

1 On June 6, 2007, Complainant filed its Opposition to Respondent's
2 Hearing Brief. Thereafter, on June 21, 2007, Respondent filed
3 his Reply to Opposition to Respondent's Hearing Brief.

4 Respondent's Reply to Opposition to Respondent's Hearing Brief
5 contained Exhibits 11 and 12, marked only for identification.

6 The case was deemed submitted on June 21, 2007, and all briefs
7 were read and considered.

8 On June 21, 2007, Complainant filed a written objection
9 to Exhibit 11 (letter dated May 24, 2007) and Exhibit 12 (letter
10 dated May 30, 2007). The objection to Exhibit 12 was sustained
11 on the grounds set forth in Complainant's written objections.

12 The objection to Exhibit 11 was overruled, as untimely, in that
13 Exhibit 11 was admitted in evidence, as administrative hearsay,
14 during the course of the hearing.

15 On July 13, 2007, Administrative Law Judge ("ALJ")
16 Lopez, submitted a Proposed Decision which I declined to adopt
17 as my Decision herein.

18 Pursuant to Section 11517(c) of the Government Code of
19 the State of California, Respondent was served with notice of my
20 determination not to adopt the Proposed Decision of the ALJ
21 along with a copy of said Proposed Decision. Respondent was
22 notified that I would decide the case upon the record, the
23 transcript of proceedings held on May 24, 2007, and upon any
24 written argument offered by Respondent and Complainant.

25 On October 4, 2007, Argument was submitted by
26 Respondent.
27

1 On October 12, 2007, Argument was submitted on behalf
2 of Complainant.

3 I have given careful consideration to the record in
4 this case including the transcript of the proceedings of May 24,
5 2007. I have also considered the Argument submitted by
6 Respondent and the Argument submitted on behalf of Complainant.

7 The following shall constitute the Decision of the Real
8 Estate Commissioner in this proceeding:

9 ORDER

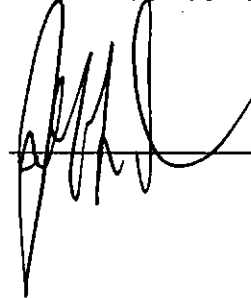
10 WHEREFORE, THE FOLLOWING ORDER is hereby made:

11 The Proposed Decision of the Administrative Law Judge,
12 dated July 13, 2007, shall be adopted as my decision herein.

13 This Decision shall become effective at 12 o'clock noon
14 on December 6, 2007.

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16 IT IS SO ORDERED 11-13-07

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18 JEFF DAVI
19 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MIGUEL ANGEL AGUILAR,

Respondent.

Case No.: H-33724 LA

OAH No.: L2007030111

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 May 24, 2007.

Lissete Garcia, Staff Counsel, represented the Complainant.

Respondent appeared in person and was represented by Paul D. Bojic, Attorney at Law.

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

The record was held open to allow the filing of post hearing briefs. On June 7, 2007, Complainant filed its brief, a Response Brief to Respondent's Trial Brief. Thereafter, on June 21, 2007, Respondent filed his Closing Brief. The Closing Brief contained Exhibits 11 and 12, marked only for identification. The case was deemed submitted on June 21, 2007 and all briefs were read and considered.

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

* Complainant's motion to amend the accusation during the course of the hearing was taken under submission. Upon review of the trial briefs the motion is granted. Accordingly, the accusation is amended by interlineation as follows: on page 7, paragraph 12, line 20, the number 5 is stricken and the number 9 is inserted in lieu thereof.

FACTUAL FINDINGS

Parties and License Status

1. Joseph Aiu, Complainant herein, a Deputy Real Estate Commissioner of the State of California, brought the Accusation in his official capacity.
2. Miguel Angel Aguilar, Respondent herein, is presently licensed by the Department of Real Estate of the State of California as a real estate salesperson under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code.
3. Respondent, pursuant to the provisions of Code section 10153.4, was originally licensed as a salesperson with the Department on August 26, 2005.
4. The Salesperson License Application (application) was completed by Respondent, on or about May 27, 2004, and Respondent's then sponsoring broker signed the Broker Certification on the first page of the application on May 27, 2004.

