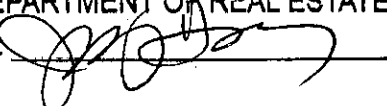


FILED

MAY 15 2007

DEPARTMENT OF REAL ESTATE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA BY: 

* * * * *

In the Matter of the Application of)	No. H-33535 LA
)	
)	L-2007020274
JUAN CARLOS ELIAS, JR.,)
)	
)	
Respondent.)
_____)

DECISION

The Proposed Decision dated April 13, 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.

Pursuant to Section 11517(c)(2)(c) of the Government Code, the following correction is made:

Factual Findings, page 2, paragraph No. 4.
line 1, "for twenty days" is amended to read "for twenty-
two days".

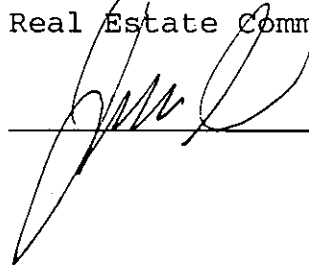
The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a 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 June 4, 2007.

IT IS SO ORDERED 5/9/07.

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JUAN CARLOS ELIAS, JR.,

Respondent.

Case No.: H-33535 LA

OAH No.: L2007020274

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on March 26, 2007.

Cheryl Keily, Staff Counsel, represented the Complainant.

Respondent appeared in person and represented himself.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued and thereafter submitted.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

1. Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, brought the Statement of Issues in her official capacity.

2. Respondent, Juan Carlos Elias, Jr., made application to the Department of Real Estate of the State of California for a real estate salesperson license on June 21, 2005, with the knowledge and understanding that any license issued as a result of said application would be subject to Business and Professions Code section 10153.4, subdivision (c).

3. On January 12, 1998, Respondent, then aged nineteen, and his friends, during a night of "partying" took the vehicle of other persons in retaliation for a prank done by the other persons. As a result of that conduct Respondent was subjected to criminal proceedings. Thereafter, on December 11, 1998, in the Superior Court of California, Southeast District, County of Los Angeles, in Case No. VA046435, Respondent was convicted of violating

California Penal Code section 215, subdivision (a) (Carjacking), a felony. The underlying facts of this criminal conviction involve moral turpitude, and bear a substantial relationship under title 10, Chapter 6, section 2910, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

4. As a result of the conviction Respondent was given total credit for ^{twenty-two} ~~twenty~~ days in custody, fifteen days actual custody, and seven days work time and was ordered to and did pay a fine. He was placed on two years formal probation and did adhere to all conditions of probation. Accordingly, Respondent's motion to dismiss the conviction was granted pursuant to Penal Code section 1203.4, and the crime was, therefore, expunged.

5. Since the time of the conviction in 1998, Respondent has been a productive member of society. He has since married and he together with his wife have four children, his wife's two sons aged twelve and fourteen and his two children, aged seven and three. The family lives as a unit and Respondent, through his work, does provide the financial support of the family unit. At present, Respondent does have stability of family life and does fulfill parental and familial responsibilities.

6. Respondent is presently employed for AT & T Wireless as a retail salesperson of cell phones. Prior to that time, beginning in 1999, Respondent owned a cell phone business operating under a business license issued by the City of Long Beach. That license was always in good standing. Since the time of his 1998 conviction Respondent has worked with diligence, industry and honesty.

7. Respondent is an active member of his local church and acts as a worship director. The church and its director help provide goods and services to the needy. Respondent, therefore, has conscientious involvement in church programs designed to provide social benefits or to ameliorate social problems.

8. Respondent's rehabilitative efforts set forth in Findings 4 through 7 were partially offset by two alcohol related convictions as follows:

- (A) On January 21, 2000, in the Municipal Court of California, Downey Judicial District, County of Los Angeles, in Case No. 9DW06066, Respondent was convicted of violating California Vehicle Code section 23152(B) (Driving with 0.08% or Higher Blood Alcohol), a misdemeanor.
- (B) On January 7, 2004, in the Superior Court of California, County of Orange, in Case No. 03NM10645, Respondent was convicted of violating California Vehicle Code section 23103, subdivision (a) (Reckless Driving) pursuant to California Vehicle Code section 23103.5 (Involvement of Alcohol), a misdemeanor.

9. As a result of the 2000 conviction Respondent was placed on probation, paid a fine and completed a three month first-offender alcohol counseling program. Despite completion of that program, the 2004 conviction occurred. As a result of the 2004 conviction Respondent was placed on five years summary probation, fined and ordered to complete an eighteen month multiple offender alcohol program. Respondent has paid all fines and has completed the court mandated program. He is in present compliance with all conditions of probation.

10. All three convictions resulted from the abuse of alcohol. Respondent now has a change in attitude, brought about by his completion of the multiple offender program (program), and by the shame to himself and to his family caused by his past alcohol abuse. As a result of the program, Respondent has abstained from the use of alcohol and Respondent has attended Alcoholics Anonymous meetings. He has been sober for a time in excess of two years.

11. Subsequent to the 2004 misdemeanor, Respondent completed the 45 hour Real Estate Principles Course, with a score of 94%, in his quest for licensure. He, therefore, has completion of training courses for economic self-improvement.

12. Respondent was open and honest during the application process and disclosed the convictions in his application. Respondent was open and honest in his testimony, and is contrite about his past wrongdoing. At present – given his perseverance and change in attitude – Respondent is a socially and professionally responsible person.

