

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues of:

JOSHUA MAURICIO CHAIREZ,

Respondent.

Case No. H-33933 LA

OAH No. L2007060074

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on August 7, 2007, in Los Angeles, California.

Lisette Garcia, Counsel, represented complainant Janice Waddell.

Jonathan Kissel, Attorney at Law, represented respondent.

Complainant seeks to deny respondent's real estate salesperson's license application based on allegations that respondent suffered three criminal convictions. Respondent presented evidence in mitigation and rehabilitation in support of licensure.

Oral and documentary evidence was presented at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant filed the Statement of Issues in her official capacity as a Deputy Real Estate Commissioner of the State of California.

2. On July 5, 2006, respondent filed an application for licensure as a real estate salesperson. He has not completed all courses required pursuant to Business and Professions Code section 10153.4.

3. a. On November 2, 2000, in the Superior Court, County of Los Angeles, State of California, in case number 0MT11316, respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level higher than .08 percent), a misdemeanor. The court suspended imposition of sentence and placed respondent on summary probation for 36 months on terms and conditions that included service of 48 hours in county jail, payment of \$1,420 in fines and fees, and completion of a three-month alcohol counseling program.

b. The facts and circumstances surrounding this conviction are that while having a blood alcohol content greater than .08 percent, respondent drove on the freeway and rear-ended another vehicle.

4. a. On September 8, 2005, in the Superior Court, County of Los Angeles, State of California, in case number 5AL02325, respondent was convicted, on his plea of guilty, of violating Vehicle Code section 31 (providing false information to a peace officer), a misdemeanor crime involving moral turpitude and substantially related to the qualifications, duties and functions of a real estate licensee. The court suspended imposition of sentence and placed respondent on summary probation for 3 years on terms and conditions that included payment of \$130 in fines and fees.

b. On March 29, 2005, respondent repeatedly denied that he was the driver of a vehicle involved in a single-vehicle traffic collision, when in fact he was the driver.

5. a. On October 26, 2006, in the Superior Court, County of Los Angeles, State of California, in case number 6MP06110, respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b), a misdemeanor. The court suspended imposition of sentence and placed respondent on summary probation for 60 months on terms and conditions that included service of 96 hours in county jail, with credit for 48 hours, payment of \$1,749 in fines and fees, and completion of an 18-month alcohol counseling program.

b. On June 9, 2006, respondent, after having consumed at least three or four beers, hit a parked car and attempted to leave the scene. A subsequent breath test yielded a .18 percent blood alcohol level.

6. Respondent's convictions set forth in factual finding numbers 3 and 5 are substantially related to the qualifications, functions, and duties of a real estate salesperson by reason of California Code of Regulations, title 10, section 2910, subdivision (a)(11), in that they are two convictions involving driving and use or consumption of alcoholic beverages.

7. Respondent's alcohol-related convictions, taken together, involve moral turpitude in the existing circumstances, as respondent's underlying actions display extreme disregard for his safety and that of others.

8. Respondent complied with the terms and conditions of the 2000 probation order. He has paid fines owed. However, he violated the 2005 criminal probation order when he suffered the 2006 conviction. He is still on probation for the last two convictions. He expressed regret about his conduct that led to the convictions.

9. On November 13, 2006, respondent enrolled in the court-ordered alcohol counseling program, Right-On Programs. He stopped drinking alcoholic beverages in June or July 2006 and is benefiting from the program.

10. Respondent is 25 years old. He lives with an older brother. He no longer socializes with those he was acquainted with at the time of the last conviction.

11. Respondent has worked as a real estate assistant in the offices of real estate broker Robert E. Silva (Silva). Silva and real estate salesperson Paul Argueta wrote letters in support of respondent's application, attesting to his good character and diligence.

LEGAL CONCLUSIONS

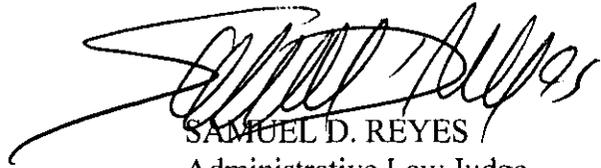
1. Cause exists pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b), to deny respondent's application because he was convicted of crimes involving moral turpitude and substantially related to the qualifications, functions, and duties of a real estate licensee, by reason of factual finding numbers 3 through 7.