Pre-Application Convictions

5. On June 26, 2002, in the Superior Court of California, County of Riverside, Case No. RIM421253, Respondent pled guilty to and was convicted of violating Vehicle Code section 12500(A) (unlicensed driver) and section 14601.2(A) (driving with a license suspended or revoked for DUI and having knowledge of such suspension or revocation), misdemeanors. Respondent was sentenced to probation, a fine of \$270.00, restitution of \$100.00 and ordered not to drive without a valid driver's license, insurance and registration. Respondent was found in violation of his probation and his probation was revoked on May 28, 2004, April 22, 2005, and May 4, 2005. Respondent's probation was extended until November 6, 2006.
6. On October 9, 2003, in the Superior Court of California, County of Orange, North Justice Center, Case No. 03NM03560, Respondent pled guilty to and was convicted of violating Vehicle Code section 23152(A) (driving under the influence of drugs or alcohol), a misdemeanor. Respondent was sentenced to three years informal probation, the terms and conditions of which included fines and restitution of \$662.00, completion of a three-month alcohol education program, a restricted driver's license for 90 days and legal mandates, to do not drive with any alcohol or drugs in system and to do not drive without a valid driver's license, insurance and registration. Respondent was found in violation of his probation and his probation was revoked on December 8, 2003, December 31, 2003, July 13, 2004, January 4, 2005, May 18, 2005 and June 14, 2005.

7. On April 28, 2004, in the Superior Court of California, County of Orange, Harbor Justice Center – Newport Beach Facility, Case No. 04HM01851, Respondent pled guilty to and was convicted of violating Vehicle Code section 4462.5(A) (unlawfully display false evidence of registration with the intent to avoid registration fees) and Vehicle Code section 14601.2(A) (driving with a license suspended or revoked for DUI and having knowledge of such suspension or revocation), misdemeanors. Respondent was sentenced to one year informal probation, the terms and conditions of which included ten days county jail, a fine of \$300.00 (vacated as fine is concurrent to Case No. 04HM01109), restitution of \$100.00, and to not drive without a valid driver's license and insurance.

8. On April 28, 2004, in the Superior Court of California, County of Orange, Harbor Justice Center – Newport Beach Facility, Case No. 04HM02109, Respondent pled guilty to and was convicted of violating Vehicle Code section 14601.2(A) (driving with a license suspended or revoked for DUI and having knowledge of such suspension or revocation), a misdemeanor. Respondent was sentenced to one year informal probation, the terms and conditions of which included a fine of \$500.00, restitution of \$100.00, to do not drive with drugs or alcohol in system, and to do not drive without a valid driver's license and insurance.

9. On May 6, 2005, in the Superior Court of California, County of Orange, Central Justice Center, Case No. 05CM01801, Respondent pled guilty to and was convicted of violating Penal Code section 148.9, subdivision (a) (false representation to a peace officer), Vehicle Code section 14601.2, subdivision (a) (driving on suspended or revoked license for DUI and with knowledge of such suspension or revocation), and Vehicle Code section 4462.5 (unlawfully display false evidence of registration with intent to avoid registration fees), misdemeanors. Respondent was sentenced to three years informal probation, the terms and conditions of which included, obey all laws, ordinances and court orders, and to do not drive without valid driver's license and liability insurance, to install a Ignition Interlock Device, serve thirty days in custody, a fine of \$500.00 or serve additional sixteen days jail, and restitution of \$100.00.

