

AUG 29 2007

STATE OF CALIFORNIA

BY: [Signature]

* * * * *

No. H-33833 LA

L-2007050084

Respondent .

The Proposed Decision dated July 20, 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, 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.

noon on This Decision shall become effective at 12 o'clock
September 18, 2007.

IT IS SO ORDERED

JEFF DAVIS
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JORGE GOMEZ, JR.,

Respondent.

Case No.: H-33833 LA

OAH No.: L2007050084

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 June 25, 2007.

Alvaro Mejia, 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

Parties

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, Jorge Gomez, Jr., made application to the Department of Real Estate of the State of California for a real estate salesperson license on January 30, 2006, 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).

Criminal Convictions

3. During Respondent's youth, Respondent suffered convictions which are set forth in the Findings which follow.

4. On April 17, 1992, Respondent broke into a vehicle and took objects of value from the vehicle, thus subjecting Respondent to criminal proceedings. Thereafter, on May 4, 1992, in the Municipal Court of Torrance, County of Los Angeles, State of California, Case No. 92M04761, Respondent was convicted of one count of violating Penal Code section 459 (burglary), a crime by its facts and circumstances involving moral turpitude. The crime is substantially related under California Code of Regulations, title 10, section 2910, to the qualifications, functions and duties of a real estate licensee.

5. On April 14, 1994, Respondent was in his parked vehicle after having imbibed alcohol to excess. He was confronted by a police officer acting in his official capacity. He was handcuffed but managed to flee the scene. Subsequently, he was arrested and subjected to criminal proceedings. Thereafter, on July 5, 1994, in the Municipal Court of Alhambra, County of Los Angeles, State of California, Case No. 94M01960, Respondent was convicted of one count of violating Vehicle Code section 23152, subdivision (a) (driving under the influence), and one count of violating Penal Code section 836.6(b) (escape/attempt escape from police officer). The crimes, when taken together, involve moral turpitude. The crimes, when taken together, are substantially related under California Code of Regulations title 10, section 2910, to the qualifications, functions and duties of a real estate licensee.

6. While still on probation for the offenses set forth in Finding 5, Respondent, again, drank to excess, and Respondent, again, was pulled over by the police and arrested. During an interrogation by the police he gave a police officer a name different from his actual name. As a result, on August 15, 1994, in the Municipal Court of West Covina, County of Los Angeles, State of California, Case No. 94M10575, Respondent was convicted of one count of violating Vehicle Code section 23152, subdivision (b) (driving with blood alcohol .08% or more), and one count of violating Penal Code section 148.9 (false identity to peace officer). The crimes, when taken together, involve moral turpitude. The crimes, when taken together, are substantially related under California Code of Regulations, title 10, section 2910, to the qualifications, functions and duties of a real estate licensee.

7. As a result of his alcohol related convictions, Respondent's driver's license was suspended by the Department of Motor Vehicles. Despite the suspension of his driving privileges, Respondent drove his vehicle to and from work on July 5 and July 14, 1998, resulting in the following misdemeanors: On November 25, 1998, in the Municipal Court of Metropolitan Courthouse Judicial District, County of Los Angeles, State of California, in Case No. 8MT13028, Respondent was convicted of violating Vehicle Code section 14601.2, subdivision (a) (driving when privilege suspended), a misdemeanor; on September 29, 1998, in the Municipal Court of Bellflower Courthouse Judicial District, County of Los Angeles, State of California, in Case No. 8LC03058, Respondent was, again, convicted of violating Vehicle Code section 14601.2, subdivision(a) (driving when privilege suspended for prior

DUI conviction), a misdemeanor. Neither of the misdemeanors involve moral turpitude and neither of the misdemeanors are substantially related to the qualifications, functions or duties of a real estate licensee. However, in aggravation, each misdemeanor does constitute an antisocial and wrongful act.

Disclosure

8. In response to Question 25 of his license application, to wit: "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," Respondent answered "Yes," but failed to reveal the conviction set forth in Finding 4. Given the remoteness of the conviction Respondent, in a sincere and credible attempt to provide full disclosure to the Department, did rely on a criminal court record background check by a private firm which failed to uncover the fifteen year old conviction set forth in Finding 4. The remote conviction did, ultimately, come to the attention of the Department and Respondent did, when asked to do so, provide all relevant facts concerning the conviction to the Department. Respondent had no intent other than to provide full disclosure. Respondent's failure to do so – given the remoteness of the conviction – was the result of a reasonable and prudent reliance of the results of the background check. Accordingly, Respondent's failure to reveal the conviction set forth in Finding 4 does not constitute the attempt to procure a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact, or knowingly making a false statement of material fact required to be revealed in the application.

