

FILED
FEB 13 2007
DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	No. H-33163 LA
JAHMALL BATISTE ELLIS,)	L-2006100115
)	
)	
Respondent.)	
_____)	

DECISION

The Proposed Decision dated January 17, 2007 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.

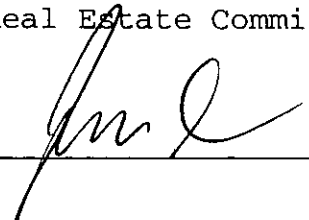
The application for a real estate salesperson license is denied. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on March 5, 2007.

IT IS SO ORDERED _____

2-8-07

JEFF DAVI
Real Estate Commissioner



BEFORE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

JAHMALL BATISTE ELLIS,

Respondent.

Case No. H-33163 LA

OAH No. L-2006100115

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on December 18, 2006, in Los Angeles. Complainant was represented by Lissete Garcia, Staff Counsel. Respondent Jahmall Batiste Ellis was present and represented by Maynard D. Davis, Attorney at Law.

After the conclusion of the hearing, the record was re-opened on December 22, 2006, to receive complainant's Exhibit 13 which was inadvertently taken from the hearing by respondent.

Oral and documentary evidence having been received, the Administrative Law Judge submitted this matter for decision on December 22, 2006, and finds as follows:

FINDINGS OF FACT

1. The Administrative Law Judge takes official notice that, on August 23, 2006, the Statement of Issues, Case No. H-33163 LA, was made and filed by complainant Maria Suarez in her official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of California (hereinafter Department).

2. (A) On or about September 26, 2005, Jahmall Batiste Ellis (hereinafter respondent) filed a Salesperson License Application with the Department pursuant to Business and Professions Code section 10153.3 for issuance of a real estate salesperson's license. Respondent filed said application with the understanding that any license issued would be subject to the conditions of Business and Professions Code section 10153.4.

(B) The records of the Department of Real Estate do not show that respondent has successfully completed all of the courses required under Business and Professions Code section 10153.4.

3. (A) Question No. 25 on the Salesperson License Application asks, "Have you ever been convicted of any violation of law? Convictions expunged under Penal Code Section 1203.4 must be disclosed. However, you may omit minor traffic citations which do not constitute a misdemeanor or felony offense." If an applicant answers "Yes", the application requires that he or she provide a detailed explanation of any convictions, including the court of conviction, arresting agency, date and type of conviction, code violated, and disposition.

(B) In response to Question No. 25, respondent marked the box for the answer "Yes" and disclosed the four convictions which are described in Findings 5 and 7 – 9 below. He attached a letter and certain documents pertinent to those three convictions as well as a fourth conviction. However, he failed to disclose the three convictions set forth in Findings 4 and 10 below.

4. (A) On or about May 20, 1996, before the Municipal Court of the West Los Angeles Judicial District, County of Los Angeles, State of California, in Case No. 95W05037, respondent was convicted on his plea of nolo contendere of violating one count of Penal Code section 484, subdivision (a) (petty theft), a misdemeanor and crime involving moral turpitude.

(B) As a result of his plea, imposition of sentence was suspended and respondent was placed on summary probation for 18 months on condition, in part, that he pay a fine, penalty assessment, and fees totaling \$625; and obey all laws and orders of the court. The court authorized expungement of the conviction if respondent had no further violations. Respondent paid all fines and fees and proceedings were terminated one year later.

(C) The facts and circumstances of respondent's theft conviction were that, on December 10, 1995, he went to the Home Depot store on Jefferson Boulevard in Los Angeles with a cousin. While inside the store, respondent carried a closed circuit television valued at \$299 out of the establishment. He was stopped by store security and said he only wanted to show the television to his "brother" who was parked in his vehicle in front of the store. When questioned by police, the cousin stated he came to the Home Depot to return merchandise and did not know that respondent was going to show him the television. Respondent had only \$5 of cash on his person.

(D) Respondent's conviction for petty theft was for a crime substantially related to the qualifications, functions, or duties of a licensed real estate salesperson. Honesty and integrity are qualities expected of a real estate licensee.

5. (A) On or about September 29, 1997, before the Municipal Court, Consolidated Fresno Judicial District, County of Fresno, State of California, Case No. 97905945-2, respondent was convicted on his plea of no contest of violating one count of Penal Code section 487, subdivision (a) (grand theft), a felony and crime involving moral turpitude.