Post-Application Convictions

10. On June 23, 2006, in the Superior Court of California, County of Riverside, Case No. SWM040723, Respondent pled guilty to and was convicted of violating Vehicle Code section 14601.1 (driving when his driving privilege was suspended and revoked for a reason other than one listed in Vehicle Code sections 14601, 14601.2, or 14601.5 having knowledge of such suspension and revocation) and Vehicle Code section 40508(A) (willfully failed to appear in accordance with a written agreement), misdemeanors. Respondent was sentenced to three years summary probation, the terms and conditions of which included, to obey all laws, ordinances and court orders, to serve thirty days in custody, to not drive unless properly licensed nor without insurance or valid registration, and pay fines and restitution of \$1,795.00.

11. On June 23, 2006, in the Superior Court of California, County of Riverside, Case No. SWM049663, Respondent pled guilty to and was convicted of violating Vehicle Code section 14601.1(A) (driving with a suspended license), a misdemeanor. Respondent was sentenced to three years summary probation, the terms and conditions of which included fines of \$1,650.00, and restitution of \$100.00.

12. The conduct set forth in Findings 7, 8 and 9, and each of them, when considered with Findings 5 and 6, constitute: willful failure to comply with court orders; conduct which demonstrates a pattern of repeated and willful disregard of law; convictions involving driving and the consumption of alcohol.

13. The conduct set forth in Findings 10 and 11, and each of them, when combined with Findings 5, 6, 7, 8 and 9, constitute: willful failure to comply with court orders; conduct which demonstrates a pattern of repeated and willful disregard of law; convictions involving driving and the consumption of alcohol.

14. The wrongdoing set forth in Findings 10 and 11, and each of them, in light of the wrongdoing set forth in Findings 5, 6, 7, 8, and 9 constitutes a continuum of conduct done knowingly contrary to community standards of justice. Therefore, the wrongdoing set forth in Findings 10 and 11, constitutes moral turpitude.

Disclosure

15. Prior to filing the application, Respondent undertook a reasonable and prudent search of court records to compile the necessary information to provide full disclosure to the Department. Respondent did fully reveal the information required by interrogatory number 27 of the application with regard to the convictions set forth in Findings 6, 7, 8 and 9 but failed to include the information with regard to the conviction set forth in Finding 5. Such failure was the result of inadvertence and not intent. Further, in response to Interrogatory 26 of the license application, to wit: "ARE THERE ANY CRIMINAL CHARGES PENDING AGAINST YOU AT THIS TIME?", Respondent marked the box denoting "No", a truthful answer at the time Respondent answered the Interrogatory.

In sum, in the application and in response to the Department's follow-up request of July 14, 2005, Respondent did provide all the information that he could reasonably glean from existing court records with regard to his pre-application criminal convictions.

16. Respondent's conduct set forth in Finding 15 does not constitute the attempt to procure a real estate license by fraud, misrepresentation, or deceit, or by making a false statement of material fact required to be revealed in said application.

Rehabilitation

17. As a result of his post-application convictions and his prior violations of probation as set forth in the pre-application convictions, Respondent is still on probation and will continue on probation until 2009. A number of the convictions involved the use of alcohol and Respondent has attended court-ordered Alcoholics Anonymous (AA) meetings. However, Respondent did not establish that he has a sobriety date and an AA sponsor. Respondent's expectation is that the Department of Motor Vehicles will reinstate his suspended driving privilege in or about August, 2007. Respondent has yet to complete the payment of all court-ordered fines but he is current in his payments pursuant to a court ordered installment plan.

18. Respondent has work experience under his license for Treehouse Real Estate & Mortgage Inc. He is presently employed by Infinity Mortgage Services, under his license, as a Loan Officer and has been so employed since January, 2007. He has worked for Infinity with dependability, trustworthiness and honesty and, accordingly to Infinity's Vice President of Loan Operations, Respondent has treated all of his clients ethically and Respondent is, therefore, an asset to Infinity. While a licensee of the Department, Respondent has worked under his license with integrity and with fealty.

