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MAR 03 2009

DEPARTMENT OF REAL ESTATE

By L. Frost

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

JOAO CARLOS NUNEZ,

Respondent.

No. H-31284 LA

ORDER DENYING REINSTATEMENT OF LICENSE

On April 12, 2005, a Decision was rendered in Case No. H-31284 LA revoking the real estate salesperson license of Respondent effective May 3, 2005.

On October 17, 2007, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence submitted in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's real estate salesperson license at this time.

The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and

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1 integrity than an applicant for first time licensure. The proof must be sufficient to overcome the
2 prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

3 The Department has developed criteria in Section 2911 of Title 10, California
4 Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for
5 reinstatement of a license. Among the criteria relevant in this proceeding are:

6 Regulation 2911(a) The passage of not less than two years since the most recent
7 criminal conviction or act of the applicant that is a basis to deny the departmental action sought.
8 (A longer period will be required if there is a history of acts or conduct substantially related to
9 the qualifications, functions or duties of a licensee of the department.)

10 On April 15, 1999 in the Los Angeles County Municipal Court, Respondent was
11 convicted of Driving With Blood Alcohol Over .08% in violation of Vehicle Code Section
12 23152(b), a misdemeanor. On June 14, 2001, in the San Bernardino County Superior Court,
13 Respondent was convicted of Driving Without An Operator's License in violation of Vehicle
14 Code Section 12500, a misdemeanor. On January 25, 2002, in the San Bernardino County
15 Superior Court, Respondent was convicted of Vandalism in violation of Penal Code Section
16 594(b)(3), a misdemeanor. Respondent was placed on 2 years probation. After a night of
17 drinking, Respondent fell through a store window at the Wherehouse Music store in Rancho
18 Cucamonga. Also on January 25, 2002, in the San Bernardino County Superior Court,
19 Respondent was convicted of Hit and Run With Property Damage in violation of Vehicle Code
20 Section 20002, a misdemeanor. Respondent was placed on probation for 2 years. On April 29,
21 2004, in the San Bernardino County Superior Court, respondent was convicted of Driving With
22 Blood Alcohol Over .08% in violation of Vehicle Code Section 23152(b) and False Identification
23 To Peace Officer in violation of Penal Code Section 148.9, each a misdemeanor. Respondent was
24 placed on 3 years probation and ordered to pay \$1,450 in fines and restitution. Respondent has a
25 long history of petty crimes reflecting adversely on his character. Insufficient time has elapsed to
26 support the conclusion that Respondent is now rehabilitated.

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1 Regulation 2911(b) Restitution to any person who has suffered monetary losses
2 through "substantially related" acts or omissions of the applicant.

3 Respondent has provided no evidence he has satisfied his restitution obligations.

4 Regulation 2911(c) Expungement of criminal convictions resulting from immoral
5 or antisocial acts.

6 Respondent has provided no evidence any of his convictions have been expunged.

7 Regulation 2911(f) Abstinence from the use of controlled substances or alcohol
8 for not less than two years if the conduct which is the basis to deny the departmental action
9 sought is attributable in part to the use of controlled substances or alcohol.

10 Respondent has not abstained from alcohol since his license was revoked.

11 Regulation 2911(g) Payment of the fine or other monetary penalty imposed in
12 connection with a criminal conviction or quasi-criminal judgment.

13 Respondent has provided no evidence Respondent has satisfied the fines imposed
14 in connection with his most recent conviction.

15 Regulation 2911(h) Stability of family life and fulfillment of parental and familial
16 responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency
17 action sought.

18 Respondent reports he is obligated to pay child support for two small children and
19 advises he is current in this obligation.

20 Regulation 2911(i) Completion of, or sustained enrollment in, formal educational
21 or vocational training courses for economic self-improvement.

22 Respondent has provided no evidence of qualifying educational activities.

23 Regulation 2911(j) Discharge of, or bona fide efforts toward discharging,
24 adjudicated debts or monetary obligations to others.

25 A \$345 County tax lien has been filed against Respondent. Respondent has
26 provided no evidence this lien has been satisfied.

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1 Regulation 2911(l) Significant or conscientious involvement in community,
2 church or privately-sponsored programs designed to provide social benefits or to ameliorate
3 social problems.