(B) As result of his plea, imposition of sentence was suspended and respondent was placed on two years formal probation on condition, in part, that he be committed to the county jail for 150 days, obey all laws, be subject to search and seizure, report to the probation officer within two weeks, and complete 200 hours of community service within one year. The court suspended the jail sentence pending respondent's compliance or completion of probation and ordered that the matter may be reduced to a misdemeanor upon completion of the community service.

(C) The facts and circumstances of respondent's conviction were that, on May 4, 1997, while visiting friends at California State University at Fresno, respondent and a college acquaintance attempted to buy two computers from the Costco department store in Clovis at a lesser price. Inside the store, respondent and the other man placed two computers valued at more than \$400 into a box for a futon bed and then resealed the box with tape. They used pillows from the futon to package the computers in the box. Respondent then approached a customer. He told the customer that he had misplaced his Costco membership card and asked the customer to buy the purported furniture item for him. The unsuspecting customer agreed after respondent gave him \$200. Respondent and his friend were arrested outside the store after the customer came out with his wife and child, carrying the futon box containing the computers.

(D) Respondent's conviction for grand theft was for a crime substantially related to the qualifications, functions, or duties of a licensed real estate salesperson. Honesty and integrity are qualities expected of a real estate licensee.

(E) On April 21, 1998, respondent's grand theft offense was declared a misdemeanor under Penal Code section 17. Respondent had completed probation for this offense. On May 1, 1998, the Superior Court of Fresno County granted respondent's petition under Penal Code section 1203.4 and expunged the conviction for grand theft.

6. It was not established that, on or about May 5, 1998, respondent was convicted of driving with a suspended driver's license in violation of Vehicle Code section 14601, subdivision (a), before the Long Beach Municipal Court. Complainant did not present any direct evidence on this allegation and respondent denied the conviction, testifying that the matter had been reduced to a driving violation or infraction.

7. (A) On or about September 21, 2000, before the Superior Court of California, County of Los Angeles, in Case No. 0BH01351, respondent was convicted on his plea of nolo contendere of violating one count of Vehicle Code section 23152, subdivision (b) (driving with .08 percent or more blood alcohol content), a misdemeanor and crime not involving moral turpitude.

(B) As result of his plea, imposition of sentence was suspended and respondent was placed on three years summary probation on condition, in part, that he pay fines and fees totaling \$1,200 or perform 89 hours of community service, complete a three-month first offender alcohol and drug education and counseling program, and not drive without a valid driver's license in his possession and insurance. On January 31, 2001, respondent filed proof with the court that he performed the 89 hours of community service.

(C) The facts and circumstances of respondent's conviction were that, on or about June 20, 2000, respondent drove a motor vehicle under the influence of alcohol after drinking too much at a nightclub celebration of the Los Angeles Lakers professional basketball championship. At 2:45 a.m., sheriff's deputies found respondent passed out behind the wheel of his 1998 Lexus in the center median of La Cienega Boulevard in Los Angeles. His car engine was running, the transmission was in drive, and respondent had his foot on the brake. The deputies turned off the vehicle's ignition and had respondent step out of his car. Respondent could not walk or stand and he became belligerent. At the hearing, respondent disputed the deputies' version of his arrest, testifying that they exaggerated the circumstances of his arrest. He stated he was asleep and had not been driving.

(D) Respondent's conviction for driving while having .08 percent or more blood alcohol content was for a crime not substantially related to the qualifications, functions, or duties of a licensed real estate salesperson.

8. (A) On or about July 8, 2002, before the Superior Court of California, County of Los Angeles, in Case No. 2WL12892, respondent was convicted on his plea of nolo contendere of violating Vehicle Code section 14610, subdivision (a)(1) (possessing a canceled or revoked license) and section 14601.5, subdivision (a) (driving with a suspended or revoked license), misdemeanors and crimes not involving moral turpitude.

(B) As result of his plea, imposition of sentence was suspended. For displaying or possessing a cancelled or revoked license, respondent was placed on three years summary probation on condition, in part, that he pay fines and fees totaling \$1,236 or, in lieu of the fines and fees, serve 13 days in the county jail or perform 13 days of work with Cal Trans, and not drive without a valid license and insurance. For driving with a suspended or revoked license, respondent was placed on three years summary probation and sentenced to 20 additional days of Cal Trans work.

(C) The facts and circumstances of respondent's conviction were that, on May 2, 2002, while driving in Marina del Rey with two companions, respondent was stopped by sheriff's deputies because his vehicle's front license plate was "obscured and unreadable." Inside his car, respondent was found to be in possession of a California driver's license and a New Jersey driver's license, both of which had his photograph and name. The California driver's license was counterfeit. Respondent also had two counterfeit interim or temporary driver's licenses in a briefcase. In his wallet, he also had another counterfeit California driver's license with his photograph but in the name of another person. A DMV check of respondent's license revealed that he was driving on a suspended or revoked driver's license. At the hearing, respondent testified that he was not certain that he did anything illegal. He claimed that he used the different identifications to obtain entrance to nightclubs in different states.