19. Respondent is at present in a stable relationship and is engaged to be married. That stable relationship, combined with Respondent's present work for Infinity have contributed to Respondent's change in attitude from that which existed during the course of his wrongdoing. That change was demonstrated by the open, honest and sincere testimony of Respondent and his desire to be a socially responsible person and a professionally responsible licensee.

LEGAL CONCLUSIONS

Applicable Law

1. Business and Professions Code section 10177 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, or may suspend or revoke the license of a corporation or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

- (a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or any salesperson, by fraud, misrepresentation, or deceit, or by making any material misstatement of fact in an application for a real estate license, license renewal or reinstatement.
- (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 crime 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.

2. Business and Professions Code section 490 provides:

A board 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. 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 action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, 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.

3. 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 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 Code if it involves:

- - -
- (9) Contempt of court or willful failure to comply with a court order.
 - (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.
- - -

4. The crimes set forth in Findings 7, 8 and 9, are substantially related to the qualifications, functions and duties of a licensee of the Department under California Code of Regulations, title 10, section 2910, subdivisions (a)(9), (a)(10) and (a)(11), by reason of Finding 12, and therefore cause exists for discipline of Respondent's license under Business and Professions Code section 490.

5. The crimes set forth in Findings 10 and 11, are substantially related to the qualifications, functions and duties of a licensee of the Department under California Code of Regulations, title 10, section 2910, subdivisions (a)(9), (a)(10) and (a)(11), by reason of Finding 13 and therefore cause exists for discipline of Respondent's license under Business and Professions Code section 490.

6. Respondent's convictions set forth in Findings 10 and 11, constitute cause for discipline of Respondent's license pursuant to Business and Professions Code section 10177, subdivision (b) in that the crimes are crimes of moral turpitude by reason of Finding 14.

7. No cause exists for discipline of Respondent's license pursuant to any Business and Professions Code section, including sections 475, subdivision (a), 480, subdivision (c) or 10177, subdivision (a), by reason of Finding 16.

Penalty Considerations

8. The Department has issued Criteria of Rehabilitation set forth in California Code of Regulations, title 10, section 2912. According to that regulation, the Guidelines are to be considered in evaluating the rehabilitation of a licensee who is subjected to disciplinary action as a result of a crime. Applying the Guidelines to this case Respondent, by reason of Findings 10 and 11, has failed to meet the initial criterion in that the convictions are less than

two years remote. Respondent's rehabilitation to date is insufficient to allow continued licensure without restriction or discipline. Respondent's rehabilitation to date – as summarized in Findings 17, 18 and 19 – is sufficient to allow licensure on a restricted (probationary) status under the close and continuing supervision of his employing broker.

ORDER

All licenses and licensing rights of Respondent Miguel Angel Aguilar under the Real Estate law are revoked, provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to section 10156.5 of the Business and Professions Code if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.
4. Six months after the issuance of the restricted license, and at six months intervals thereafter during the term of any restricted license issued pursuant to this Decision, Respondent shall provide proof acceptable to the Real Estate Commissioner that, during the preceding six months, Respondent has, each and every week, attended one or more sessions of Alcoholics Anonymous or similar 12 Step or substance abuse program, or that such attendance in any week was impractical due to travel for work, the illness of Respondent or a member of Respondent's family, vacation, incarceration, residential treatment for substance abuse, extreme personal hardship for Respondent or a member of Respondent's family, or family emergency. Respondent shall submit such proof to the Los Angeles Crisis Response Team Manager of the Department of Real Estate. The Commissioner may suspend the restricted license issued to Respondent pending a hearing held in accordance with section


11500, *et seq.*, of the Government Code, if such proof is not timely submitted as provided for herein, or as provided or in a subsequent agreement between the Respondent and the Commissioner. The suspension shall remain in effect until such proof is submitted or until Respondent enters into an agreement satisfactory to the Commissioner to provide such proof, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

5. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

- (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
- (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating activities for which a real estate license is granted.

6. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

Dated: July 13, 2007


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm

1 2007, and any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of May 24, 2007, at the Los Angeles office of
6 the Department of Real Estate unless an extension of the time is
7 granted for good cause shown.

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9 must be submitted within 15 days after receipt of the argument of
10 Respondent at the Los Angeles office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: _____

14 9-14-07
15 JEFF DAVIS
16 Real Estate Commissioner
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BEFORE THE
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STATE OF CALIFORNIA

In the Matter of the Accusation of:

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Respondent.

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OAH No.: L2007030111

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12. The conduct set forth in Findings 7, 8 and 9, and each of them, when considered with Findings 5 and 6, constitute: willful failure to comply with court orders; conduct which demonstrates a pattern of repeated and willful disregard of law; convictions involving driving and the consumption of alcohol.

13. The conduct set forth in Findings 10 and 11, and each of them, when combined with Findings 5, 6, 7, 8 and 9, constitute: willful failure to comply with court orders; conduct which demonstrates a pattern of repeated and willful disregard of law; convictions involving driving and the consumption of alcohol.

14. The wrongdoing set forth in Findings 10 and 11, and each of them, in light of the wrongdoing set forth in Findings 5, 6, 7, 8, and 9 constitutes a continuum of conduct done knowingly contrary to community standards of justice. Therefore, the wrongdoing set forth in Findings 10 and 11, constitutes moral turpitude.

Disclosure

15. Prior to filing the application, Respondent undertook a reasonable and prudent search of court records to compile the necessary information to provide full disclosure to the Department. Respondent did fully reveal the information required by interrogatory number 27 of the application with regard to the convictions set forth in Findings 6, 7, 8 and 9 but failed to include the information with regard to the conviction set forth in Finding 5. Such failure was the result of inadvertence and not intent. Further, in response to Interrogatory 26 of the license application, to wit: "ARE THERE ANY CRIMINAL CHARGES PENDING AGAINST YOU AT THIS TIME?", Respondent marked the box denoting "No", a truthful answer at the time Respondent answered the Interrogatory.

In sum, in the application and in response to the Department's follow-up request of July 14, 2005, Respondent did provide all the information that he could reasonably glean from existing court records with regard to his pre-application criminal convictions.

16. Respondent's conduct set forth in Finding 15 does not constitute the attempt to procure a real estate license by fraud, misrepresentation, or deceit, or by making a false statement of material fact required to be revealed in said application.

Rehabilitation

17. As a result of his post-application convictions and his prior violations of probation as set forth in the pre-application convictions, Respondent is still on probation and will continue on probation until 2009. A number of the convictions involved the use of alcohol and Respondent has attended court-ordered Alcoholics Anonymous (AA) meetings. However, Respondent did not establish that he has a sobriety date and an AA sponsor. Respondent's expectation is that the Department of Motor Vehicles will reinstate his suspended driving privilege in or about August, 2007. Respondent has yet to complete the payment of all court-ordered fines but he is current in his payments pursuant to a court ordered installment plan.

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LEGAL CONCLUSIONS

Applicable Law

1. Business and Professions Code section 10177 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, or may suspend or revoke the license of a corporation or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

- (a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or any salesperson, by fraud, misrepresentation, or deceit, or by making any material misstatement of fact in an application for a real estate license, license renewal or reinstatement.
- (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 crime 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.

2. Business and Professions Code section 490 provides:

A board 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. 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 action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, 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.

3. 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 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 Code if it involves:

- - -
- (9) Contempt of court or willful failure to comply with a court order.
 - (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.
- - -

4. The crimes set forth in Findings 7, 8 and 9, are substantially related to the qualifications, functions and duties of a licensee of the Department under California Code of Regulations, title 10, section 2910, subdivisions (a)(9), (a)(10) and (a)(11), by reason of Finding 12, and therefore cause exists for discipline of Respondent's license under Business and Professions Code section 490.

