

FILED
JAN 25 2005

DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By

* * * * *

In the Matter of the Application of)

No. H-31095 LA

ARTURO GOMEZ,

L-2004080408

Respondent.)

DECISION

The Proposed Decision dated December 2, 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.

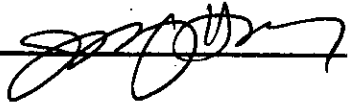
This Decision shall become effective at 12 o'clock noon on February 14, 2005.

IT IS SO ORDERED

JEFF DAVIS
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JAN 14 2005
DEPARTMENT OF REAL ESTATE

By 

In the Matter of the Application of:

ARTURO GOMEZ,

Respondent.

File No. H-31095 LA

OAH No. L2004080408

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on November 4, 2004, in Los Angeles, California. Complainant was represented by Kelvin K. Lee, Staff Counsel for the Department of Real Estate. Respondent, Arturo Gomez (Respondent), appeared and represented himself.

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on November 4, 2004. The Administrative Law Judge hereby makes her findings of fact, conclusions of law, and orders, as follows:

FACTUAL FINDINGS

1. On July 22, 2004, Complainant Maria Suarez filed the Statement of Issues in the above-captioned proceeding while acting in her official capacity as Deputy Real Estate Commissioner of the Department of Real Estate (Department), State of California.

2. On October 6, 2003, Respondent submitted to the Department an application for a real estate salesperson license.

3a. On October 17, 1996, in the Court of Common Pleas of Berks County, State of Pennsylvania, Case Number 1109-96, entitled *The Commonwealth of Pennsylvania v. Arturo Gomez*, Respondent was convicted by a jury of violating Title 35 (Health and Safety), Pennsylvania Consolidated Statutes, sections 780-113; subdivision (a)(16) (Knowing or Intentional Possession of Marijuana), and 780-113, subdivision (a)(30) (Manufacture, Delivery or Possession of Marijuana with the Intent to Distribute), the latter being a crime involving moral turpitude which is substantially related to the qualifications, functions and duties of a real estate licensee.

3b. Respondent was sentenced to five years confinement in a state correctional facility. He was also ordered to pay a fine of \$50,000 and to participate in drug/alcohol treatment program. Respondent served the full five years of confinement and was released in 2001.

3c. The facts and circumstances surrounding Respondent's conviction were as follows: In March of 1996, a school acquaintance offered Respondent money to transport suitcases full of marijuana to Pennsylvania. Respondent accepted the offer and transported the drugs to Pennsylvania.

4. Respondent accepted full responsibility for his crime, stating, "There is no way to make this sound good, or to make it sound as if I was a victim. I made a stupid choice, and got in trouble." However, Respondent agreed to transport the drugs because, despite working two part-time jobs while attending college, he was "broke all the time." As a result, he made "that fateful decision (the wrong decision) to take [his friend] up on his offer to transport [the] suitcases to Pennsylvania."

5. Respondent attempted to obtain an "expungment" of his conviction, but discovered that Pennsylvania does not have such a procedure.

6. Respondent fully disclosed his conviction on his real estate salesperson license application.

7. Respondent no longer associates with his former criminal accomplice. He is actively involved in his church. Respondent is "not the same person" as he was at the time of his crime, and at age 30, he is now "trying to better [himself]." He has learned from his mistake that "going the easy way is not the right way." He also assured the Department that he is "fully aware of the responsibilities that come with [being a real estate salesperson], and the duties it imposes."

8. Respondent attended community college for two years and earned a certificate of completion in the curriculum of Business Administration-Real Estate at Los Angeles Trade Technical College. He also took and passed the State real estate examination. He currently works on a volunteer basis for a lending broker and plans to work there after licensure. His employer is willing to be his sponsoring broker, should he become licensed.

9. Respondent submitted a letter of reference from his broker, who was aware of Respondent's prior conviction. Respondent's broker described Respondent as a great asset to his employer and a "reliable, trustworthy person deserving of a change [sic] to make something of himself."

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LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's application for a real estate salesperson license, pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, and California Code of Regulations, title 10, section 2910, subdivision (a)(8), for his criminal conviction, which is substantially related to the duties, qualifications, and functions of a real estate licensee, as set forth in Factual Findings 3a, 3b and 3c.

