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FILED

MAR 22 2011

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

* * * * *

In the Matter of the Application of)	No. H-36825 LA
)	
)	L-2010120182
ALFREDO DIEGO JR.,)
))
))
Respondent.)
_____))

DECISION

The Proposed Decision dated March 3, 2011, 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. If and when application is again made for this license, all competent evidence of rehabilitation presented by respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on APR 11 2011.

IT IS SO ORDERED 3/17/11

JEFF DAVI
Real Estate Commissioner

[Signature]
BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

ALFREDO DIEGO JR.,

Respondent.

Case No. H-36825 LA

OAH No. 2010120182

PROPOSED DECISION

Administrative Law Judge Jankhana Desai, Office of Administrative Hearings, State of California, heard this matter on February 1, 2011, in Los Angeles, California.

Diane Lee, Staff Counsel, represented Robin Trujillo, Deputy Real Estate Commissioner (Complainant) of the Department of Real Estate (Department) of the State of California.

Alfredo Diego Jr. (Respondent) was present throughout the hearing and represented himself.

Oral and documentary evidence was received and argument heard. The record was closed and the matter submitted on February 1, 2011.

FACTUAL FINDINGS

Background

1. On September 28, 2010, Complainant filed the Statement of Issues in her official capacity as Deputy Real Estate Commissioner of the Department.
2. On November 12, 2009, Respondent made application to the Department for licensure as a real estate salesperson. The application was denied and this hearing ensued.
3. At hearing, the Statement of Issues was amended, without objection, as follows: (1) On page 2, paragraph 3, line 11, the words "a misdemeanor" were stricken and replaced with the words "an infraction"; and, (2) the words "In Aggravation" were inserted on page 2, line 7.

Respondent's Convictions

4a. On December 17, 1997, in the Municipal Court of San Fernando, County of Los Angeles, Case No. 7SF07822, Respondent was convicted, on his plea of guilty, of violating California Penal Code section 415.5, subdivision (a) (disturbing the peace at a university), a misdemeanor.

4b. Imposition of sentence was suspended and Respondent was placed on summary probation for a period of 12 months under terms and conditions that required Respondent to: (1) pay fines and fees in the amount of \$540 and (2) stay away from the location of the arrest.

5a. On April 20, 1998, in the Municipal Court of Van Nuys, County of Los Angeles, Case No. 8PN01115, Respondent was convicted on his plea of nolo contendere of violating California Penal Code section 484, subdivision (a) (petty theft), a misdemeanor.

5b. Imposition of sentence was suspended and Respondent was placed on summary probation for a period of 24 months under terms and conditions that required Respondent to: (1) serve five days in county jail (with credit given for four days time served); (2) pay a fine of \$100; (3) pay restitution to the victim; and (4) stay away from the location of the arrest.

6a. On July 10, 1998, in the Municipal Court of Van Nuys, County of Los Angeles, Case No. 8PN04433, Respondent was convicted on his plea of nolo contendere of violating California Penal Code sections 664/484, subdivision (a) (attempted petty theft), a misdemeanor.

6b. Imposition of sentence was suspended and Respondent was placed on summary probation for a period of 12 months under terms and conditions that required Respondent to pay fines and fees in the total amount of \$540.

6c. The facts and circumstances of the crime are that, on June 12, 1998, Respondent went to an auto sound store to have his car windows tinted when he saw an amplifier and placed it under his front waist band. Respondent then placed the amplifier inside the store's garage after he thought that a store employee was going to catch him.

7a. On August 15, 2008, in the Superior Court of the State of California, County of Los Angeles, Case No. 6AV04969, Respondent was convicted on his plea of nolo contendere of violating California Vehicle Code section 14601.1, subdivision (a) (driving with a suspended or revoked license), a misdemeanor.

7b. Imposition of sentence was suspended and Respondent was placed on summary probation for a period of three years under terms and conditions that required Respondent to: (1) serve 10 days in county jail (with credit given for four days time served) and (2) pay fines and fees in the total amount of \$480.

7c. The facts and circumstances of the crime are that Respondent was driving with a suspended license, which had been suspended as a result of suffering two speeding tickets.

7d. Respondent remains on probation and is expected to complete probation in August 2011.

8. Respondent has not fully accepted responsibility for his actions. In a Department form, "Conviction Detail Report," Respondent was to write the details of the crimes he committed. In detailing the convictions, Respondent did not fully accept responsibility for all of his crimes. In a letter to the Department, dated November 29, 2009, Respondent denied culpability for his attempted petty theft conviction, set forth in Factual Finding 6. At hearing, Respondent waived about accepting responsibility for his attempted petty theft conviction. He denied culpability and denied his admissions to the reporting police officers; although, he ultimately stated that he accepted full responsibility for his attempted petty theft conviction.

In Aggravation

9a. On February 24, 1999, in the Municipal Court of Downey, County of Los Angeles, Case No. 9DW00393, Respondent was convicted, on his plea of guilty, of violating Downey Municipal Code section 4116 (illegal dumping), an infraction.