4 Respondent has provided no evidence of qualifying community service activities.

5 Regulation 2911(m) New and different social and business relationships from
6 those which existed at the time of the conduct that is the basis for denial of the departmental
7 action sought.

8 Respondent has provided no evidence of any new or different social or business
9 relationships.

10 Regulation 2911(n) Change in attitude from that which existed at the time of the
11 conduct in question as evidenced by any or all of the following:

12 (1) Testimony of applicant.

13 Respondent has provided no statement indicating a change in attitude.

14 (2) Evidence from family members, friends or other persons familiar with
15 applicant's previous conduct and with his subsequent attitudes and behavioral patterns.

16 No letters of recommendation were received concerning Respondent.

17 (3) Evidence from probation or parole officers or law enforcement officials
18 competent to testify as to applicant's social adjustments.

19 No information concerning Respondent was received from parole or law
20 enforcement officials.

21 (4) Evidence from psychiatrists or other persons competent to testify with
22 regard to neuropsychiatric or emotional disturbances.

23 No information concerning Respondent was received from mental health
24 professionals.

25 On November 19, 2008, the deputy commissioner assigned to Respondent's
26 petition sent a letter to Respondent requesting additional information, but Respondent did not
27 respond. An interview appointment was set for Respondent for January 21, 2009, but

1 Respondent did not appear. On December 26, 2008, Respondent left a telephone message
2 indicating he was moving to North Carolina and was no longer interested in license
3 reinstatement.

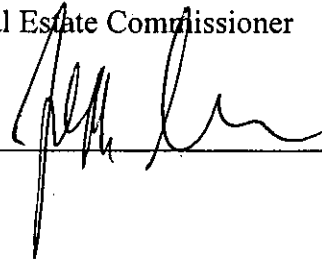
4 Given the violations found and the fact that Respondent has not established that
5 Respondent has satisfied Sections 2911(a), (b), (c), (f), (g), (i), (j), (l), or (n) of the Regulations, I
6 am not satisfied that Respondent is sufficiently rehabilitated to receive a real estate salesperson
7 license.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
9 reinstatement of Respondent's real estate salesperson license is denied.

10 This Order shall become effective at 12 o'clock noon on MAR 23 2009

11 IT IS SO ORDERED 2/19/09

12 JEFF DAVI
13 Real Estate Commissioner

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FILED
APR 13 2005
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE *Laura B. Allen*

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)
JOAO CARLOS NUNEZ,,)
Respondent.)

No. H-31284 LA
L-2004110037

DECISION

The Proposed Decision dated March 9, 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.

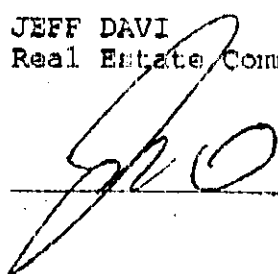
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

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 MAY 3 2005

IT IS SO ORDERED 4-12-05

JEFF DAVI
Real Estate Commissioner



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

In the Matter of the Accusation of

JOAO CARLOS NUNEZ,

Respondent.

Case No. H-31284 LA

OAH No. L2004110037

PROPOSED DECISION

This matter came on regularly for hearing on February 24, 2005, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Complainant, Maria Suarez, was represented by Chris Leong, Staff Counsel.

Joao Carlos Nunez (Respondent) was present and was represented by Frank M. Buda, 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 Accusation was made by Maria Suarez, who is a Deputy Real Estate Commissioner of the State of California, acting in her official capacity.
2. Respondent was issued a license as a real estate salesperson by the Department of Real Estate (the Department) on August 10, 2001. The license will expire on August 9, 2005, unless renewed.

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3. On January 25, 2002, in the Superior Court of California, County of San Bernardino, in Case No. MWV065510, Respondent was convicted, on his plea of nolo contendere, of violating Penal Code section 594, subdivision (b)(3) (Vandalism), a crime substantially related to the qualifications, functions and duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a) (10) and (11).

4. Respondent was placed on conditional and revocable release for a period of 24 months under various terms and conditions including payment of fines and fees totaling \$450.00, payment of restitution to Wherehouse Music in a sum not disclosed by the evidence, and an order to stay away from the Wherehouse Music Store on Foothill Boulevard in Rancho Cucamonga, California.

