

FILED
FEB. 11, 2009
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By ca

In the Matter of the Application of
AMBROSIO ACOSTA, JR.,
Respondent.

No. H-34805 LA
L-2008060261

DECISION

The Proposed Decision dated January 2, 2009, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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

Factual Findings, page 2, paragraph 5(A), "August 6, 1996" is corrected to read "September 6, 1996."

Conditions "5" and "6" of the Order are not adopted and shall not be a part of the Decision.


The application for a real estate broker license is denied, but the right to a restricted real estate salesperson is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy of Section 11522 is attached hereto for the information of respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is attached hereto.

This Decision shall become effective at 12 o'clock noon on March 3, 2009.

IT IS SO ORDERED 2/4/09

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

AMBROSIO ACOSTA, JR.;

Respondent.

Case No. H-34805 LA

OAH No.: L2008060261

PROPOSED DECISION

Deborah Myers-Cregar, Administrative Law Judge, Office of Administrative Hearings, heard this matter on December 2, 2008, in Los Angeles, California.

Lisette Garcia, Staff Counsel, represented Maria Suarez (Complainant).

Mary Work, Attorney at Law, represented Ambrosio Acosta, Jr. (Respondent).

Oral and documentary evidence was received. The record was closed and the matter was submitted.

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

1. The Statement of Issues was filed by Maria Suarez, a Deputy Real Estate Commissioner of the State of California, acting in her official capacity.
2. On December 5, 2005, Respondent submitted his application for a real estate salesperson license to the Department of Real Estate (Department). The application was denied, a Statement of Issues was filed and Respondent requested a hearing. Subsequently, Respondent withdrew his application and the Department dismissed the Statement of Issues.

3. On August 23, 2007, Respondent submitted his application for a real estate broker license to the Department. That application was denied, the Statement of Issues was filed, and Respondent requested an administrative hearing.

4. The basis for the denial is that Respondent was convicted of theft, forging an official seal, and three subsequent convictions which serve as factors in aggravation. Further, in his 2005 application, Respondent disclosed only four of his six convictions. He did not disclose his two convictions involving dishonesty which were substantially related to the qualifications, functions or duties of a real estate licensee.

Convictions

5. (A) On ~~August~~^{September} 6, 1996, in the Superior Court of California, County of Los Angeles, in Case No. 6E03070, Respondent was convicted, on his nolo contendere plea of violating Penal Code section 472 (forging an official seal), a misdemeanor.

(B) Imposition of sentence was suspended and Respondent was placed on summary probation for two years. Respondent was ordered to perform 15 days of Cal Trans service. On October 22, 1997, Respondent was found in violation of his probation for driving with a suspended license. His probation was reinstated. On July 24, 2007, his conviction was expunged under Penal Code section 1203.4.

(C) The facts and circumstances underlying the conviction are that, at age 18, Respondent had a false identification in his possession. Respondent explained he used it to get into clubs.

6. (A) On August 24, 1998, in the Superior Court of California, County of Los Angeles, Central District Judicial District, in Case No. 8SE04132, Respondent was convicted, on his nolo contendere plea, of violating Penal Code section 484, subdivision (a) (theft), a misdemeanor and a crime of moral turpitude.

(B) Imposition of sentence was suspended and Respondent was placed on summary probation for three years under certain terms and conditions, including serving 10 days in county jail. On July 25, 2007, Respondent's conviction was expunged pursuant to Penal Code section 1203.4.

(C) The facts and circumstances underlying the conviction are that Respondent took several Sony Play Station games from a delivery made at his work.

Factors in Mitigation

7. Respondent was a young adult, age 18 and 20, at the time he committed these crimes. He admitted he was young, naïve, and running around with the wrong crowd in his neighborhood.

Factors in Aggravation

8. Respondent has four other convictions. On July 23, 1996, Respondent was convicted of driving under the influence of alcohol. On October 22, 1997, he was convicted of driving with a suspended license. On November 2, 2001, he was convicted of driving under the influence of alcohol. On November 7, 2002, he was convicted of driving with a suspended license.