Mitigation

9. When Respondent was a youth his mother was terminally ill with cancer. He was close to his mother, and to overcome his grief, he drank and drank heavily. He also then associated with a group of juveniles his own age who drank to excess and engaged in antisocial behavior. These circumstances do not excuse Respondent's wrongdoing but do mitigate same.

Rehabilitation

10. Respondent has – some years ago – completed probation in all cases and has completed all court ordered requirements and obligations. He has suffered no other conviction since his last conviction – nine years ago – in 1998.

11. Shortly before Respondent's mother died in 1997 she made Respondent promise that he would abstain from drinking. With that advise from his mother as an impetus and with his criminal probation as further impetus, Respondent attended Alcoholics Anonymous (AA) meetings in Southgate and under the aegis of his AA sponsor, Respondent has been sober for the last nine years.

12. At present, Respondent and his father own Picaro Trucking Company, with articles of incorporation on file with the Secretary of State. Respondent has worked with Picaro with honesty, diligence and industry.

13. Respondent is soon to be married to the mother of his three children. He has lived with his prospective wife for sixteen years and the children live with Respondent and his prospective wife. The children – a girl aged fourteen, a boy aged thirteen and a girl aged eight – are all good students. The family does regularly attend Holy Family Church and Respondent is active in church affairs. Respondent maintains close relationship with his father. His family provides strong emotional support to Respondent and Respondent reciprocates by fulfilling all familial responsibilities. Respondent does have stability of family life.

14. On December 7, 2005, Respondent did receive a certificate of completion for mastering the forty-five hour real estate principles course with a score of 94%. He also did receive a boot camp diploma, from Exit Desert Ocean Realty (Exit) on August 18, 2006, in recognition of his real estate knowledge and skills. Respondent, therefore, has completed necessary training for economic self-improvement. Additionally, Respondent has attended Computer Career Connection and has obtained computer skills applicable to property management.

15. Both Brenda Rice, a manager and broker associate of Exit and Julie Linden, the owner of Exit and Respondent's sponsoring broker, filed character letters, on behalf of Respondent, based on their personal knowledge of Respondent. In the credible opinion of Ms. Rice, Respondent is devoted to becoming an educated and informed realtor and Respondent is "a very dedicated individual." In the credible opinion of Ms. Linden Respondent has a good work ethic, has integrity, and if licensed will be a "great asset" to Exit.

16. Respondent was open and honest in his testimony and did demonstrate a change in attitude from that which existed at the time of the crimes. That change was brought about by a number of factors: by the death of his mother; by new and different social relationships; by Respondent's growth and maturity; and by Respondent's impending marriage and the desire to be a good husband and a good father. The change was evidenced by the credible testimony of Respondent; and by the absence of subsequent convictions and by present conformity to societal rules. Respondent's sponsoring broker, Julie Linden, will undertake the necessary supervision over Respondent's real estate activities should he receive a restricted license. At present, Respondent is a socially and professionally responsible person and has successfully matured from a youthful wrongdoer into a thirty-four year old productive member of society.

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 time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following the 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 480 provides in pertinent part:

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

- (1) Been convicted of a crime.

- - -

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 professions for which application is made.

- - -

- (c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

3. Business and Professions Code section 475 provides, in part:

- (a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:
- (1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.
 - (2) Conviction of a crime.

Violations

4. Respondent's convictions, as set forth in Findings 4, 5 and 6, constitute cause for denial of Respondent's application pursuant to Business and Professions Code section 10177, subdivision(b) in that the crimes are crimes of moral turpitude.

5. The crimes set forth in Findings 4, 5 and 6, are substantially related to the qualifications, functions and duties of a licensee of the Department under California Code of Regulations, title 10, section 2910 and therefore cause exists for denial of Respondent's application under Business and Professions Code section 480, subdivision (a)(1).

6. Cause exists for denial of Respondent's application pursuant to Business and Professions Code sections 475, subdivision(a)(2), by reason of Findings 4, 5 and 6.

