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AUG 22 2011
DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	No. H-31142 LA
)	
RAFAEL GARCIA JR.,)	
)	
Respondent.)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On June 30, 2005, a Decision was rendered herein revoking the real estate salesperson license of Respondent.

On or about June 21, 2010, Respondent petitioned for reinstatement of said real estate salesperson license. The Attorney General of the State of California has been given notice of the filing of Respondent's petition.

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

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NOW, THEREFORE, IT IS ORDERED that a real estate salesperson license be

issued to Respondent, if Respondent satisfies the following requirements:

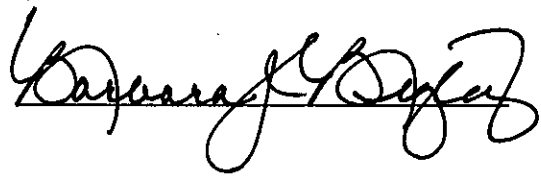
1. Takes and passes the examination for a real estate salesperson license.
2. Submits a completed application and pays the fee for a real estate salesperson

license within the 12 month period following the date of this Order.

This Order shall be effective immediately.

Dated: 6/29/11

BARBARA J. BIGBY
Acting Real Estate Commissioner



FILED
JUL - 5 2005
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By K. Vickerbell

* * * * *

In the Matter of the Accusation of)	No. H-31142 LA
)	
)	L-2004120465
RAFAEL GARCIA, JR.,)	
)	
Respondent.)	

DECISION

The Proposed Decision dated June 8, 2005, 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 Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on JUL 25 2005.

IT IS SO ORDERED 6-30-05

JEFF DAVI
Real Estate Commissioner

[Signature]

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

In the Matter of the Accusation Against:

RAFAEL GARCIA, JR.,

Real Estate Salesperson License No. 01219386,

Respondent.

Case No. H-31142 LA

OAH No. L2004120465

PROPOSED DECISION

Robert S. Eisman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California, on May 16, 2005.

Elliott Mac Lennan, Real Estate Counsel, represented Maria Suarez (complainant).

Respondent appeared and represented himself at the hearing.

Sworn testimony and documentary evidence was received, the record was closed, and the matter submitted on May 16, 2005.

The issue in this proceeding is whether respondent's license as a real estate salesperson should be disciplined due to a criminal conviction.

The Administrative Law Judge makes the following factual findings, legal conclusions and order:

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FACTUAL FINDINGS

1. Complainant Maria Suarez filed the Accusation in her official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate, State of California. (Complainant exhibit 1.)

2. The Department of Real Estate first licensed respondent, as a real estate salesperson, license number 01219386, on April 2, 1997. The license is currently active and will expire on September 2, 2006. (Complainant exhibit 3.)

3. On September 6, 2001, in the Superior Court of California, County of San Bernardino, in Case No. FWV021367, *People v. Rafael Garcia, Jr., et al.*, the court convicted respondent on a plea of nolo contendere of violating Health and Safety Code section 11366.5, subdivision (a), management or control of a place for the purpose of unlawfully manufacturing, storing, or distributing a controlled substance for sale or distribution, a felony offense.

Pursuant to a plea agreement, the court sentenced respondent to 36 months of supervised probation under terms and conditions, including serving two (2) days in the county jail, complying with probation program requirements, participating in a counseling program, and attending Narcotics Anonymous / Alcoholics Anonymous meetings twice per week. (Complainant exhibit 4.)

The facts and circumstances surrounding the offense and conviction are that on October 11, 2000, police officers responded to a hotel where respondent had rented two rooms and there was reported suspicious activity possibly involving narcotics. When investigating officers confronted respondent, they smelled a strong odor associated with marijuana and observed a briefcase that was in respondent's possession. Respondent was arrested at the scene for an outstanding warrant and when the briefcase was inventoried, it was found to contain seven receptacles containing methamphetamines, a bag of marijuana, miscellaneous narcotic paraphernalia and packaging material, a scale, and pay/owe sheets. Respondent also possessed \$2,429.00 in cash that was contained in a currency envelope. Respondent was subsequently arrested for violation of Health and Safety Code section 11378 and section 11379, subdivision (a). (Complainant exhibit 5.)