9. Respondent complied with the terms of his probations and these convictions were expunged in 2007.

Failure to reveal convictions

10. On December 5, 2005, Respondent did not disclose his 1996 or 1998 convictions on his initial application for real estate salesperson license. (see Factual Finding 4). He only listed his two drunk-driving convictions and his two driving with suspended license convictions.

11. Respondent testified he did not intend to not disclose two of his convictions. He explained he forgot about them because they occurred so long ago. When he realized he had forgotten to list them, he hired an attorney to avoid making further mistakes. However, his testimony was not persuasive because he also testified he went to the courthouses to collect all the information he needed.

Rehabilitation

12. Respondent is now 30 years old. He married his wife, Carmen, two years ago. He helps to financially support his mother. On June 3, 2005, Respondent graduated from California State University, Fullerton with a Bachelor of Arts degree in Business Administration. Respondent is very proud that he is the first person in his family to graduate from college. He attended four colleges and completed his course requirements in nine years. Respondent overcame a challenging socio-economic childhood to advance his education. While in college, he completed the Latino College Leadership Institute course to develop his leadership skills. He is no longer in contact with the negative influences from his childhood.

13. Respondent joined the Santa Ana Chamber of Commerce to develop his business contacts. He is a member of Toastmasters International and has received recognition for his speaking skills. Respondent has volunteered at his church, the

American Old Catholic Church, and his pastor wrote a letter describing him as a valued member of his parish, a good role-model and responsible. Respondent has also volunteered for the Heart to Heart Foundation, a fundraiser for domestic violence and child abuse programs.

14. Since 2006, Respondent has worked for Vantage Real Estate. He has experience in loan processing and the commercial leasing aspect of the company. Respondent eventually wants to open up his own branch office.

15. Respondent has the support of his sister, and a business colleague who both testified at the administrative hearing in support of his licensure. Respondent's sister, Vanessa Acosta, testified that Respondent is a role model to her family. One of seven children, Respondent grew up in a neighborhood with negative influences such as gangs and violence. Respondent took on a paternal role over the family when his parents separated and his mother received welfare. Respondent worked, went to college, and provided his mother with financial support. Respondent has inspired Vanessa to pursue her college education at Cal State University Long Beach.

16. Jeffrey Hakin, a licensed salesperson and the president of commercial services at Vantage Real Estate, testified Respondent was his assistant. Respondent sets appointments for tenants of commercial leases. Mr. Hakin believed Respondent would be an asset to their company as a licensee. Mr. Hakin was aware of the Statement of Issues and Respondent's convictions and is still supportive of his licensure. Mr. Hakin represented that the licensed broker at Vantage, Marcus Garcia, supported Respondent's licensure as well.

LEGAL CONCLUSIONS

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

1. Cause exists to deny Respondent's real estate broker license application pursuant to Business and Professions Code section 475 subdivision (a)(2), section 480, subdivision (a) and section 10177, subdivision (b), for conviction of a crime, as set forth in Findings 5 and 6.

2. Two of Respondent's convictions involve dishonesty and moral turpitude and are substantially related to the qualifications, functions and duties of a real estate licensee under California Code of Regulation, title 10, section 2910. However, those convictions occurred in 1996 and 1998 and are accordingly remote in time.

3. Cause exists to deny Respondent's real estate salesperson license application pursuant to Business and Professions Code section 475 subdivision (a) (1), section 480, subdivision (c), and section 10177, subdivision (a), for failure to disclose a conviction, as set forth in Findings 10 and 11.

4. Business and Professions Code sections 475, subdivision (a)(1) and 480, subdivision (c), require a determination of whether Respondent knowingly made a false statement of fact required to be revealed on the application.

5. In his December 2005 application, Respondent did not disclose two of his six convictions, the two which involved dishonesty. His explanation that he forgot about them was not persuasive. Respondent had a higher duty to investigate the details of his convictions. While he certainly alerted the Department to the existence of his criminal record, he did not provide the full details of his record required of him. Therefore, his failure to disclose was knowing.

6. Business and Professions Code section 10177, subdivision (a), requires a determination of whether Respondent attempted to procure a real estate license by fraud, misrepresentation, deceit, or making a material misstatement of fact in his application.