7. No cause exists for denial of Respondent's application pursuant to Business and Professions Code section 10177, subdivision (a), by reason of Finding 8.

8. No cause for denial of Respondent's application pursuant to Business and Professions Code sections 475, subdivision (a)(1) or Business and Professions Code section 480, subdivision (c), by reason of Finding 8.

Licensing Considerations

9. 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 Respondent.

Respondent's convictions are more than two years remote and, thus, Respondent has met the initial factor set forth in the criteria, and by reason of Findings 10 through 16, Respondent has substantially complied with the remaining applicable criteria. Accordingly, by reason of Respondent's record of rehabilitation to date, licensure 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
- (a) 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 license 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: July 20, 2007


RICHARD J. LOPEZ

Administrative Law Judge
Office of Administrative Hearings

RJL:rfm

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FILED
MAR 20 2007
DEPARTMENT OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	NO. H-33833 LA
JORGE GOMEZ JR.,)	<u>STATEMENT OF ISSUES</u>
Respondent:)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against JORGE GOMEZ JR. ("Respondent"), is informed and alleges in her official capacity as follows:

I

Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about January 30, 2006, with the knowledge and understanding that any license issued as a result of said application would be subject to the conditions of Section 10153.4 of the California Business and Professions Code.

II

CRIMINAL CONVICTION

On or about July 5, 1994, in the Municipal Court of Alhambra, County of Los Angeles, State of California, Case No. 94M01960, Respondent JORGE GOMEZ JR. was convicted of one (1) count of violating California Vehicle Code Section 23152(a) (driving under the influence), and one (1) count of violating California Penal Code Section 836.6(b) (escape/attempt escape from police officer), crimes involving moral turpitude which are substantially related under Title 10, Chapter 6, Section 2910, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

III

On or about August 15, 1994, in the Municipal Court of West Covina, County of Los Angeles, State of California, Case No. 94M10575, Respondent JORGE GOMEZ JR. was convicted of one (1) count of violating California Vehicle Code Section 23152(b) (driving with blood alcohol .08% or more), and one (1) count of violating California Penal Code Section 148.9 (false identity to peace officer), crimes involving moral turpitude which are substantially related under Title 10, Chapter 6, Section 2910, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

IV

On or about May 4, 1992, in the Municipal Court of Torrance, County of Los Angeles, State of California, Case No.

1 92M04761, Respondent JORGE GOMEZ JR. was convicted of one (1)
2 count of violating California Penal Code Section 459 (burglary),
3 a crime involving moral turpitude which is substantially related
4 under Title 10, Chapter 6, Section 2910, California Code of
5 Regulations, to the qualifications, functions or duties of a
6 real estate licensee.

7 V

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

13 VI

14 FAILURE TO REVEAL CONVICTION

15 In response to Question 25 of his license application,
16 to wit: "HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW?
17 CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE
18 DISCLOSED. HOWEVER, YOU MAY OMIT MINOR TRAFFIC CITATIONS WHICH
19 DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE," Respondent
20 answered "Yes," but failed to reveal the conviction described in
21 paragraph IV above.
22

23 VII

24 Respondent's failure to reveal the conviction set
25 forth herein in his license application constitutes the attempt
26 to procure a real estate license by fraud, misrepresentation, or
27 deceit, or by making a material misstatement of fact, or

1 knowingly making a false statement of material fact required to
2 be revealed in said application, which is grounds for denial of
3 the issuance of a license under Business and Professions Code
4 Sections 475(a)(1), 480(c), and/or 10177(a).

5 These proceedings are brought under the provisions of
6 Section 10100, Division 4 of the Business and Professions Code
7 of the State of California and Sections 11500 through 11528 of
8 the Government Code.

9 WHEREFORE, Complainant prays that the above-entitled
10 matter be set for hearing and, upon proof of the charges
11 contained herein, that the Commissioner refuse to authorize the
12 issuance of, and deny the issuance of, a real estate salesperson
13 license to Respondent, JORGE GOMEZ JR., and for such other and
14 further relief as may be proper under other provisions of law.

15 Dated at Los Angeles, California

16 this 13th day of March, 2007.

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19 
20 Maria Suarez
Deputy Real Estate Commissioner

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24
25 cc: Jorge Gomez Jr.
26 Julie Louise Linden
27 Maria Suarez
Sacto.