9b. The court sentenced Respondent to pay a fine of \$305.

9c. The facts and circumstances of the crime are that, during a long car journey, Respondent urinated in a cup of soda and left the cup outside his car.

Failure to Disclose Conviction

10a. Question 1, Part D of Respondent's license application states:

HAVE YOU EVER BEEN CONVICTED OF A MISDEMEANOR OR FELONY? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY. IF YES, COMPLETE ITEM 5.

10b. Two boxes, one designated "Yes" and one designated "No," were provided to respond to Question 1, Part D. Respondent marked the box designating "Yes" as his answer, but failed to disclose the petty theft conviction set forth in Factual Finding 5.

10c. In failing to disclose his petty theft conviction, Respondent attempted to procure a license by making a material misstatement of fact in his application.

10d. At hearing, Respondent explained that he went to the court in Van Nuys and discovered that the court had no record of the conviction. Since the conviction was quite old, Respondent believed that it was dismissed. On August 14, 2009, Respondent's conviction was expunged pursuant to California Penal Code section 1203.4. In light of Respondent's disclosure of his other convictions, this explanation is plausible; however, it does not excuse Respondent from disclosure based on the explicit language on the form requiring Respondent to disclose expunged convictions.

Rehabilitation and Mitigation

11. Respondent is 31, married, and has two children, a 14-year-old son and a 4-year-old daughter. He testified that when he committed his crimes, he was young, had no parents to give him guidance, and was surrounded by bad peers. He also testified that he has turned his life around.

12. Since the end of 2007, Respondent has been working part-time as an office assistant for a real estate company, Platinum Alliance. Respondent's supervisor, Dennis Dailey (Dailey), wrote a letter, dated January 27, 2011, on Respondent's behalf. Dailey, a real estate broker, wrote that he has known Respondent for over three years and Respondent has been "an asset to (the) company" and "an asset to today's market as a licensed Real Estate agent." Dailey also wrote that Respondent is ethical, motivated, and has received praise from clients for his "great customer service."

13. Respondent is also attending Kaplan College to obtain his Associate Arts degree in Criminal Justice. Respondent is performing well at Kaplan, and has earned seven certificates for being on the Dean's List, two certificates for being on the Honor Roll, and one certificate for perfect attendance. Fred Saenz (Saenz), Program Director at Kaplan College, wrote a letter of reference on behalf of Respondent. In his letter, dated November 15, 2010, Saenz wrote that Respondent is intelligent, motivated, trustworthy, and possesses strong ethics. Respondent is expected to graduate in March 2011.

14. Respondent serves as a youth mentor at the YMCA.

15. Respondent is also interested in serving as an officer with the Los Angeles Police Department. He has started the application process.

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's real estate salesperson license application pursuant to Business and Professions Code sections 475, subdivision (a)(2), 480, subdivision (a), and 10177, subdivision (b), in that he has been convicted of crimes substantially related

to the qualifications, functions, or duties of a licensee of the Department, as set forth in Factual Finding 4, 5, 6, and 7.

2. Cause further exists to deny Respondent's real estate salesperson license application pursuant to Business and Professions Code sections 475, subdivision (a)(1), 480, subdivision (c), and 10177, subdivision (a), for his failure to reveal his petty theft conviction in his license application which constitutes the attempt to procure a real estate license by making a material misstatement of fact, as set forth in Factual Finding 10.

3. The Department has adopted a regulation to determine whether a crime or act is substantially related to the qualifications, functions and duties of a real estate licensee. California Code of Regulations, title 10, section 2910, states in 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 [Business and Professions] 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 Sections 480 and 490 of the [Business and Professions] Code if it involves:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

[¶] . . . [¶]

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

[¶] . . . [¶]

(10) Conduct which demonstrates a pattern of repeated and willful disregard of law.

The convictions set forth in Factual Findings 5 and 6 involve the fraudulent taking of property and are, therefore, substantially related to the qualifications, functions and duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(1) and (8).

The convictions set forth in Factual Findings 4 and 7, when taken together with those set forth in 5 and 6, demonstrate a pattern of repeated and willful disregard of law pursuant to California Code of Regulations title 10, section 2910, subdivision (a)(10).

4. As cause exists to deny Respondent's application, Respondent bears the burden of establishing his rehabilitation. (*Martin v. Alcoholic Beverage Control Appeals Bd.* (1950) 52 Cal.2d 259, 264-265).

5. The Department has established a regulation for the purpose of evaluating the extent of an applicant's rehabilitation following a criminal conviction. California Code of Regulations, title 10, section 2911 states:

The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for the reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is the basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions, or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

(c) Expungement of criminal convictions resulting from immoral or antisocial acts.

(d) Expungement of discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.

(g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.

(i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self improvement.

(j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

(k) Correction of business practices resulting in injury to others or with the potential to cause such injury.

(l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

(n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

(1) Testimony of the applicant.

(2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.


