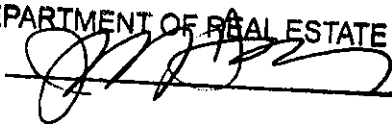


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MAR 25 2011

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: 

* * * * *

In the Matter of the Application of)
HAGOP JACK OGANYAN;
Respondent.

No. H-36911 LA
L-2010120802

DECISION

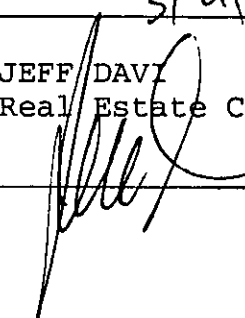
The Proposed Decision dated March 3, 2011, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a real estate broker license is denied, but the right to a restricted real estate broker 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 broker 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 APR 14 2011.

IT IS SO ORDERED

3/21/2011
JEFF DAVILA
Real Estate Commissioner


BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

HAGOP JACK OGANYAN,

Respondent.

Case No. H-36911 LA

OAH No. 2010120802

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.

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

George MgDesyan, Attorney at Law, represented Hagop Jack Oganyan (Respondent), who was present throughout the hearing.

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 November 10, 2010, Complainant filed the Statement of Issues in her official capacity as Deputy Real Estate Commissioner of the Department.

2. On April 19, 2010, Respondent made application to the Department for licensure as a real estate broker. The application was denied and this hearing ensued.

Respondent's Conviction

3. On April 24, 1995, in the Superior Court of the State of California, County of Los Angeles, Case No. 95P03044, Respondent was convicted, on his plea of guilty, of violating California Penal Code section 484, subdivision (a) (petty theft), a misdemeanor. The court sentenced Respondent to pay \$280 in fines and fees. Respondent paid the \$280 on April 28, 1995. The facts and circumstances of the crime are that, on April 3, 1995,

Respondent went into Carl's Jr. restaurant and purchased some food. Although he had not purchased a beverage, he reached over the counter and took beverage cup(s). The total amount of loss to Carl's Jr. as per the police report was \$5.60.

4. On June 12, 1997, Respondent's conviction was expunged pursuant to California Penal Code section 1203.4.

Failure to Disclose Conviction

5a. Question 19 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 OFFENSE. IF YES, COMPLETE ITEM 23.

5b. Two boxes, one designated "Yes" and one designated "No," were provided to respond to Question 19. Respondent marked the box designating "No" as his answer.

5c. Respondent failed to disclose his petty theft conviction. In failing to disclose his conviction, Respondent attempted to procure a license by making a material misstatement of fact in his application.

6. At hearing, Respondent testified that the reason he did not disclose his petty theft conviction was because he relied on the advice of an attorney. Respondent explained that he solicited the advice of Lance Rosenberg (Rosenberg), an attorney and Respondent's tax business client, and was told that he did not need to disclose the conviction since it was expunged. