real estate salesperson
4 license under the authority of Section 10156.5 of the Business
5 and Professions Code.

6 I further understand that the restricted license shall
7 be subject to the provisions of Section 10156.7 of the Business
8 and Professions Code and the following conditions, limitations
9 and restrictions will attach to the restricted license issued by
10 the Department of Real Estate pursuant hereto:

11 1. The restricted license issued to Respondent,

12 (a) may be suspended prior to hearing by Order of the
13 Real Estate Commissioner in the event of Respondent's conviction
14 (including a plea of nolo contendere) to a crime which is
15 substantially related to Respondent's qualifications, fitness or
16 capacity as a real estate licensee.

17 (b) may be suspended prior to hearing by Order of the
18 Real Estate Commissioner on evidence satisfactory to the
19 Commissioner that Respondent has violated provisions of the
20 California Real Estate Law, the Subdivided Lands Law,
21 Regulations of the Real Estate Commissioner, or the conditions
22 attaching to this restricted license.

23 2. Respondent shall not be eligible to apply for the
24 issuance of an unrestricted real estate license nor for the
25 removal of any of the conditions, limitations or restrictions
26 of a restricted license until two (2) years has elapsed from the
27 effective date of this Decision.

1 3. With the application for license, or with the
2 application for transfer to a new employing broker, Respondent
3 shall submit a statement signed by the prospective employing
4 real estate broker on a form RE 552 approved by the Department
5 of Real Estate which shall certify as follows:

6 (a) That the employing broker has read the
7 Decision which is the basis for the issuance of the
8 restricted license; and

9 (b) That the employing broker will carefully
10 review all transaction documents prepared by the
11 restricted licensee and otherwise exercise close
12 supervision over the licensee's performance of acts
13 for which a license is required.

14 4. Respondent's restricted real estate salesperson
15 license is issued subject to the requirements of Section
16 10153.4 of the Business and Professions Code, to wit:
17 Respondent shall, within eighteen (18) months of the issuance
18 of the restricted license, submit evidence satisfactory to the
19 Commissioner of successful completion, at an accredited
20 institution, of two (2) of the courses listed in Section
21 10153.2, other than real estate principles, advanced legal
22 aspects of real estate, advanced real estate finance or
23 advanced real estate appraisal. If Respondent fails to timely
24 present to the Department satisfactory evidence of successful
25 completion of the two required courses, the restricted license
26 shall be automatically suspended effective eighteen (18) months
27

1 after the date of its issuance. Said suspension shall not be
2 lifted unless, prior to the expiration of the restricted
3 license, Respondent has submitted the required evidence of
4 course completion and the Commissioner has given written notice
5 to Respondent of lifting of the suspension.

6 5. Pursuant to Section 10154, if Respondent has not
7 satisfied the requirements for an unqualified license under
8 Section 10153.4, Respondent shall not be entitled to renew the
9 restricted license, and shall not be entitled to the issuance
10 of another license which is subject to Section 10153.4 until
11 four (4) years after the date of the issuance of the preceding
12 restricted license.

13 Nov. 16, 2004
14 DATED

Kelvin K. Lee
KELVIN K. LEE, Counsel
Department of Real Estate

16 * * *

17 I have read the Stipulation and discussed it with my
18 administrative advocate. Its terms are understood by me and
19 are agreeable and acceptable to me. I willingly and voluntarily
20 agree to enter into this Stipulation.

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Respondent can signify acceptance and approval of the terms and conditions of this Stipulation by faxing a copy of the signature page, as actually signed by Respondent, to the Department at the following fax number: (213) 576-6917. Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of his actual signature as it appears on the Stipulation, that receipt of the fax copy by the Department shall be as binding on him as if the Department had received the original signed Stipulation.

NOVEMBER 4th, 2004
DATED

NICHOLAS ANDREW BENAVIDES,
Respondent

DATED:

November 12, 2004

Charles Benninghoff
CHARLES BENNINGHOFF
Administrative Advocate for
Respondent
Approved as to Form

* * *

I have read the Statement of Issues filed herein, the Proposed Decision of the Administrative Law Judge dated September 30, 2004, and the foregoing Stipulation and Waiver signed by Respondent. I am satisfied that it will not be inimical to the public interest to issue a restricted salesperson license to Respondent.