(D) Respondent's conviction for possessing and driving canceled or suspended licenses was for crimes substantially related to the qualifications, functions, or duties of a licensed real estate salesperson. Honesty and integrity are qualities expected of a real estate licensee.

9. (A) On or about June 4, 2003, before the Superior Court of California, County of Los Angeles, in Case No. 3MT04665, respondent was convicted on his plea of nolo contendere of violating one count of Vehicle Code section 14601.1, subdivision (a) (driving with a suspended license) with a prior conviction for the same offense, a misdemeanor and crime not involving moral turpitude. Respondent admitted the prior conviction for purposes of his plea agreement.

(B) As result of his plea, imposition of sentence was suspended and respondent was placed on summary probation for three years on condition, in part, that he pay fines and fees totaling \$1,686 or, in lieu of fine and fees, serve 17 days in the county jail or perform 17 days of work with Cal Trans, not drive without a valid driver's license and insurance. In lieu of jail, fines, and Cal Trans work, the court ordered that respondent may perform 237 hours of community service. On November 17, 2003, the court ordered that the fines, Cal Trans work, and community service be deleted from his conditions of summary probation.

(C) The facts and circumstances of respondent's conviction were that, on or about March 6, 2003, respondent drove his vehicle on the 405 Freeway while his driver's license was suspended. At the hearing, respondent claimed that he did not know that his license had been suspended.

(D) Respondent's conviction for driving on a suspended license was not for a crime substantially related to the qualifications, functions, or duties of a licensed real estate salesperson.

(E) On March 29, 2006, the court terminated respondent's summary probation for this offense three months early and terminated proceedings.

10. (A) On or about September 22, 2003, before the Superior Court of California, County of Los Angeles, in Case No. 3SB06001, respondent was convicted on his plea of nolo contendere of violating one count of Penal Code section 470 (possessing a driver's license or identification with intent to defraud), a misdemeanor and crime involving moral turpitude.

(B) As result of his plea, imposition of sentence was suspended and respondent was placed on three years summary probation on condition, in part, that he pay fines and fees totaling \$1,095 and perform 80 hours of community service. On January 24, 2004, respondent filed proof with the court that he had performed the 80 hours of community service. On March 23, 2004, respondent paid the fines in full and proceedings were terminated.

(C) The facts and circumstances of respondent's conviction were established by respondent's testimony. On or about July 24, 2003, he went to the Sam's Club to return a computer monitor. Respondent was questioned about the return and had in his possession several California drivers' licenses in other people's names. He indicated that he used the identifications to enter nightclubs.

(D) Respondent's conviction for possessing fraudulent driver's licenses was for a crime substantially related to the qualifications, functions, or duties of a licensed real estate salesperson. Honesty and integrity are qualities expected of a real estate licensee.

(E) On March 8, 2006, the court terminated respondent's probation for this offense. On March 27, 2006, the court granted respondent's petition under Penal Code section 1203.4 and expunged the conviction.

11. Respondent failed to disclose or omitted in his application for a real estate license the two convictions set forth in Findings 4 and 10 above. His failure to disclose the two convictions constituted material misstatements of fact required in the real estate license. As such, respondent attempted to procure a real estate license by making material misstatements of fact or knowingly omitting to state material facts in an application for a real estate license.

12. Respondent admits he did not disclose or explain in his real estate application the conviction for petty theft in 1996 and the conviction for possessing a fraudulent driver's license in 2003. Respondent states that he used information from a background check company to list his convictions.

13. Respondent admits his record of criminal convictions although he disputes the circumstances of a couple of his arrests. He has not had any convictions or

contact with law enforcement in the last three years. He is not on probation for any conviction. Three of his convictions have been expunged. Respondent attributes his convictions to his past immaturity and bad decisions made when he was younger.

14. Respondent is now 29 years old. He has been employed as the business manager at MLS Mortgage and Realty Company in Encino for about seven months. He performs administrative duties for the company, such as reviewing time cards and overseeing parking and building access, for which he does not need a real estate license. The real estate broker for the company is Michael L. Stokes. Respondent testified that he disclosed his convictions to his employer.

15. In December 2002, respondent attained a bachelor of science degree in business administration and/or marketing from California State University at Long Beach. Thereafter, he completed a one-year certificate program in music marketing and worked in the music industry for approximately two years. Respondent then worked as an actor before entering the real estate field.