5. The facts and circumstances underlying the conviction are that, on June 27, 2001, at approximately 1:30 a.m., after a night of drinking with his friends in a sports bar, Respondent fell through a store window at a Wherehouse Music store.

6. On January 25, 2002, in the Superior Court of California, County of San Bernardino, in Case No. TWV034398, Respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code section 20002, subdivision (a) (Vehicle Involved in Accident With Property Damage/ Hit and Run), a crime involving moral turpitude and one substantially related to the qualifications, functions and duties of a real estate licensee, pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a) (8) and (10).

7. Respondent was placed on conditional and revocable release for a period of 24 months under various terms and conditions including payment of fines and fees totaling \$450.00, and payment of restitution to the victim in a sum not disclosed by the evidence. (It was not established whether the 24-month probationary period was to run consecutively or concurrently with that imposed in Case No. MWV065510, or whether the \$450.00 in fines and fees were to be paid separately in the two cases or collectively for both.)

8. The facts and circumstances underlying the conviction are that, on April 21, 2001, Respondent accidentally struck another car from behind with his vehicle while driving in heavy traffic. The other driver asked Respondent to follow her out of the traffic for the purpose of exchanging information. Respondent believed that no properly damage had been incurred so, rather than follow her, he left the scene of the accident.

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9. On April 29, 2004, in the Superior Court of California, County of San Bernardino, in Case No. MWV070260, Respondent was convicted, on his pleas of guilty, of violating Vehicle Code section 23152, subdivision (b) (Driving Under the Influence With a 0.08 percent or higher blood alcohol level), and Penal Code section 148.9, subdivision (a) (False Representation or Identification to a Peace Officer), a crime involving moral turpitude. Both crimes were substantially related to the qualifications, functions and duties of a real estate licensee, pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a) (8), (10) and (11).

10. Respondent was placed on conditional and revocable release for a period of 36 months under various terms and conditions including payment of fines and fees totaling \$1,450.00, attendance and completion of an approved multiple offender alcohol program, and restriction of his driver's license to his commute to and from employment, during the course of employment, and his commute to and from the treatment program.

11. The facts and circumstances underlying the conviction are that, on October 31, 2001, at approximately 2:30 a.m., after drinking in a nightclub with a friend, Respondent drove his friend's car. He then gave a false name to the California Highway Patrol officer who stopped him.

12. Respondent is still on probation for the 2004 conviction. He has paid approximately \$400 of the \$1,450.00 in fines and fees and has completed a portion of the alcohol program.

13. As a factor in aggravation, on April 15, 1999, in the Municipal Court of the Downey Judicial District, County of Los Angeles, State of California, in Case No. 9DW02350, Respondent was convicted, on his plea of guilty, of violating Vehicle Code section 23152, subdivision (b) (Driving a Vehicle While Having a Blood Alcohol Level of 0.08 Percent or Greater). He was placed on summary probation for a period of 36 months under various terms and conditions including payment of a \$1,419.00 fine and attendance at and completion of a first offender alcohol and other drug education and counseling program.

14. As a further factor in aggravation, on June 14, 2001, in the Superior Court of California, County of San Bernardino, in Case No. 398624JN, Respondent was convicted, on his plea of guilty, of violating Vehicle Code section 12500, subdivision (a) (No Operator License). The facts and circumstances underlying that conviction are that Respondent drove his vehicle while his license was suspended as a result of an earlier driving under the influence conviction. At the time he did so, Respondent was still on probation for that earlier conviction.

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15. Respondent is successful in his work as a real estate salesperson for Contact One Mortgage & Realty in Rancho Cucamonga, where he has worked since January 2004.

16. Respondent is married and has a five-year-old daughter. His wife does not work outside the home.

17. Respondent has reduced the amount of alcohol he consumes and he refrains from driving when he drinks. He now considers himself an occasional drinker who does not "party" as much as he formerly did. He is remorseful for his past criminal conduct. He does not believe he will re-offend because of his devotion to his work and his family.

18. Respondent offered five written character references which were admitted pursuant to Government Code section 11513, subdivision (d). Those references support the live testimony of Respondent and his wife concerning a change in Respondent's attitude since 2001 and his strong work ethic.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following Legal Conclusions:

1. Cause exists for the revocation or suspension of Respondent's real estate salesperson license pursuant to Business and Professions Code section 10177, subdivision (b), for conviction of a crime, as set forth in Findings 6, 7, 8, 9, 10, 11 and 12.