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Respondent can signify acceptance and approval of the terms and conditions of this Stipulation by faxing a copy of the signature page, as actually signed by Respondent, to the Department at the following fax number: (213) 576-6917.

Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of his actual signature as it appears on the Stipulation, that receipt of the fax copy by the Department shall be as binding on him as if the Department had received the original signed Stipulation.

DATED _____

NICHOLAS ANDREW BENAVIDES,
Respondent

DATED: _____

CHARLES BENNINGHOFF
Administrative Advocate for
Respondent
Approved as to Form

* * *

I have read the Statement of Issues filed herein, the Proposed Decision of the Administrative Law Judge dated September 30, 2004, and the foregoing Stipulation and Waiver signed by Respondent. I am satisfied that it will not be inimical to the public interest to issue a restricted salesperson license to Respondent.

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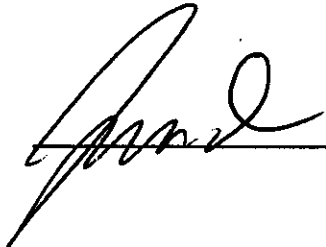
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1 Therefore, IT IS HEREBY ORDERED that the real estate
2 salesperson license application of Respondent is denied and a
3 restricted real estate salesperson license is issued to
4 Respondent if Respondent has otherwise fulfilled all of the
5 statutory requirements for licensure. The restricted license
6 shall be limited, conditioned and restricted as specified in the
7 foregoing Stipulation and Waiver.

8 This Order shall become effective on January 10, 2005

9 IT IS SO ORDERED December 14, 2004.

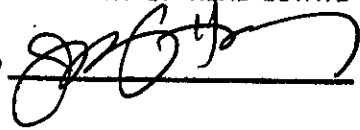
10 JEFF DAVI
11 Real Estate Commissioner

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FILED
OCT 29 2004

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)

No. H-30904 LA

NICHOLAS ANDREW BENAVIDES,)

L-2004060361

Respondent.)

NOTICE

TO: NICHOLAS ANDREW BENAVIDES, Respondent, and CHARLES
BENNINGHOFF, his Advocate.

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated September 30, 2004, of the Administrative Law Judge
is not adopted as the Decision of the Real Estate Commissioner.
A copy of the Proposed Decision dated September 30, 2004, is
attached for your information.

In accordance with Section 11517(c) of the Government
Code of the State of California, the disposition of this case
will be determined by me after consideration of the record herein
including the transcript of the proceedings held on September 1,

///

1 2004, 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 September 1, 2004, at the Los Angeles
6 office of the Department of Real Estate unless an extension of
7 the time 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: 10-21-04, 2004

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15 JEFF DAVI
16 Real Estate Commissioner
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

NICHOLAS ANDREW BENAVIDES,

Respondent.

Case No. H-30904 LA

OAH No. L2004060361

PROPOSED DECISION

Administrative Law Judge Michael A. Scarlett, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on September 1, 2004.

Calvin K. Lee, Staff Counsel, represented Complainant Maria Suarez, Deputy Real Estate Commissioner.

Nicholas Andrew Benavides (hereinafter Respondent) was present at hearing and was represented by Charles Benninghoff, his administrative advocate.

Oral and documentary evidence was received and the matter was submitted on September 1, 2004.

FACTUAL FINDINGS

1. Maria Suarez (Complainant) made the Statement of Issues in her official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate (Department), State of California.
2. On December 1, 2003, Respondent applied to the Department for a real estate salesperson's license. Respondent disclosed in his application that he had been convicted of a crime in September 2003. Respondent's application for licensure was denied and this hearing ensued.
3. On September 17, 2003, in the Superior Court of California, County of San Bernardino, Respondent was convicted on his guilty plea to one count of possessing a deceptive government identification, a drivers license, in violation of Penal Code section 529.5, subdivision (c), a misdemeanor and a crime of moral turpitude that is substantially

related to the qualifications, functions and duties of a real estate salesperson. Respondent was fined \$200.00 and was not placed on probation. Respondent has moved to have his conviction expunged but as of the date of hearing, had not obtained the expungement order from the court.