4. Circumstances in aggravation that are not separately alleged as causes for discipline, but are considered when determining the degree of discipline, if any, that should be imposed on respondent, include the following:

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a. On March 26, 1990, in the Municipal Court, County of Los Angeles, in Case No. 90M03479, *People v. Rafael Garcia, Jr.*, the court convicted respondent of violating Vehicle Code section 23152, subdivision (a), driving a vehicle while under the influence of any alcoholic beverage and/or drug, a misdemeanor offense; section 23152, subdivision (b), driving a vehicle with a blood alcohol content of 0.08 percent or more, by weight, a misdemeanor offense; and two Vehicle Code infractions. (Complainant exhibit 6.)

b. On December 12, 1996, in the Municipal Court, County of San Bernardino, in Case No. TWV18252, *People v. Rafael Garcia, Jr.*, respondent was again convicted of violating Vehicle Code section 23152, subdivision (b), a misdemeanor offense. (Complainant exhibit 7.)

5. Respondent is 37 years old and is currently working as a salesperson for TrendWest Resorts, Inc., where he sells real estate time shares. Respondent also owns and operates a somewhat successful cabinet and countertop business. He completed probation for his 2001 conviction in November 2004.

Respondent acknowledged that the briefcase that was seized and searched in October 2000 was in his possession. However, he stated that it actually belonged to his friend, who was just out of jail for vehicular manslaughter and was occupying the other of respondent's two rented rooms. Respondent alleged that he retained the briefcase to "limit problems" for that friend.

6. Respondent's arguments are not persuasive as a form of extenuation or mitigation. The issue of Respondent's guilt may not be re-litigated. Respondent's entry of the plea of *nolo contendere* in his criminal case is conclusive evidence of guilt upon which the administrative law judge must rely. (*Arneson v. Fox* (1980) 28 Cal.3d 440.)

7. Respondent did not provide any outside verification of his rehabilitation. He brought no supporting witnesses, declarations or letters of reference.

LEGAL CONCLUSIONS

1. The standard of proof in this proceeding is "clear and convincing evidence to a reasonable certainty," meaning that complainant is obliged to adduce evidence that is clear, explicit, and unequivocal -- so clear as to leave no substantial doubt and sufficiently strong as to command the unhesitating assent of every reasonable mind. (*Ettinger v. Bd. of Med. Quality Assurance* (1982) 135 Cal.App.3d 853; *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, 1893; *In Re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. Business and Professions Code section 490 states, in pertinent part: "A [department] may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."

3. California Code of Regulations, title 10, section 2910, subdivision (a), states, in pertinent part:

"When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime . . . the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves: [¶] . . . [¶]

"(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another. [¶] . . . [¶]

"(10) Conduct which demonstrates a pattern of repeated and willful disregard of law."

4. Respondent's 2000 conviction involved the management or control of a room used to unlawfully manufacture, store, or distribute a controlled substance for sale or distribution. Presumably the narcotics were sold or distributed for economic benefit. The presence of pay/owe sheets in the briefcase supports this conclusion. There was also a significant threat of substantial injury to members of the public who acquired or used the methamphetamines sold or distributed from respondent's rented hotel rooms.

Respondent's most recent conviction, when considered in light of his two prior convictions for driving under the influence of alcohol, also establishes a pattern of repeated and willful disregard of the law. Based on the foregoing, respondent's 2001 conviction is deemed to be substantially related to the qualifications, functions, and duties of a real estate salesperson. (Factual Findings 3 and 4.)

5. Complainant established by clear and convincing evidence to a reasonable certainty that respondent's license to practice as a real estate salesperson is subject to discipline pursuant to Business and Professions Code section 490 based upon the 2001 conviction. (Factual Findings 3 and 4; Legal Conclusions 2, 3, and 4.)

6. Business and Professions Code section 10177, subdivision (b), states that the Real Estate Commissioner may suspend or revoke the license of a real estate licensee who has "[e]ntered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude."

Respondent's 2001 conviction was for a felony offense. (Factual Finding 3.)

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7. Managing or controlling a place for the purpose of unlawfully selling or distributing a controlled substance is a crime whose elements necessarily involve moral turpitude. (See *People v. Thornton* (1992) 3 Cal.App.4th 419, 422 - 424; *People v. Mansfield* (1992) 200 Cal.App.3d 82, 88-89; *People v. Vera* (1999) 69 Cal.App.4th 1100; *People v. Castro* (1985) 38 Cal.3d 301, 317.)

The concept of "moral turpitude" is an elusive one. However, there is widespread agreement that convictions of crimes involving fraudulent intent and intentional dishonesty for personal gain establish moral turpitude as a matter of law. [¶] . . . [¶] Honesty and truthfulness are two qualities deemed by the legislature to bear on one's fitness and qualification to be a real estate licensee. If appellant's criminal offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson.