2. Cause exists for the revocation or suspension of Respondent's real estate salesperson license pursuant to Business and Professions Code section 490, for conviction of a crime, as set forth in Findings 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12.

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California Code of Regulations, title 10, section 2910 provides in pertinent part:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480 (a)(2) or 480 (a)(3) of the [Business and Professions] Code, 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 Section 480 and 490 of the [Business and Professions] 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 personal property of another.

¶ . . . ¶

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

(11) Two or more convictions involving the consumption or use of alcohol or drugs, when at least one of the convictions involve driving and the use or consumption of alcohol or drugs.

Between 2002 and 2004, Respondent suffered four criminal convictions, thus establishing, at the least, a pattern of repeated and willful disregard of law. The convictions offered by Complainant in aggravation demonstrate that the pattern was of considerably longer duration than those offered as causes for discipline established. His leaving the scene of an automobile accident in which he rear-ended another vehicle, and his deliberate act of offering a false identity to a police officer during a traffic stop easily constitute unlawful acts done with the intent of conferring a financial or economic benefit upon himself. In addition, three of the four convictions (exclusive of the convictions offered in aggravation) involved the consumption of alcohol.

Respondent argued that California Code of Regulations, title 10, section 2910, subdivision (a)(11) may not be used to establish a substantial relationship of his alcohol-related convictions to the qualifications, functions or duties of a licensee because that provision was enacted after the convictions occurred, and it was not expressly given retroactive effect.

Cause exists to revoke or suspend Respondent's real estate salesperson license even absent a nexus between his alcohol-related convictions and his qualifications, functions or duties as a real estate licensee. However, that nexus is nonetheless established.

A regulation is presumed valid, and the burden is placed on the party challenging its validity to prove otherwise. (*Freeman v. Contra Costa County Water Dist.* (1971) 18 Cal.App. 3d 404, 408; *Fox v. San Francisco Residential etc. Bd.* (1985) 169 Cal.App. 3d 651, 655; *Masonite Corp. v. Superior Court* (1994) 25 Cal.App. 4th 1045, 1053.)

For a regulation to be valid, it must (A) be consistent with and not in conflict with the enabling statute and (B) reasonably necessary to effectuate the purpose of the statute. (*Physicians & Surgeons Laboratory, Inc. v. Department of Health Services* (1992) 6 Cal.App. 4th 968, 982, citing Government. Code section 11342.2 (1979).)

The rules of construction and interpretation applicable to statutes should be used in construction and interpretation of administrative regulations. Furthermore, the general rule is that if a statute (or regulation) can be construed in a manner that will uphold its validity, then such a construction should apply. (*Cal. Drive-in Restaurant Ass'n. v. Clark* (1943) 22 Cal. 2d 287, 292). See also *Bryant v. Swoap* (1975) 48 Cal.App. 3d 431, 439: "Where possible, appellate courts must construe statutes and regulations to render them valid.")

It is well-settled that statutes are not to be given a retroactive operation unless it is clearly made to appear that the Legislature intended a retroactive application. (*Aetna Cas. and Surety Co. v. Ind. Acc. Com.* (1947) 30 Cal. 2d 388, 393; *Mir v. Charter Suburban Hosp.* (1994) 27 Cal.App. 4th 1471, 1478.) This principle was recognized by the Supreme Court well over 100 years ago in *Pignaz v. Burnett*, (1897) 119 Cal. 157, 160, where the Court pointed out that retroactive statutes had been "universally reprobated" by legal writers, and that the law presumed against retroactive application. The rule has regularly been applied to statutory amendments, and not just new legislative schemes. (E.g., *Hibernia S. and L. Soc. V. Hayes* (1880) 56 Cal. 297; *General Ins. Co. v. Commerce Hyatt House* (1970) 5 Cal.App. 3d 460, 471.)

A retroactive statute is one which "affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the statute." (*Aetna Cas. and Surety, supra*, 30 Cal. 2d at 391.) However, an agency's promulgation and implementation of regulations is a very different exercise than a legislature's creation of a statute. Regulations or agency rules come in different classifications or degrees. There are substantive rules (where retroactivity is seldom approved by courts). There are also procedural regulations and interpretative rules (regulations) that may have retroactive effect. Stated more simply, if a regulation restates existing law, it will be applied to cases already pending upon its enactment. If it creates new substantive liability, it will be given prospective application only.