(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

Although most of Respondent's convictions were more than a decade ago, Respondent suffered a conviction as late as 2008, and remains on probation for that conviction. While Respondent is to be commended for his rehabilitative efforts, especially in the academic arena, he is not fully rehabilitated at this time. He has not fully accepted responsibility for his actions. His answers on the Conviction Detail Report, his November 12, 2009 letter to the Department, and his reluctance to unequivocally accept responsibility at hearing, evidence a lack of rehabilitation that precludes the issuance of a license.

ORDER

Respondent Alfredo Diego Jr.'s application for a real estate salesperson license is denied.

DATED: March 3, 2011



JANKHANA DESAI
Administrative Law Judge
Office of Administrative Hearings

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1 DIANE LEE, Counsel (SBN 247222)
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6 (Direct) (213) 576-6907

FILED

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DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of) No. H-36825 LA
12)
13 ALFREDO DIEGO, JR.,) STATEMENT OF ISSUES
14) Respondent.)

15 The Complainant, Robin Trujillo, a Deputy Real Estate
16 Commissioner of the State of California, acting in her official
17 capacity, for Statement of Issues against ALFREDO DIEGO, JR.
18 ("Respondent") alleges as follows:

19 1.

20 On or about November 12, 2009, Respondent made
21 application to the Department of Real Estate of the State of
22 California for a real estate salesperson license.

23
24 (CRIMINAL CONVICTIONS)

25 2.

26 On or about August 15, 2008, in the Superior Court of
27 California, County of Los Angeles, Case No. 6AV04969, Respondent

1 was convicted of violating California Vehicle Code Section
2 14601.1(a) (driving with suspended or revoked license), a
3 misdemeanor. Said crime bears a substantial relationship to the
4 qualifications, functions, or duties of a real estate licensee
5 under Section 2910, Title 10, Chapter 6, California Code of
6 Regulations.

7 3.

8 On or about February 24, 1999, in the Municipal Court
9 of Downey, County of Los Angeles, Case No. 9DW00393, Respondent
10 was convicted of violating Downey Municipal Code Section 4116
11 (illegal dumping), a misdemeanor. Said crime bears a
12 substantial relationship to the qualifications, functions, or
13 duties of a real estate licensee under Section 2910, Title 10,
14 Chapter 6, California Code of Regulations.

15 4.

16 On or about July 10, 1998, in the Municipal Court of
17 Van Nuys, County of Los Angeles, Case No. 8PN04433, Respondent
18 was convicted of violating California Penal Code Section
19 664/484(a) (theft), a misdemeanor. Said crime bears a
20 substantial relationship to the qualifications, functions, or
21 duties of a real estate licensee under Section 2910, Title 10,
22 Chapter 6, California Code of Regulations.

23 5.

24 On or about April 20, 1998, in the Municipal Court of
25 Van Nuys, County of Los Angeles, Case No. 8PN01115, Respondent
26 was convicted of violating California Penal Code Section 484(a)
27 (theft), a misdemeanor. Said crime bears a substantial

1 relationship to the qualifications, functions, or duties of a
2 real estate licensee under Section 2910, Title 10, Chapter 6,
3 California Code of Regulations.

4 6.

5 On or about December 17, 1997, in the Municipal Court
6 of San Fernando, County of Los Angeles, Case No. 7SF07822,
7 Respondent was convicted of violating California Penal Code
8 Section 415.5(a) (disturbing the peace at university), a
9 misdemeanor. Said crimes bear a substantial relationship to the
10 qualifications, functions, or duties of a real estate licensee
11 under Section 2910, Title 10, Chapter 6, California Code of
12 Regulations.

13 7.

14 The crimes of which Respondent was convicted as
15 alleged above constitute cause for denial of Respondent's
16 application for a real estate license under California Business
17 and Professions Code Sections 475(a)(2), 480(a), and 10177(b).

18
19 (FAILURE TO REVEAL CONVICTION)

20 8.

21 In response to Part D - Question 1 of his license
22 application, to wit: "HAVE YOU EVER BEEN CONVICTED OF A
23 MISDEMEANOR OR FELONY? CONVICTIONS EXPUNGED UNDER PENAL CODE
24 SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT TRAFFIC
25 CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY."
26 Respondent answered "Yes," but failed to reveal the conviction
27 described in Paragraph 5 above.

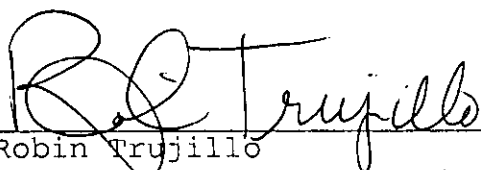
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Respondent's failure to reveal this conviction in his license application constitutes knowingly making a false statement of material fact required to be revealed in said application, which is grounds for denial of the issuance of a license under California Business and Professions Code Sections 480(c) and 10177(a).

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

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

Dated at Los Angeles, California: September 21, 2010.


Robin Trujillo
Deputy Real Estate Commissioner

cc: ALFREDO DIEGO, JR.
Diego International, Inc.
Robin Trujillo
Sacto