7. Respondent knowingly made a false statement of fact required to be revealed on the application, as set forth in Legal Conclusion 5. The next question is whether his misstatement of fact was material. Black's Law Dictionary, 7th Edition, defines material as "[o]f such a nature that knowledge of the item would affect a person's decision-making process; significant; essential."

8. A violation of Business and Professions Code section 10177, subdivision (a), and section 480, subsection (c) exists only if the non-disclosure was of a material fact. The misstatements were material because the convictions were substantially related to the qualifications, functions and duties of a real estate licensee. Even if Respondent had disclosed his older convictions, the Department would have had a reasonable basis for taking adverse action against his application. Because knowledge of Respondent's conviction would have affected the Department's decision-making process, his failure to disclose it is an omission of a material fact.

9. Respondent's fairly recent act of not disclosing two of his convictions must be considered in light of his longer history toward rehabilitation and law abiding conduct.

10. Respondent has met many of the criteria for rehabilitation set forth in California Code of Regulations, title 10, section 2911. Respondent's convictions involving dishonesty are 10 and 12 years old, which exceeds the two year guideline in section 2911, subdivision (a). However, section 2911, subdivision (a) recognizes a longer time period should be considered when there is a longer history of convictions.

As factors of aggravation, Respondent has suffered four additional convictions for a total of six, and therefore a longer time period is prudent.

11. In further support of Respondent's rehabilitation, all of his convictions have been expunged. He has been crime free since 2002. (Subd. (c).) Respondent has completed his probation and paid his fines. (Subds. (d) and (g).) He has a stable family relationship, is newly married, and is financially supportive of his mother. (Subd. (h).) Respondent has studied and obtained a Bachelor of Arts degree. (Subd. (i).) Respondent has also changed his business practice by hiring a lawyer to help him understand his legal obligations. (Subd. (k).) Respondent is a member of a church and has volunteered many hours to benefit his parish. He appears committed to helping others in his community. (Subd. (l).) Respondent has evinced a change in attitude, and has new and different social relationships from those he maintained during his life of crime. He has been a productive, law-abiding citizen in all other aspects of his life. Respondent's change in attitude and evidence of new business relationships were established by Respondent, Vanessa Acosta and Jeffrey Hakin, a licensee and Respondent's supervisor. (Subds. (m) and (n).)

12. *Golde v. Fox* (1979) 98 Cal.App.3d 167, speaks of the requirements of a real estate licensee. "Honesty and integrity are deeply and daily involved in various aspects of the practice." (*Id.* at 176.)

13. Respondent's recent dishonest act in December 2005, not disclosing two of his six convictions, raises serious concerns about his trustworthiness and his need for supervision. Respondent has no experience in the real estate industry as a licensee, and it would not be prudent to allow him unsupervised activity. Real estate brokers are not supervised. Respondent must appreciate the need for complete honesty and full disclosures in the real estate industry. In order to protect the public interest, Respondent's real estate activities should be closely supervised for a period of time.

WHEREBY THE FOLLOWING ORDER is made:

ORDER

Respondent's application for a real estate broker license is hereby denied, provided, however, that Respondent may apply for a restricted salesperson license, and a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code upon his application for such and the completion of any required courses. 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 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;

(B) The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulation of the Real Estate Commissioner or conditions attaching to the restricted license.

2. 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 four (4) years have elapsed from the issuance of the restricted license to the Respondent.

3. During the period that the restricted license is in effect Respondent shall obey all laws, rules, and regulations governing the rights, duties, and responsibilities of a real estate licensee in the State of California, and shall remain in compliance with the terms and conditions of his criminal probation.

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 which is the basis for issuing the restricted license; and,

(B) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

not adopted

5. Respondent shall complete any education or training otherwise required to hold such a conditional license.

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6. Pursuant to section 10154, if Respondent has not satisfied the requirements for an unqualified license under section 10153.4, 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.

Date: January 2, 2009


DEBORAH MYERS CREGAR
Administrative Law Judge
Office of Administrative Hearings

not
admitted

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FILED
April 9, 2008
DEPARTMENT OF REAL ESTATE

By Cruz

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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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12 In the Matter of the Application of) NO. H-34805 LA
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AMBROSIO ACOSTA, JR.,)
Respondent.)
STATEMENT OF ISSUES

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

32 I

33 On or about August 23, 2007, Respondent made
34 application to the Department of Real Estate of the State of
35 California for a real estate broker license.