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The Department's 11th criterion for "substantial relationship" may very well be viewed as an interpretative rule. An interpretative rule (regulation) merely fleshes out what the agency said in its earlier promulgated substantive regulation. Hence, the interpretative rule has automatic retroactive effect. (Fox, *Understanding Administrative Law*, Third Edition, 1997.) Although there is no case law directly on point, there is a California case which is analogous. (See, *In re Kelley*, 52 Cal. 3d 487 (1990).) In *Kelley*, with facts similar to this matter, the California Supreme Court held there was a nexus between the misconduct (two drunk driving convictions, where the second occurred two and one half years after the first) and an attorney's fitness to practice law. The Court stated, at page 495-496 (citations omitted):

This nexus is established in two ways. First, petitioner's most recent conviction was in violation of a court order directed specifically at petitioner following her first conviction. Petitioner demonstrated a complete disregard for the conditions of her probation, the law and the safety of the public. . . . Disobedience of a court order, whether as a legal representative or as a party, demonstrates a lapse of character and a disrespect for the legal system. . . . Her repeated criminal conduct, and the circumstances surrounding it, are indications of alcohol abuse that is adversely affecting petitioner's private life. We cannot and should not sit back and wait until petitioner's alcohol abuse problem begins to affect her practice of law. . . . Although it is true that petitioner's misconduct caused no harm to her clients, this fact alone does not insulate her from discipline aimed at ensuring that her potentially harmful misconduct does not recur. Lack of past or present adverse impact on an attorney's practice or clients is an appropriate consideration in assessing the amount of discipline warranted in a given case, but it does not preclude imposition of a discipline as a threshold matter. . . . We agree with petitioner that it would be unreasonable to hold attorneys to such a high standard of conduct that every violation of law, however minor, would constitute a ground for professional discipline. But that is not the case here. Petitioner's behavior evidences both a lack of respect for the legal system and an alcohol abuse problem. Both problems, if not checked, may spill over into petitioner's professional practice and adversely affect her representation of clients and her practice of law. Our task in disciplinary cases is preventative, protective and remedial, not punitive. . . . Keeping this in mind, it is our responsibility to impose a discipline that will protect the public from this potential harm.

No reason exists why a Department licensee should be treated differently, for licensing purposes, than an attorney. Both act in fiduciary capacities with their clients. Both have, or may have, access to client funds, and both professions carry the potential for harm to their respective clients if alcohol abuse is left unchecked.

In light of the above, Complainant established a substantial relationship between Respondent's alcohol-related convictions and the qualifications, functions and duties of a real estate licensee, pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(11).

Respondent has failed to satisfy several of the Department's Criteria of Rehabilitation set forth in California Code of Regulations, title 10, section 2912. For example, According to Criterion (a) of those criteria, a minimum of two years should have passed since the most recent substantially related criminal conviction, and a longer period of time should pass if there is a history of substantially related criminal convictions or acts. Fewer than two years have elapsed since Respondent's most recent conviction. He therefore failed to satisfy even the minimum requisite for that criterion. Respondent has not had any of his convictions expunged or dismissed pursuant to Penal Code section 1203.4 [Criterion (c)]. He remains on criminal probation [Criterion (e)]. He has not abstained at all from the use of alcohol, much less for the minimum period of two years [Criterion (f)]. He has not completed paying his court-ordered fine [Criterion (g)].

The fact that Respondent remains on criminal probation is particularly troubling because it cannot be determined whether Respondent's decreased alcohol consumption and avoidance of additional violations of law are the function of his commitment to rehabilitation or his desire to avoid a probation violation and its consequences. Since criminal probationers have a strong incentive to obey the law while under the supervision of the criminal justice system, little weight is generally placed on the fact that an applicant has engaged in good behavior while on probation or parole. (*In re Gossage* (2000) 23 Cal.4th 1080.) Although a substantial period of time passed between the act that gave rise to the 2004 conviction and the conviction itself, Respondent was off of criminal probation only a few months following his 2002 conviction, before he suffered his 2004 conviction.

