

MAR - 7 2008

STATE OF CALIFORNIA

BY: [Signature]

* * * * *

No. H-34219 LA

L-2007090284

Respondent.

DECISION

IT IS SO ORDERED March 7, 2008

JEFF DAVI
Real Estate Commissioner

By **WAYNE S. BELL**
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. H-34219 LA

THOMAS LANG,

OAH No.: 2007090284

Respondent

PROPOSED DECISION

On November 8, 2007, Deborah Myers, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter in Los Angeles, California.

Maria Suarez (Complainant), a Deputy Real Estate Commissioner of the State of California, was represented by Cheryl Keily, Staff Counsel.

Thomas Lang (Respondent) was present and represented himself.

Oral and documentary evidence was received. The matter was submitted for decision and the record was closed. On December 5, 2007, on her own motion, the ALJ reopened the record to allow Respondent to submit evidence that his felony conviction was reduced to a misdemeanor and expunged pursuant to Penal Code section 17, subdivision (b), and 1203.4, as the hearing was scheduled to be heard on December 7, 2007. Respondent timely submitted a minute order of the proceedings, which is marked for identification as Exhibit D. Complainant did not object to the admission of the minute order (Exhibit 6). Exhibit D is admitted. The matter was submitted and the record was closed on January 4, 2008.

FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. The Accusation was filed by Maria Suarez, a Deputy Real Estate Commissioner of the State of California, acting in her official capacity.
2. Respondent has been licensed as a real estate salesperson since August 20, 2005. His salesperson license will expire on August 19, 2009 unless renewed.

Conviction

3. On ~~January 23~~ ^{march 17}, 2006, in the Superior Court of California, County of San Bernardino, in Case No. FSB053183, Respondent was convicted, on his guilty plea, of violating Vehicle Code section 4463, subdivision (a), (falsification of a smog certificate), a felony and crime of moral turpitude substantially related to the qualifications, functions and duties of a real estate salesperson under California Code of Regulations, title 10, section 2910, subdivision (a)(4).

4. Imposition of sentence was suspended and Respondent was placed on formal probation for three years. He was ordered to serve 90 days in county jail and was eligible for the work release program. Respondent was further ordered to pay fines and fees totaling \$2,359.35, complete a 52-hour drug rehabilitation and testing program, and to surrender his smog technician license.

5. The facts and circumstances underlying the conviction are that Respondent held a smog technician certificate, owned a smog test station, El Nica, and held a smog check test only station license and an automotive repair dealer registration through the Bureau of Automotive Repair (BAR). On September 1, 2005, one of Respondent's employee's, Callejas, "clean-piped" 16 vehicles.¹ On September 8, 2005, the Callejas "clean-piped" 17 vehicles, entering Respondent's license number into the smog computer as the testing technician. Respondent entered into a plea bargain agreement to plead guilty to one count of violating Vehicle Code section 4463, subdivision (a), and the remaining 35 counts were dismissed.

Revocation of BAR licenses

6. Respondent entered into a stipulated settlement with the BAR which revoked his certificate, license and registration, effective October 10, 2006. He admitted each and every charge and allegation in Accusation No. 79/06-46 (Exhibit 4): the test station made misleading statements and committed fraud by certifying the vehicles had passed inspection; the test station failed to comply with regulations and provisions of the Motor Vehicle Inspection program by failing to properly perform emissions control tests and issue electronic certificates; the test station and Respondent aided and abetted the employee, who was unlicensed, by allowing him to perform functions which required a license; Respondent failed to perform smog inspections and properly test vehicles as required by the Health and Safety Code and the BAR's regulations; and Respondent admitted to falsely issuing the 17 smog certificates for which his employee had improperly used his license. Respondent closed his shop and now rents the space to another business.

¹ Clean-piping is a process by which the wand of the emissions testing machine is placed in a different vehicle than the one reportedly tested, resulting in the passing of the test and the improper issuance of a certificate of compliance.

Mitigation

7. In mitigation of his crime, Respondent credibly testified that he was new to the automotive repair business and was naïve about its operations. In April 2005, after leaving a long and successful career as an engineer and a division manager at a large corporation, he invested in what he believed was a profitable auto repair shop. Respondent thought it would be easy to control the profits and losses of the business, and he became licensed by June of that year. Respondent hired Callejas, whom he believed to be a reputable mechanic and smog technician. Callejas' advanced skills led Respondent to believe that Callejas was trustworthy and experienced. Callejas was knowledgeable about automotive contracts, dealers, and other mechanics, and provided a source of potential business for Respondent's new shop, and Respondent felt Callejas would be an asset to his business. Respondent was not aware that Callejas was not licensed because Callejas posted a false license and used another technician's license number, that of 'Petway'. Respondent was not aware that Callejas had been disciplined by the BAR and that his license had been revoked because Callejas posted a false license. Callejas convinced him to open a second shop which he could run, and Respondent trusted him. Respondent visited the shop where Callejas worked once to twice weekly, and felt the reports from the smog machine matched the receipts. The BAR video surveillance established that Callejas was the individual who clean-piped the vehicles while using Respondent's and Petway's license number as the testing technicians. Respondent did not realize his own license was being misused because he was running two shops and failed to sufficiently supervise the operations of the shop in which Callejas worked. Respondent did not see the red flags that should have warned him that business was "too good" to be true.