16. Respondent completed a real estate principles course through a home study program and then passed the real estate licensing examination in August 2005. He has not had any recent contact with the sponsoring broker listed on his license application. Respondent desires a career in real estate. He has studied real estate financing and investment and has worked diligently in the past two or three years to obtain a real estate license. Respondent regrets his past criminal history.

* * * * *

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

CONCLUSIONS OF LAW

1. Grounds exist to deny respondent's application for a real estate salesperson's license under Business and Professions Code section 10177, subdivision (b), and section 480, subdivision (a)(1), for convictions of crimes involving moral turpitude and substantially related to the qualifications, functions, and duties of a real estate license, based on Findings 4, 5, and 10 above.

2. Grounds also exist to deny respondent's application for a real estate salesperson's license under Business and Professions Code section 10177, subdivision (a), section 480, subdivision (c), and section 475, subdivision (a)(1), for attempting to procure a real estate license by making material misstatements of fact or knowingly

omitting to state material facts in an application for a real estate license, based on Findings 2 – 11 above.

3. Rehabilitation—Based on Findings 2 – 16 above, it was not established that respondent is fully rehabilitated from his convictions under the criteria set forth in California Code of Regulations, title 10, section 2911. Over an eight year span from 1996 until 2003, respondent had three convictions involving moral turpitude and substantially related to the qualifications, functions, or duties of a real estate licensee. One of these convictions was for felony grand theft, another for petty theft, and another was a misdemeanor that involved his possession of fraudulent driver's licenses. In other words, these three convictions were for crimes that showed a lack of honesty and integrity. Respondent has not committed an offense in over three years and has had two of his convictions expunged. However, it has been less than one year since respondent was discharged from probation supervision. Finally, respondent's misstatement on his license application by failing to disclose all of his convictions has a strong tendency in reason to show that he is not fully rehabilitated from his crimes. For the sake of the public interest and welfare, respondent cannot be issued a real estate license at this time.

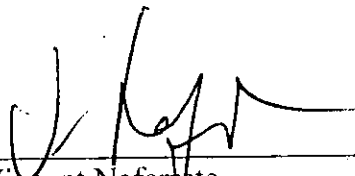
* * * * *

Wherefore, the following Order is hereby made:

ORDER

The application of respondent Jahmall Batiste Ellis for issuance of a real estate salesperson's license shall be denied, based on Conclusions of Laws Nos. 1 - 3 above, jointly and for all. The Statement of Issues, Case No. H-33163 LA, is sustained.

Dated: Jul 17, 2007



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

1 LISSETE GARCIA, Counsel (SBN 211552)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6914

FILED
AUG 24 2006
DEPARTMENT OF REAL ESTATE

By 

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11
12 In the Matter of the Application of) NO. H-33163 LA
13 JAHMALL BATISTE ELLIS,) STATEMENT OF ISSUES
14 Respondent.)

15
16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, for Statement of Issues
18 against JAHMALL BATISTE ELLIS ("Respondent"), is informed and
19 alleges in her official capacity as follows:

20 1.

21 On or about September 26, 2005, Respondent made
22 application to the Department of Real Estate of the State of
23 California for a real estate salesperson license with the
24 knowledge and understanding that any license issued as a result
25 of said application would be subject to the conditions of
26 Section 10153.4 of the California Business and Professions Code.
27

FIRST CAUSE FOR DENIAL
(CRIMINAL CONVICTIONS)

2.

On or about May 20, 1996, in the Municipal Court of West Los Angeles Courthouse Judicial District, County of Los Angeles, State of California, Case No. 95W05037, Respondent pled nolo contendere and was convicted of a violation of Penal Code Section 484(A) (theft of property), a misdemeanor. Said crime involves moral turpitude and bears a substantial relationship under Section 2910, Title 10, Chapter 6, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

3.

On or about September 29, 1997, in the Fresno County Municipal Court, Consolidated Fresno Judicial District, State of California, Case No. 97905945-2, Respondent pled nolo contendere and was convicted of a violation of Penal Code Section 484(A) (grand theft), a felony. Said crime involves moral turpitude and bears a substantial relationship under Section 2910, Title 10, Chapter 6, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

4.

On or about May 5, 1998, in the Long Beach Municipal Court Judicial District, County of Los Angeles, State of California, Case No. 8LL03536, Respondent pled nolo contendere and was convicted of violating Vehicle Code Section 14601.1(A)

1 (driving with suspended license), a misdemeanor. Said crime
2 bears a substantial relationship under Section 2910, Title 10,
3 Chapter 6, California Code of Regulations, to the
4 qualifications, functions or duties of a real estate licensee.