That fact that Respondent continues to consume alcohol and offered no evidence of alcohol rehabilitation except for the two court-ordered programs, one of which is only partially complete, is further and additional cause for concern that his rehabilitation is seriously incomplete.

Respondent has a history of criminal convictions that are substantially related to the qualifications, functions and duties of a real estate licensee. He is not sufficiently rehabilitated to ensure the protection of the public safety, welfare and interest should he remain licensed.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent, Joao Carlos Nunez, under the
Real Estate Law are revoked.

DATED: March 9, 2005



H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

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DEPARTMENT OF REAL ESTATE

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

By *James B. Clark*

In the Matter of the Accusation of

JOAO CARLOS NUNEZ,

} Case No. H-31284 LA

} OAH No. L-2004110037

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

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, California on **FEBRUARY 24, 2005**, at the hour of **9:00 a.m.**, or as soon thereafter as the matter can be heard, upon the Accusation 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.

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: November 30, 2004

By *Chris Leong*
CHRIS LEONG, Counsel

cc: Joao Carlos Nunez
Frank M. Buda, Esq.
Money Plus Financial Inc./SACTO./OAH

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DEPARTMENT OF REAL ESTATE

CHRIS LEONG, Counsel (SBN 141079)
Department of Real Estate
320 West Fourth Street, Suite 350
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Telephone: (213) 576-6982
-or- (213) 576-6910 (Direct)

By Laura B. Jones

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of
JOAO CARLOS NUNEZ,
Respondent.

No. H-31284 LA

A C C U S A T I O N

The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, for cause of Accusation
against JOAO CARLOS NUNEZ (hereinafter "Respondent"), is informed
and alleges as follows:

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

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II

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

CONVICTIONS

III

On or about January 25, 2002, in the Superior Court of California, County of San Bernardino, State of California, Case No. MWV065510, Respondent was convicted of violating one count of Section 594(B)(3) of the California Penal Code (PC) (Vandalism), a crime involving moral turpitude which is substantially related to the qualifications, functions and duties of a real estate licensee.

IV

On or about January 25, 2002, in the Superior Court of California, County of San Bernardino, State of California, Case No. TWV034398, Respondent was convicted of violating one count of Section 20002(A) of the California Vehicle Code (VC) (Hit and run), a crime involving moral turpitude which is substantially related to the qualifications, functions and duties of a real estate licensee.

V

On or about April 29, 2004, in the Superior Court of California, County of San Bernardino, State of California, Case No. MWV070260, Respondent was convicted of violating one count each of Section 23152(B) VC (DUI .08 or higher blood alcohol), and Section 148.9(A) PC (False representation identification to

1 peace officer), crimes involving moral turpitude which are
2 substantially related to the qualifications, functions and duties
3 of a real estate licensee.

4 AGGRAVATION

5 VI

6 On or about April 15, 1999, in the Municipal Court of
7 Downey Judicial District, County of Los Angeles, State of
8 California, Case No. 9DW02350, Respondent was convicted of
9 violating one count of Section 23152(B) VC (DUI .08 or higher
10 blood alcohol), a crime involving moral turpitude which is
11 substantially related to the qualifications, functions and duties
12 of a real estate licensee.

13 VII

14 On or about June 14, 2001, in the Superior Court of
15 California, County of San Bernardino, State of California, Case
16 No. 398624JN, Respondent was convicted of violating one count of
17 Section 12500(a) VC (Unlicensed driver), a crime involving moral
18 turpitude which is substantially related to the qualifications,
19 functions and duties of a real estate licensee.

20 VIII

21 The conviction set forth in Paragraphs III, IV and V,
22 above constitute cause under Code Sections 490 and 10177(b) for
23 the suspension or revocation of all licenses and license rights
24 of Respondent under the Real Estate Law.

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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
4 action against all licenses and license rights of Respondent,
5 JOAO CARLOS NUNEZ, under the Real Estate Law (Part 1 of
6 Division 4 of the Business and Professions Code), and for such
7 other and further relief as may be proper under other
8 applicable provisions of law.

9 Dated at Los Angeles, California
10 this 22nd day of September, 2004.

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13 Deputy Real Estate Commissioner
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23 cc: Joao Carlos Nunez
24 Money Plus Financial, Inc.
25 Sacto.
26 LF
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