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FIRST CAUSE FOR DENIAL
(CRIMINAL CONVICTIONS)

II

On or about August 24, 1998, in the Municipal Court of East Los Angeles Courthouse Judicial District, County of Los Angeles, State of California, Case No. 8SE04132, Respondent was convicted of violating California Penal Code Section 484(a) (theft), a misdemeanor. Said crime involves moral turpitude and bears a substantial relationship under Section 2910, Title 10, Chapter 6, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee. Respondent was sentenced to three years summary probation, the terms and conditions of which included serving 10 days county jail.

III

On or about September 6, 1996, in the Los Angeles County Municipal Court, State of California, Case No. 6SE03070, Respondent was convicted of violating Penal Code Section 472 (forging an official seal), a misdemeanor. Said crime involves moral turpitude and bears a substantial relationship under Section 2910, Title 10, Chapter 6, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee. Respondent was sentenced to two years summary probation, the terms and conditions of which included performing 15 days Cal Trans work. On or about October 22, 1997, Respondent was found in violation of his probation, due to

1 a conviction for driving without a license, however, probation
2 was reinstated.

3 MATTERS IN AGGRAVATION

4 IV

5 On or about October 22, 1997, in the Municipal Court
6 of East Los Angeles Courthouse Judicial District, County of Los
7 Angeles, State of California, in Case No. 7SE02866, Respondent
8 was convicted of violating Vehicle Code Section 12500(a)
9 (unlicensed driver), a misdemeanor.

10 V

11 On or about November 2, 2001, in the Superior Court of
12 California, County of Los Angeles, in Case No. 1PA02088,
13 Respondent was convicted of violating Vehicle Code Section
14 23152(b) (driving vehicle with 0.08% or more B.A.C.), a
15 misdemeanor.

16 VI

17 On or about November 7, 2002, in the Superior Court of
18 California, County of Los Angeles, in Case No. 2SE01386,
19 Respondent was convicted of violating Vehicle Code Section
20 14601.1(a) (driving with a suspended license), a misdemeanor.

21 VII

22 The crimes of which Respondent was convicted as
23 alleged in Paragraph II and III above, constitute cause for
24 denial of Respondent's application for a real estate license
25 under Business and Professions Code Sections 475(a)(2), 480(a),
26 and 10177(b).
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SECOND CAUSE FOR DENIAL
(FAILURE TO REVEAL CONVICTION)

VIII

On or about December 5, 2005, Respondent originally applied to the Department for a real estate salesperson license. In response to Question 25 of said application, to wit, "Have you ever been convicted of any violation of law?", Respondent marked the box "Yes"; however, Respondent failed to disclose the 1998 theft conviction set forth in Paragraph II above.

IX

On February 28, 2007, the Department filed a Statement of Issues against Respondent in DRE Case No. H-33761 LA. On May 15, 2007, Respondent withdrew his application for a salesperson license with the Department. On June 5, 2007, the Department dismissed Statement of Issues (DRE No. H-33761 LA) based on Respondent's withdrawal of his application for a real estate salesperson license.

X

Respondent's failure to disclose the conviction, as set forth in Paragraph II above, in his December 5, 2005, real estate salesperson license application, constitutes 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, which is grounds for denial of the issuance of a license under Business and Professions Code Sections 475(a)(1), 480(c) and 10177(a).

1 These proceedings are brought under the provisions of
2 Section 10100, Division 4 of the Business and Professions Code
3 of the State of California and Sections 11500 through 11528 of
4 the California Government Code.

5 WHEREFORE, the Complainant prays that the above-
6 entitled matter be set for hearing and, upon proof of the
7 charges contained herein; that the Commissioner refuse to
8 authorize the issuance of, and deny the issuance of, a real
9 estate salesperson license to Respondent, AMBROSIO ACOSTA, JR.,
10 and for such other and further relief as may be proper in the
11 premises.

12 Dated at Los Angeles, California

13 this 7th day of April, 2008.

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17 Deputy Real Estate Commissioner
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24 cc: Ambrosio Acosta, Jr.
25 Sacto.
26 Maria Suarez
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