LEGAL CONCLUSIONS

Applicable Authority

1. Business and Professions Code section 480 provides in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any section which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapse, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is

made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of section 1203.4 of the Penal Code.

- - -

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

2. Business and Professions Code section 475 provides in pertinent part:

(a) Notwithstanding any other provision of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

- - -

(2) Conviction of a crime.

3. Business and Professions Code section 10177, subdivision (b) provides:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following. . . .

(b) Entered 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, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

Violations

4. Cause exists for denial of Respondent's application for violations of Business and Professions Code sections 475, subdivision (a)(2); 480, subdivision (a)(1) and 10177, subdivision (b), by reason of Finding 3.

Licensing Considerations

5. California Code of Regulations, title 10, section 2911, sets forth criteria of rehabilitation that have been developed by the Department, pursuant to Business and Professions Code section 482, subdivision (a), to evaluate the rehabilitation of an applicant for issuance of a license in considering whether or not to deny the issuance on account of a crime or act committed by the applicant. Respondent's conviction is eight years remote and, despite aggravating circumstances (Finding 9), Respondent has met a number of the required criteria (Findings 4 through 7, 10, 11 and 12). Accordingly, by reason of Respondent's record of rehabilitation to date, license of Respondent, on a restricted status, is consistent with the public interest.

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 10153.5 of the Business and Professions Code. The restricted license issued to the Respondent shall be subjected to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

- (a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or
- (b) The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

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

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.

4. Respondent's restricted real estate salesperson license is issued subject to the requirements of section 10153.5 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.

5. Pursuant to section 10154, if Respondent has not satisfied the requirements for an unqualified license under section 10153.5, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to section 10153.4 until four years after the date of the issuance of the preceding restricted license.

Dated: April 13, 2007


RICHARD J. LOPEZ

Administrative Law Judge
Office of Administrative Hearings

RJL:rfm

CHERYL D. KEILY, Counsel (SBN 94008)
Department of Real Estate
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Los Angeles, California 90013-1105

Telephone: (213) 576-6982
(Direct) (213) 576-5770

FILED

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DEPARTMENT OF REAL ESTATE

BY: [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	NO. H-33535 LA
)	
JUAN CARLOS ELIAS JR.,)	
)	<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 JUAN CARLOS ELIAS JR., aka Juan C. Elias, aka Juan Elias, aka Juan Carlos Elias, ("Respondent"), is informed and alleges as follows:

1.

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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2.

Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about June 21, 2005, with the knowledge and understanding that any license issued as a result of said application would be subject to the conditions of Business and Professions Code ("Code") Section 10153.4.

3.

(CRIMINAL CONVICTIONS)

On or about December 11, 1998, in the Superior Court of California, Southeast District, County of Los Angeles, in Case No. VA046435, Respondent was convicted of violating California Penal Code Section 215(a) (Carjacking), a felony. The underlying facts of this criminal conviction involve moral turpitude, and bear a substantial relationship under Title 10, Chapter 6, Section 2910, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

4.

In aggravation, on or about January 21, 2000, in the Municipal Court of California, Downey Judicial District, County of Los Angeles, in Case No. 9DW06066, Respondent was convicted of violating California Vehicle Code Section 23152(B) (Driving with 0.08% or Higher Blood Alcohol), a misdemeanor.

5.

On or about January 7, 2004, in the Superior Court of California, County of Orange, in Case No. 03NM10645, Respondent

1 was convicted of violating California Vehicle Code Section
2 23103(a) (Reckless Driving) pursuant to California Vehicle Code
3 Section 23103.5 (Involvement of Drugs or Alcohol), a
4 misdemeanor. The underlying facts of this criminal conviction
5 involve moral turpitude, and bear a substantial relationship
6 under Title 10, Chapter 6, Section 2910, California Code of
7 Regulations, to the qualifications, functions or duties of a
8 real estate licensee.

9 6.

10 The crimes of which Respondent was convicted, as
11 alleged herein above in Paragraphs 3 and 5, constitute cause for
12 denial of Respondent's application for a real estate license
13 under Code Sections 475(a)(2); 480(a)(1) and/or 10177(b).

14 The Statement of Issues is brought under the
15 provisions of Section 10100, Division 4 of the Business and
16 Professions Code of the State of California and Sections 11500
17 and 11529 of the Government Code.

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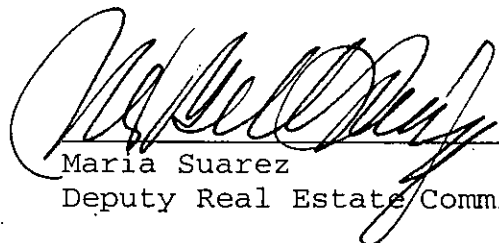
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1 WHEREFORE, Complainant prays that the above entitled
2 matter be set for hearing and, upon proof of the charges
3 contained herein, that the Commissioner refuse to authorize the
4 issuance of, and deny the issuance of, a real estate salesperson
5 license to Respondent, JUAN CARLOS ELIAS JR., and for such other
6 and further relief as may be proper under other provisions of
7 law.

8 Dated at Los Angeles, California
9 this 8th day of February, 2006.

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15 Maria Suarez
16 Deputy Real Estate Commissioner
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25 Cc: JUAN CARLOS ELIAS JR.
26 Maria Suarez
27 Sacto.