4. The facts and circumstances surrounding Respondent's September 17, 2003 conviction are that on September 24, 2003, he was cited and arrested for possessing a fake drivers license at a baseball game he was attending with friends. Respondent and his friends were stopped in the parking lot of the baseball stadium and questioned about a golf cart incident unrelated to Respondent. Respondent was asked for identification at which time he told the officers he did not have identification. The officers searched Respondent and found his wallet in his pocket which contained the fake driver's license. At the time, Respondent was under 21 years of age and the driver's license indicated that the person named in the license was over 21. Respondent admitted to officers that he had been drinking beers at the baseball game although he had not used the false identification to purchase the beers. Apparently, Respondent's friends had purchased the beers for him. Respondent was arrested at that time and charged with possessing a false identification.

5. Respondent is currently 21 years of age. He presented himself at hearing as a very responsible and mature individual who appeared to have learned a valuable lesson from his indiscretion in committing the June 2003 offense. Respondent's demeanor while testifying at hearing was sincere and forthright. He admitted that he possessed the fake identification and accepted responsibility for his conduct. He admitted that he purchased the false identification from a street vendor with the intent to use the identification to purchase alcohol, as he was not yet 21 years of age. Respondent realizes that his actions were immature and irresponsible. It appears he has genuinely learned from the experience and has gained a significant level of maturity as a result.

6. Respondent is currently employed at MG Mortgage as an assistant to his mortgage broker, John Gahndouri Ryan Lee, the owner and director of the company. Respondent also received his Notary Commission, Commission Number 1457281, in December 2003, and serves as the notary for MG Mortgage. John Gahndouri testified on Respondent's behalf and stated that he would be committed to hiring Respondent as a real estate salesperson if he is granted a salesperson's license. Gahndouri intends to personally supervise Respondent and provide mentoring during Respondent's initial training as a salesperson. Gahndouri Lee holds Respondent in the highest regard and believes that he had matured significantly since the June 2003 offense. Lee stated that Respondent disclosed the conviction after he hired Respondent as an assistant.

7. Respondent completed study for two Associate of Arts degrees in Social/Behavioral Science and Liberal Arts from Mt. San Jacinto College in December 2003. Respondent receives substantial moral support from his father and family, as his father testified at hearing on Respondent's behalf. Respondent's father, Daniel Benavides, has great confidence in his son and was surprised when Respondent was convicted for the false identification offense. Daniel Benavides, who is a Project Director for the West Valley

Community College, testified that Respondent's conduct in committing the offense was totally out of character and that Respondent had never been in any legal trouble before or since the June 2003 offense. Several other witnesses testified on Respondent's behalf, attesting to his good character and integrity.

8. There is sufficient evidence to establish that Respondent has been sufficiently rehabilitated from his September 2003 conviction, such that the issuance of a properly restricted real estate salesperson's license would not be against the public's interest. Respondent's conviction was for a relatively minor misdemeanor. The Superior Court judge determined that a probationary period was not necessary in the criminal case and simply ordered Respondent to pay a small fine for his conviction. The public's interest will be adequately safeguarded by issuing Respondent a probationary real estate license at this time.

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's real estate salesperson's license pursuant to Business and Professions Code sections 480, subdivision (a) and 10177, subdivision (b), by reason of Findings 3 and 4.

2. There is sufficient evidence, however, to conclude that Respondent has been rehabilitated such the issuance of a properly restricted real estate salesperson's license would not be against the public's interest. Under the Department of Real Estate regulations, California Code of Regulations, title 10, section 2911, when evaluating the rehabilitation of an applicant for purposes of determining whether to deny a license application, the following criteria for rehabilitation, in pertinent part, should be considered:

- (1) Whether there has been a passage of not less than two years from the most recent criminal conviction or act of the applicant that is a basis to deny the departmental license sought.
- (2) Payment of restitution to any person who has suffered monetary losses through acts or omissions of the licensee.
- (3) Expungement of the conviction which culminated in the administrative proceeding to take disciplinary action.
- (4) Successful completion or early discharge from probation or parole.
- (5) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the licensee.
- (6) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

- (7) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.
- (8) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- (9) Change in attitude from that which existed at the time of the commission of the criminal acts in questions.