2. Respondent has substantially complied with the Department's rehabilitation criteria set forth in California Code of Regulations, title 10, section 2911, as follows:

- (1) More than two years have lapsed since Respondent's last conviction.
[Subdivision (a)];
- (2) Respondent paid all fines and monetary penalties imposed in connection with his criminal convictions.
[Subdivision (g)];
- (3) Respondent has sustained enrollment in formal educational and vocational training courses for economic self improvement, as set forth in Factual Finding 8.
[Subdivision (i)];
- (4) Respondent has different social and business relationships from those which existed at the time of the conduct that is the basis for his convictions, as set forth in Factual Finding 7.
[Subsection (m)];
- (5) Respondent has had a change in attitude since his convictions, as set forth in Factual Findings 4, 7, 8 and 9.
[Subsection (n)].

3. Notwithstanding Legal Conclusion Number 1 above, Respondent has demonstrated sufficient rehabilitation following his conviction, such that the public would be adequately protected by the issuance of a restricted real estate salesperson's license to the Respondent.

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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 that 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.

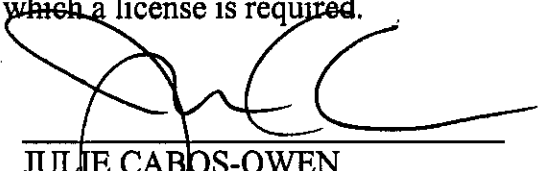
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two (2) years have elapsed from the date of issuance of the restricted license to Respondent.

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.

DATED: December 2, 2004



JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

60210

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DEPARTMENT OF REAL ESTATE

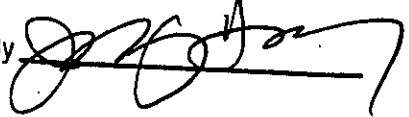
By [Signature]

cc: Arturo Gomez
Sacto.
OAH
RE 500 (Rev. 8/97)

5/20/10
KELVIN K. LEE, Real Estate Counsel (SBN 152867)
Department of Real Estate
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Telephone: (213) 576-6982
(Direct) (213) 576-6905

FILED
JUL 23 2004
DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of	)	NO. H-31095 LA
	)	
ARTURO GOMEZ,	)	<u>STATEMENT OF ISSUES</u>
	)	
Respondent.	)	
	)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Statement of Issues against ARTURO GOMEZ ("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 October 6, 2003.

III

(CRIMINAL CONVICTIONS)

On or about October 17, 1996, in the Court of Common Pleas of Berks County, State of Pennsylvania in Case No. 1109-96, Respondent ARTURO GOMEZ, was convicted of one (1) count of violating Title 35 Pennsylvania (Health and Safety) Statute 780-113 subdivision (a)(16) (Knowing or Intentional Illegal Possession of Marijuana), and one count of Statute 780-113 (a)(30), (The Manufacture, Delivery or Possession of Marijuana with the Intent to Distribute). The crimes of Knowing or Intentional Illegal Possession of Marijuana involves moral turpitude and is substantially related under Title 10, Chapter 6, Section 2910, subdivisions (a)(8), (a)(10) and (a)(11), California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

IV

One of the crimes (Knowing or Intentional Illegal Possession of Marijuana,) of which Respondent was convicted, as alleged herein above in Paragraph III, 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).

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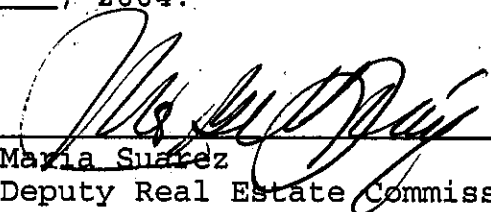
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1 The Statement of Issues is brought under the
2 provisions of Section 10100, Division 4 of the Business and
3 Profession Code of the State of California and Sections 11500
4 through 11528 of the Government Code.

5 WHEREFORE, Complainant prays that the above entitled
6 matter be set for hearing and, upon proof of the charges
7 contained herein, that the Commissioner refuse to authorize the
8 issuance of, and deny the issuance of, a real estate salesperson
9 license to Respondent, ARTURO GOMEZ, and for such other and
10 further relief as may be proper under other provisions of law.

11 Dated at Los Angeles, California

12 this 24 day of July, 2004.

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14 
15 Maria Suarez
Deputy Real Estate Commissioner

16 cc: ARTURO GOMEZ
17 Maria Suarez
18 Sacto.
19 DKW
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