Rehabilitation

8. Respondent satisfied the conditions of his criminal probation. He completed sixty days of electronic monitoring, at a cost of \$1,447. Respondent completed the 26-week Acacia drug and alcohol counseling program, at a cost of \$520. During the program, he was tested for illegal drug use almost daily, and each of his tests were clean. Respondent paid \$2,359.35 in fees and fines. Respondent impressed his probation officer and a criminal judge, who approved and granted his petition to terminate his probation early, reduce his felony conviction to a misdemeanor and to expunge his conviction. There was no evidence of previous or subsequent criminal convictions.

9. Respondent was credible in attitude and demeanor when he accepted responsibility for failing to properly supervise his employee and for failing to safeguard his own license, which resulted in the improper testing and false issuance of a total of 35 smog certificates. Respondent appeared earnest and humbled by the experience, describing how the conviction turned his life upside down. He was ashamed and could not face his wife and children. However, he told his family and

friends about his conviction because he was upset and did not want to hide it from them. Respondent expressed his regret and remorse for his actions. Respondent evinced a change in attitude and demonstrated he is capable of law-abiding conduct.

10. Respondent is 46 years old. He is married and has two children, ages 15 and 16. He earned a Bachelor of Arts degree in Industrial Engineering, and a Master's degree in Manufacturing. For twenty years, he worked for Hermetic Seal Corporation and was a division manager for 10 years who supervised 125 people. Respondent is now a real estate salesperson for Goldenkey Properties. He manages real estate properties. His broker, Michael Durkelman, knows of his conviction.

11. Respondent described himself as a very devout Catholic who is active in his church. He is a member of the Legion of Merit, and he helps bring communion twice weekly to the Cameron Senior Center.

12. Respondent holds a notary public commission with the Secretary of State. The evidence did not establish whether any disciplinary action had been initiated against his commission.

13. This conviction appears to be grounded in an isolated, aberrant act.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to suspend or revoke Respondent's real estate salesperson license pursuant to Business and Professions Code section 490, and 10177, subdivision (b) for conviction of a crime, as set forth in Findings 3, 4, and 5. Business and Professions Code sections 490 and 10177, subdivision (b) authorize the commissioner to suspend or revoke a real estate license for having a felony conviction which is substantially related to the qualifications, functions and duties of a real estate licensee. Respondent's crime is substantially related to the qualifications, functions and duties under California Code of Regulations, title 10, section 2910, subdivision (a)(4) because it involves the employment of falsehood to achieve an end.

2. Cause does not exist to suspend or revoke Respondent's real estate salesperson license pursuant to Business and Professions Code section 480, subdivision (a)(3), because that section governs the grounds for the denial of an application for a real estate license.

3. Cause exists to suspend or revoke Respondent's real estate salesperson license pursuant to Business and Professions Code 10177, subdivision (f) for having committed an act as a licensee which was grounds for revocation of a license, as set forth in Finding 6. Respondent's entered into a stipulated settlement with the BAR

admitting the allegations in the Accusation and revoking his license.

4. In evaluating whether Respondent should maintain his salesperson license, factors in mitigation of the crime and the BAR license revocations are considered, along with evidence of rehabilitation since the crime.

5. In mitigation, Respondent unknowingly hired a dishonest mechanic, Callejas, with a revoked license. Without Respondent's knowledge or consent, Callejas used Respondent's license and another's license to perform invalid emissions tests, and to falsely issue certificates of compliance. The evidence did not establish that Respondent performed any of these improper tests himself. The evidence did not establish that Respondent performed any clean-piping himself. The evidence did not establish that Respondent intended to commit fraud on the public. Rather, Respondent was responsible for supervising Callejas, and failed to effectively do so, resulting in violations of clean air codes and regulations and the false issuance of smog certificates

6. Respondent has made significant steps in his rehabilitation. He has met many of the Department's criteria of rehabilitation set forth in California Code of Regulations, title 10, section 2912. Two years have passed since his conviction (Subd. (a).) He has paid his fines. He complied with the terms of his probation, which was terminated early. Respondent's felony conviction has been reduced to a misdemeanor and expunged. (Subd. (c), (e), & (g).) He is fulfilling his familial obligations. (Subd. (j).) He is conscientiously involved in his church and volunteers at a local senior center twice a week. (Subd. (j).) Respondent acknowledged his failings, his guilt, expressed remorse and evinced a change of attitude since the incident. (Subd. (m).)