5. The crimes set forth in Findings 10 and 11, are substantially related to the qualifications, functions and duties of a licensee of the Department under California Code of Regulations, title 10, section 2910, subdivisions (a)(9), (a)(10) and (a)(11), by reason of Finding 13 and therefore cause exists for discipline of Respondent's license under Business and Professions Code section 490.

6. Respondent's convictions set forth in Findings 10 and 11, constitute cause for discipline of Respondent's license pursuant to Business and Professions Code section 10177, subdivision (b) in that the crimes are crimes of moral turpitude by reason of Finding 14.

7. No cause exists for discipline of Respondent's license pursuant to any Business and Professions Code section, including sections 475, subdivision (a), 480, subdivision (c) or 10177, subdivision (a), by reason of Finding 16.

Penalty Considerations

8. The Department has issued Criteria of Rehabilitation set forth in California Code of Regulations, title 10, section 2912. According to that regulation, the Guidelines are to be considered in evaluating the rehabilitation of a licensee who is subjected to disciplinary action as a result of a crime. Applying the Guidelines to this case Respondent, by reason of Findings 10 and 11, has failed to meet the initial criterion in that the convictions are less than

two years remote. Respondent's rehabilitation to date is insufficient to allow continued licensure without restriction or discipline. Respondent's rehabilitation to date – as summarized in Findings 17, 18 and 19 – is sufficient to allow licensure on a restricted (probationary) status under the close and continuing supervision of his employing broker.

ORDER

All licenses and licensing rights of Respondent Miguel Angel Aguilar under the Real Estate law are revoked, provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to section 10156.5 of the Business and Professions Code if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.
4. Six months after the issuance of the restricted license, and at six months intervals thereafter during the term of any restricted license issued pursuant to this Decision, Respondent shall provide proof acceptable to the Real Estate Commissioner that, during the preceding six months, Respondent has, each and every week, attended one or more sessions of Alcoholics Anonymous or similar 12 Step or substance abuse program, or that such attendance in any week was impractical due to travel for work, the illness of Respondent or a member of Respondent's family, vacation, incarceration, residential treatment for substance abuse, extreme personal hardship for Respondent or a member of Respondent's family, or family emergency. Respondent shall submit such proof to the Los Angeles Crisis Response Team Manager of the Department of Real Estate. The Commissioner may suspend the restricted license issued to Respondent pending a hearing held in accordance with section

11500, *et seq.*, of the Government Code, if such proof is not timely submitted as provided for herein, or as provided or in a subsequent agreement between the Respondent and the Commissioner. The suspension shall remain in effect until such proof is submitted or until Respondent enters into an agreement satisfactory to the Commissioner to provide such proof, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

5. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

- (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
- (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating activities for which a real estate license is granted.

6. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

Dated:

July 13, 2007



RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm

not adopted

2.

1
2 Respondent, pursuant to the provisions of Code Section
3 10153.4, was originally licensed as a salesperson with the
4 Department on or about August 26, 2005. Respondent's license is
5 subject to suspension if Respondent has not met the educational
6 requirements by February 26, 2007, pursuant to Section 10153.4
7 of the Business and Professions Code.

8
9 3.

10 On or about June 23, 2006, in the Superior Court of
11 California, County of Riverside, Case No. SWM040723, Respondent
12 pled guilty to and was convicted of violating California Vehicle
13 Code Section 14601.1 (driving when his driving privilege was
14 suspended and revoked for a reason other than one listed in
15 Section 14601, 14601.2, or 14601.5 of the Vehicle Code, having
16 knowledge of such suspension and revocation) and Vehicle Code
17 Section 40508(A) (willfully failed to appear in accordance with
18 a written agreement), misdemeanors. The underlying facts of
19 said crime involve moral turpitude and bear a substantial
20 relationship under Section 2910, Title 10, Chapter 6, California
21 Code of Regulations, to the qualifications, functions or duties
22 of a real estate licensee. Respondent was sentenced to three
23 years summary probation, the terms and conditions of which
24 included, obey all laws, ordinances and court orders, serve 30
25 days in custody, not drive unless properly licensed nor without
26 insurance or valid registration, and pay fines and restitution
27 of \$1,795.00.