5 5.

6 On or about September 21, 2000, in the Superior Court
7 of California, County of Los Angeles, Case No. 0BH01351,
8 Respondent pled nolo contendere and was convicted of a violation
9 of Vehicle Code Section 23152(B) (driving with .08% or more
10 B.A.C.), a misdemeanor. Said crime bears a substantial
11 relationship under Section 2910, Title 10, Chapter 6, California
12 Code of Regulations, to the qualifications, functions or duties
13 of a real estate licensee.

14 6.

15 On or about July 8, 2002, in the Superior Court of
16 California, County of Los Angeles, Case No. 2WL12892, Respondent
17 pled nolo contendere and was convicted of violating Vehicle Code
18 Sections 14610(A) (display/possess canceled/revoked/etc.
19 driver's license) and 14601.5(A) (drive with suspended-revoked
20 license), misdemeanors. The underlying facts of said crimes
21 involve moral turpitude and bear a substantial relationship
22 under Section 2910, Title 10, Chapter 6, California Code of
23 Regulations, to the qualifications, functions or duties of a
24 real estate licensee.
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27 ///

7.

1 On or about June 4, 2003, in the Superior Court of
2 California, County of Los Angeles, Case No. 3MT04665, Respondent
3 pled nolo contendere and was convicted of a violation of Vehicle
4 Code Section 14601.1(A) (driving with suspended license), a
5 misdemeanor.¹ Said crime bears a substantial relationship under
6 Section 2910, Title 10, Chapter 6, California Code of
7 Regulations, to the qualifications, functions or duties of a
8 real estate licensee.
9

10 8.

11 On or about September 22, 2003, in the Superior Court
12 of California, County of Los Angeles, Case No. 3SB06001,
13 Respondent pled nolo contendere and was convicted of a violation
14 of Penal Code Section 470B (possess driver's license/ID with
15 intent to defraud), a misdemeanor. The underlying facts of said
16 crime involve moral turpitude and bear a substantial
17 relationship under Section 2910, Title 10, Chapter 6, California
18 Code of Regulations, to the qualifications, functions or duties
19 of a real estate licensee.
20

21 9.

22 The crimes of which Respondent was convicted, as
23 alleged in Paragraphs 2 through 8 above, constitute cause for
24 denial of Respondent's application for a real estate license
25

26
27 ¹ Respondent also admitted to a prior conviction of violating Vehicle Code
Section 14601.1(A) on or about May 5, 1998, in the Long Beach Municipal
Court Judicial District, County of Los Angeles, State of California, Case
No. 8LL03536.

1 under Business and Professions Code Sections 475(a)(2), 480(a)
2 and 10177(b).

3 SECOND CAUSE FOR DENIAL
4 (FAILURE TO REVEAL CONVICTIONS)

5 10.

6 In response to Question 25 of the license application,
7 to wit: "HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW?
8 CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE
9 DISCLOSED. HOWEVER, YOU MAY OMIT MINOR TRAFFIC CITATIONS WHICH
10 DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE", Respondent
11 failed to reveal the convictions described in Paragraphs 2, 4
12 and 8 above.

13 11.

14 Respondent's failure to disclose the convictions, as
15 set forth in Paragraphs 2, 4, and 8 above, in his license
16 application, constitutes the attempt to procure a real estate
17 license by fraud, misrepresentation, or deceit, or by making a
18 false statement of material fact required to be revealed in said
19 application, which is grounds for denial of the issuance of a
20 license under Business and Professions Code Sections 475(a)(1),
21 480(c) and/or 10177(a).


22 These proceedings are brought under the provisions of
23 Section 10100, Division 4 of the Business and Professions Code
24 of the State of California and Sections 11500 through 11528 of
25 the California Government Code.
26

27 ///

1 WHEREFORE, the Complainant prays that the above-
2 entitled matter be set for hearing and, upon proof of the
3 charges contained herein, that the Commissioner refuse to
4 authorize the issuance of, and deny the issuance of, a real
5 estate salesperson license to Respondent, JAHMALL BATISTE ELLIS,
6 and for such other and further relief as may be proper in the
7 premises.

8 Dated at Los Angeles, California

9 this 23rd day of August, 2006.

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13 Deputy Real Estate Commissioner
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24 cc: Jahmall Batiste Ellis
25 Dean Dana/General Realty Group, Inc.
26 Maria Suarez
27 Sacto.