7. In evaluating all of these factors, it appears that Respondent has learned from his failure to properly supervise his employee. It appears that is single, isolated act of an otherwise sophisticated business man which will not likely be repeated. Therefore, the public interest will be protected with the following order.

ORDER

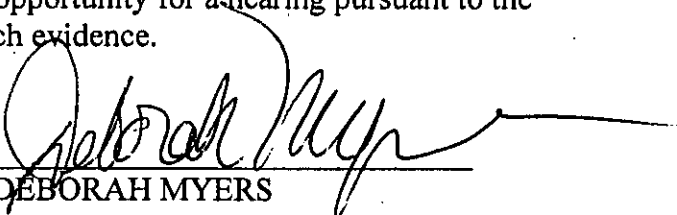
WHEREBY THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent 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 therefor 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. 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 to activities for which a real estate license is required.
5. 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: February 4, 2008


DEBORAH MYERS
Administrative Law Judge
Office of Administrative Hearings

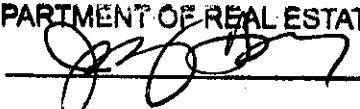
7/20/07
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4 Los Angeles, California 90013-1105

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6 (Direct) (213) 576-5770

FILED

AUG 22 2007

DEPARTMENT OF REAL ESTATE

BY: 

8
9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of) No. H- 34219 LA
13 THOMAS LANG,) A C C U S A T I O N
14 Respondent.)
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16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against THOMAS LANG, aka Thomas A. Lang, aka Thomas Alfonso
19 Lang, ("Respondent") alleges as follows:

20 1.

21 The Complainant, Maria Suarez, a Deputy Real Estate
22 Commissioner of the State of California, makes this Accusation
23 in her official capacity.

24 2.

25 Respondent is presently licensed and/or has license
26 rights under the Real Estate Law, Part 1 of Division 4 of the
27

1 California Business and Professions Code ("Code"), as a real
2 estate salesperson.
3

4 (CRIMINAL CONVICTION)

5 3.

6 On or about March 17, 2006, in the Superior Court of
7 California, County of San Bernardino, San Bernardino District,
8 in Case No. FSB053183, Respondent was convicted of violating
9 California Vehicle Code section 4463(a) (Falsification of Smog
10 Certificate), a felony. The underlying facts of this crime
11 involve moral turpitude, which bear a substantial relationship
12 under Section 2910, Title 10, Chapter 6, California Code of
13 Regulations to the qualifications, functions or duties of a real
14 estate licensee.
15

16 4.

17 The crime of which Respondent was convicted, as
18 described in Paragraph 3, above, constitutes cause under
19 Sections 490 and 10177(b) of the Code for the suspension or
20 revocation of the license and license rights of Respondent under
21 the Real Estate Law.

22 5.

23 (LICENSE DISCIPLINE)

24 On or about October 10, 2006, the State of California,
25 Department of Consumer Affairs, Bureau of Automotive Repair, in
26 Case No. 79/06-46, revoked the Smog Check, Test Only Station
27 License of Respondent (dba El Nica), License No. TE239869, and

1 Respondent's Advanced Emission Specialist Technician License,
2 License No. EA148550, and permanently invalidated the Automotive
3 Repair Dealer Registration, Registration No. AE239869, issued to
4 Respondent (dba El Nica) on the grounds that Respondent violated
5 California Business & Professions Code Sections 9884.7(a)(1)
6 (Making or Authorizing Untrue Statement) and 9884.7(a)(4)
7 (Engaging in Fraud), as well as various provisions of the Health
8 & Safety Code.

9 6.

10 The acts resulting in the disciplinary action taken
11 with respect to Respondent's Smog Check, Test Only Station
12 License, Advanced Emission Specialist Technician License, and
13 Automotive Repair Dealer Registration, as alleged herein above
14 in Paragraph 5, constitute cause under Sections 480(a)(3) and/or
15 10177(f) of the Code for the suspension or revocation of the
16 license and license rights of Respondent under the Real Estate
17 Law.

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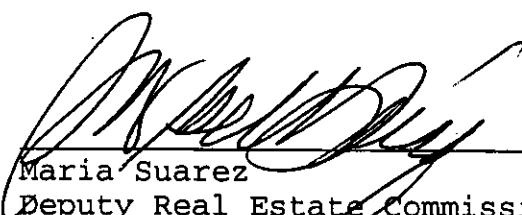
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all the licenses and license rights of
5 Respondent, THOMAS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

9 Dated at Los Angeles, California
10 this 16th day of August, 2007.

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16 Maria Suarez
17 Deputy Real Estate Commissioner
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25 cc: THOMAS LANG
26 MDHT Corporation
27 Maria Suarez
Sacto.