4.

1
2 On or about June 23, 2006, in the Superior Court of
3 California, County of Riverside, Case No. SWM049663, Respondent
4 pled guilty to and was convicted of violating California Vehicle
5 Code Section 14601.1(A) (driving with a suspended license), a
6 misdemeanor. The underlying facts of said crime involve moral
7 turpitude and bear a substantial relationship under Section
8 2910, Title 10, Chapter 6, California Code of Regulations, to
9 the qualifications, functions or duties of a real estate
10 licensee. Respondent was sentenced to three years summary
11 probation, the terms and conditions of which included, 30 days
12 in custody, fines of \$1,650.00, and restitution of \$100.00.

5.

14 On or about May 6, 2005, in the Superior Court of
15 California, County of Orange, Central Justice Center, Case
16 No. 05CM01801, Respondent pled guilty to and was convicted of
17 violating California Penal Code Section 418.9(a) (false
18 representation to a peace officer), Vehicle Code Section
19 14601.2(a) (driving on suspended or revoked license for DUI and
20 had knowledge of such suspension or revocation), and Vehicle
21 Code Section 4462.5 (unlawfully display false evidence of
22 registration with intent to avoid registration fees),
23 misdemeanors. The underlying facts of said crime involve moral
24 turpitude and bear a substantial relationship under
25 Section 2910, Title 10, Chapter 6, California Code of
26 Regulations, to the qualifications, functions or duties of a
27

1 real estate licensee. Respondent was sentenced to three years
2 informal probation, the terms and conditions of which included,
3 obey all laws, ordinances and court orders, do not drive without
4 valid driver's license and liability insurance, install Ignition
5 Interlock Device, serve 30 days in custody, fine of \$500.00 or
6 serve additional 16 days jail, and restitution of \$100.00.

7 6.

8 On or about April 28, 2004, in the Superior Court of
9 California, County of Orange, Harbor Justice Center-Newport
10 Beach Facility, Case No. 04HM02109, Respondent pled guilty to
11 and was convicted of violating California Vehicle Code
12 Section 14601.2(A) (driving with a license suspended or revoked
13 for DUI and having knowledge of such suspension or revocation),
14 a misdemeanor. The underlying facts of said crime involve moral
15 turpitude and bear a substantial relationship under
16 Section 2910, Title 10, Chapter 6, California Code of
17 Regulations, to the qualifications, functions or duties of a
18 real estate licensee. Respondent was sentenced to one year
19 informal probation, the terms and conditions of which included
20 30 days county jail, fine of \$500.00, restitution of \$100.00, do
21 not drive with drugs or alcohol in system, and do not drive
22 without a valid driver's license and insurance.

24 ///

25 ///

26 ///

27 ///

7.

1
2 On or about April 28, 2004, in the Superior Court of
3 California, County of Orange, Harbor Justice Center-Newport
4 Beach Facility, Case No. 04HM01851, Respondent pled guilty to
5 and was convicted of violating California Vehicle Code
6 Section 4462.5(A) (unlawfully display false evidence of
7 registration with the intent to avoid registration fees) and
8 Section 14601.2(A) (driving with a license suspended or revoked
9 for DUI and having knowledge of such suspension or revocation),
10 misdemeanors. The underlying facts of said crime involve moral
11 turpitude and bear a substantial relationship under Section
12 2910, Title 10, Chapter 6, California Code of Regulations, to
13 the qualifications, functions or duties of a real estate
14 licensee. Respondent was sentenced to one year informal
15 probation, the terms and conditions of which included 10 days
16 county jail, fine of \$300.00 (vacated as fine is concurrent to
17 Case No. 04HM01109), restitution of \$100.00, and not drive
18 without a valid driver's license and insurance.
19

20 MATTERS IN AGGRAVATION

21 8.