(*Harrington v. Department of Real Estate* (1989)
214 Cal.App.3d 394, 400-402.)

8. Complainant established by clear and convincing evidence to a reasonable certainty that respondent's license to practice as a real estate salesperson is subject to discipline pursuant to Business and Professions Code section 10177, subdivision (b), based upon the 2001 conviction. (Factual Finding 3; Legal Conclusions 6 and 7.)

9. The Department of Real Estate has established criteria for rehabilitation from conviction of a crime to be considered in a disciplinary proceeding. The rehabilitation criteria are found at California Code of Regulations, title 10, section 2911. Those criteria that apply to respondent's circumstance are summarized as follows:

- a. Passage of at least two years since the most recent criminal conviction or act
- c. Expungement of criminal convictions
- e. Successful completion or early discharge from probation or parole
- f. Abstinence for at least two years from the use of controlled substances or alcohol
- g. Family life stability of and fulfillment of parental and familial responsibilities
- h. Completion of, or enrollment in, formal education or vocational training courses
- k. Involvement in community, church or privately-sponsored programs
- l. New and different social and business relationships
- m. Change in attitude, as evidenced by applicant / respondent and other persons knowledgeable and competent to testify and absence of subsequent convictions

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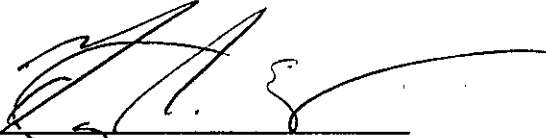
10. Although it has been several years since respondent's most recent conviction, and he has completed probation, he has not submitted convincing evidence of his rehabilitation, regarding most of the other criteria that apply to him. Respondent did not provide any outside verification of his rehabilitation. (Factual Finding 7.)

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of respondent Rafael Garcia, Jr., under the Real Estate Law are revoked.

DATED: June 8, 2005.



ROBERT S. EISMAN
Administrative Law Judge
Office of Administrative Hearings

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ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)
-or- (213) 576-6982 (office)

FILED
AUG - 4 2004
DEPARTMENT OF REAL ESTATE

By K. Niederholt

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-31142 LA
RAFAEL GARCIA, JR.,)	<u>ACCUSATION</u>
Respondent.)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against RAFAEL GARCIA, JR., is informed and alleges in her official capacity as follows:

1.

Respondent is presently licensed and/or has license rights as a real estate salesperson under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (Code).

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2.

Respondent was originally licensed by the Department of Real Estate of the State California as a real estate salesperson on April 2, 1997.

3.

On September 6, 2001, in the Superior Court of California, San Bernardino County, Rancho Cucamonga Division, State of California, in Case No. FWV021367, respondent was convicted upon a plea of nolo contendere to one count of Health and Safety Code Section 11366.5 (management of location used for unlawful manufacture or storage of controlled substance - amphetamines), a felony. Respondent is required to register pursuant to Health and Safety Code Section 11590 as a Controlled Substance Offender.

4.

This crime alleged in Paragraph 3 by its facts and circumstances involves moral turpitude and is substantially related under Section 2910(a)(8), Chapter 6, Title 10 of the California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

5.

The crime as alleged in Paragraph 3, above, constitutes cause for the suspension or revocation of the license and license rights of respondent under Sections 490 and/or 10177(b) of the Code.

IN AGGRAVATION

6.

On March 26, 1990, respondent was convicted in the Municipal Court of Citrus Judicial District, County of Los Angeles, State of California, of Vehicle Code Sections 23152(a) and (b) (DUI), misdemeanors, including several driving infractions.

7.

On December 12, 1996, respondent was convicted in the Superior and Municipal Court of the County of San Bernardino, State of California, of Vehicle Code Sections 23152(b) (DUI 0.08%), a misdemeanor.

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary action
4 against the license and license rights of respondent RAFAEL
5 GARCIA, JR. under the Real Estate Law (Part 1 of Division 4 of
6 the Business and Professions Code) and for such other and further
7 relief as may be proper under other applicable provision of law.
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9 Dated at Los Angeles, California

10 This *26th day July 2004.*

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14 Deputy Real Estate Commissioner
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23 cc: Rafael Garcia, Jr.
24 Trendwest Resorts Inc./Ronald A. Buzard
25 Maria Suarez
26 Sacto
27 CW