Here, although Respondent's conviction occurred in September 2003, less than two years prior to his application for licensure, Respondent was not placed on probation. He has paid the fine ordered by the court and exhibits sincere remorse for his criminal conduct. Respondent's youth and immaturity contributed to the bad decision he made in June 2003 to possess a fake identification. He appears to have matured significantly from this experience and it appears he is not inclined to repeat this type of conduct in the future. Respondent has not suffered any prior or subsequent criminal convictions. He has great support from his family and his broker is prepared to hire and mentor Respondent as a real estate salesperson. By Respondent's own credible testimony, and the testimony of others, Respondent has learned a great deal from this experience and has matured significantly.

3. On balance, Respondent's conviction was a relatively minor offense. The evidence does not suggest that he would pose a significant threat to the health, safety and welfare of the public if he is granted a properly restricted license.

Based on the above stated factual findings and legal conclusions, it is determined that Respondent has been sufficiently rehabilitated such that the issuance of a restricted real estate salesperson's license would not be adverse to the public's interest.

ORDER

Respondent Nicholas Andrew Benavides's application for a real estate broker license is denied; provided, however, a restricted real estate salesperson's license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code should Respondent chose to submit a real estate salesperson's application for said license. The restricted salesperson's 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. 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:

NOT RECAPTURED

NOT ADOPTED

(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.

DATED: September 30, 2004


MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings

FILED
JUN 30 2004
DEPARTMENT OF REAL ESTATE

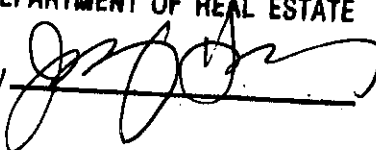
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KELVIN K LEE, Counsel (SBN 152867)
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982
(Direct) (213) 576-6905

FILED
MAY 13 2004

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)

NO. H-30904 LA

NICHOLAS ANDREW BENAVIDES,)

STATEMENT OF ISSUES

Respondent.)

The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, for cause of Statement
of Issues against NICHOLAS ANDREW BENAVIDES ("Respondent"), is
informed and alleges as follows:

I

The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, makes this Statement
of Issues against Respondent in her official capacity.

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II

Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about December 1, 2003, 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 ("Code") Section 10153.4.

III

(CRIMINAL CONVICTION)

On or about September 18, 2003 in the Superior Court of the State of California, San Bernardino County, in Case No. MWV083957, Respondent NICHOLAS ANDREW BENAVIDES, was convicted of violating Section 529.5, subdivision (C) of the California Penal Code, Possession of a Deceptive Government Identification Consisting of a Driver's License, a crime involving moral turpitude which is substantially related under Title 10, Chapter 6, Section 2910, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

IV

The crime of which Respondent was convicted, as alleged herein above, constitutes cause for denial of Respondent's application for a real estate license under Code Sections 475(a)(2), 480(a)(1) and/or 10177(b).

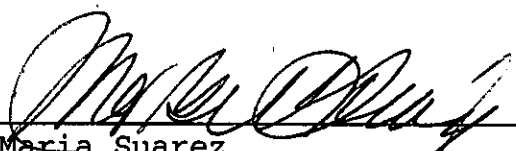
The Statement of Issues is brought under the provisions of Section 10100, Division 4 of the Business and Professions Code of the State of California and Sections 11500

and 11529 of the Government Code.

WHEREFORE, 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, NICHOLAS ANDREW BENAVIDES, and for such other and further relief as may be proper under other provisions of law.

Dated at Los Angeles, California

this 12th day of May, 2004.


Maria Suarez
Deputy Real Estate Commissioner

Cc: Nicholas Andrew Benavides
Maria Suarez
Sacto.
CW