22 On or about October 9, 2003, in the Superior Court of
23 California, County of Orange, North Justice Center, Case
24 No. 03NM03560, Respondent pled guilty to and was convicted of
25 violating California Vehicle Code Section 23152(A) (driving
26 under the influence of drugs or alcohol), a misdemeanor.
27 Respondent was sentenced to 3 years informal probation, the

1 terms and conditions of which included fines and restitution of
2 \$662.00, complete three-month alcohol education program,
3 restricted driver's license for 90 days, obey all laws, do not
4 drive with any alcohol or drugs in system, do not drive without
5 a valid driver's license, insurance and registration.

6 Respondent was found in violation of his probation and his
7 probation was revoked on December 8, 2003, December 31, 2003,
8 July 13, 2004, January 4, 2005, May 18, 2005, and June 14, 2005.

9 9.

10 On or about June 26, 2002, in the Superior Court of
11 California, County of Riverside, Case No. RIM421253, Respondent
12 pled guilty to and was convicted of violating California Vehicle
13 Code Section 12500(A) (unlicensed driver) and Section 14601.2(A)
14 (driving with a license suspended or revoked for DUI and having
15 knowledge of such suspension or revocation), misdemeanors.

16 Respondent was sentenced to probation, fine of \$270.00,
17 restitution of \$100.00, and not drive without a valid driver's
18 license, insurance and registration. Respondent was found in
19 violation of his probation and his probation was revoked on
20 May 28, 2004, April 22, 2005, and May 4, 2005. Respondent's
21 probation was extended until November 6, 2006.

23 ///

24 ///

25 ///

26 ///

27 ///

10.

1
2 The crimes of which Respondent was convicted, as
3 alleged in Paragraphs 3 through 7 above, constitute cause under
4 Code Sections 490 and/or 10177(b) for the suspension or
5 revocation of all licenses and license rights of Respondent
6 under the Real Estate Law.

11.

7
8 On or about June 8, 2005, Respondent made original
9 application to the Department for a real estate salesperson
10 license with the knowledge and understanding that any license
11 issued as a result of said application would be subject to the
12 conditions of Section 10153.4 of the Code. The State Public
13 Benefits Statement was dated June 8, 2005. The application was
14 not dated.

12.

15
16 In response to Question 26 of the license application,
17 to wit: "ARE THERE ANY CRIMINAL CHARGES PENDING AGAINST YOU AT
18 THIS TIME?", Respondent marked the box denoting "No" and failed
19 to reveal the criminal case and charges described in Paragraph 5
20 above.
21

13.

22
23 Respondent's failure to disclose the criminal case and
24 charges, as set forth in Paragraph 5 above, in his license
25 application, constitutes the attempt to procure a real estate
26 license by fraud, misrepresentation, or deceit, or by making a
27 false statement of material fact required to be revealed in said

1 application, which is grounds for denial of the issuance of a
2 license under Business and Professions Code Sections 475(a)(1),
3 480(c) and/or 10177(a).

4 WHEREFORE, Complainant prays that a hearing be
5 conducted on the allegations of this Accusation and, that upon
6 proof thereof, a decision be rendered imposing disciplinary
7 action against all licenses and/or license rights of Respondent,
8 MIGUEL ANGEL AGUILAR, under the Real Estate Law (Part 1 of
9 Division 4 of the Business and Professions Code) and for such
10 other and further relief as may be proper under other applicable
11 provisions of law.

12 Dated at San Diego, California

13 this 25 day of January, 2007.

14
15
16 
17 JOSEPH AIU
18 Deputy Real Estate Commissioner
19
20
21
22
23

24 cc: Miguel Angel Aguilar
25 Treehouse Real Estate & Mortgage, Inc.
26 Sacto.
27 Joseph Aiu