2. All evidence presented in mitigation and rehabilitation has been considered. In terms of the Department's rehabilitation criteria, found at California Code of Regulations, title 10, section 2911, respondent has satisfied very few of the applicable ones. Thus, he has abstained from use of alcohol (criterion (f)); he paid all required court-ordered fines (criterion (g)); and has new and different social and business relationships from those which existed at the time of the convictions and substance abuse (criterion (m)). On the other hand, less than two years have passed since the latest conviction (criterion (a)), and he is still on probation (criterion (e)); he presented no evidence of completion or sustained enrollment in educational activities (criterion (i)), or of significant involvement in community activities to provide social benefits and to ameliorate social problems (criterion (l)); and, while he testified that he is a different person, no other witness testified about this change in attitude from the time of the conviction (criterion (n)). In light of the foregoing, respondent has presented insufficient evidence of rehabilitation to warrant issuance of a license at this time. The order that follows, therefore, is necessary for the protection of the public.

ORDER

The application for licensure as a real estate salesperson filed by Joshua Mauricio Chairez is denied.

DATED: 9/5/07


SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

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FILED
APR 26 2007
DEPARTMENT OF REAL ESTATE

By _____

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of) NO. H-33933 LA
)
JOSHUA MAURICIO CHAIREZ,) STATEMENT OF ISSUES
)
Respondent.)

The Complainant, Janice Waddell, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against JOSHUA MAURICIO CHAIREZ ("Respondent"), is informed and alleges in her official capacity as follows:

I

On or about July 5, 2006, Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license, 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 Section 10153.4.

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II

1 On or about October 26, 2006, in the Superior Court of
2 California, County of Los Angeles, Metropolitan Courthouse
3 Judicial District, Case No. 6MP06110, Respondent was convicted
4 of violating California Vehicle Code Section 23152(B) (driving
5 with B.A.C. of 0.08% or more), a misdemeanor. The underlying
6 facts of said crime involve moral turpitude and bear a
7 substantial relationship under Section 2910, Title 10,
8 Chapter 6, California Code of Regulations, to the
9 qualifications, functions or duties of a real estate licensee.
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11 III

12 On or about September 8, 2005, in the Superior Court
13 of California, County of Los Angeles, Alhambra Courthouse
14 Judicial District, Case No. 5AL02325, Respondent was convicted
15 of violating California Vehicle Code Section 31 (give false
16 information to a peace officer), a misdemeanor. The underlying
17 facts of said crime involve moral turpitude and bear a
18 substantial relationship under Section 2910, Title 10,
19 Chapter 6, California Code of Regulations, to the
20 qualifications, functions or duties of a real estate licensee.
21

22 IV

23 On or about November 2, 2000, in the Superior Court of
24 California, County of Los Angeles, Metropolitan Courthouse
25 Judicial District, Case No. 0MT11316, Respondent was convicted
26 of violating California Vehicle Code Section 23152(B) (driving
27 with B.A.C. of 0.08% or more), a misdemeanor. The underlying

1 facts of said crime involve moral turpitude and bear a
2 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 V

6 The crimes of which Respondent was convicted, as
7 alleged in Paragraphs II, III, and IV above, constitute cause
8 for denial of Respondent's application for a real estate license
9 under Business and Professions Code Sections 475(a)(2), 480(a),
10 and 10177(b).

11 These proceedings are brought under the provisions of
12 Section 10100, Division 4 of the Business and Professions Code
13 of the State of California and Sections 11500 through 11528 of
14 the California Government Code.

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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, JOSHUA MAURICIO
6 CHAIREZ, and for such other and further relief as may be proper
7 in the premises.

8 Dated at Los Angeles, California

9 this 24 day of April, 2007.

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14 Deputy Real Estate Commissioner
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24 cc: Joshua Mauricio Chairez
25 Las Casas Realty, Inc./George B. Izquierdo
26 Sacto.
27 Janice Waddell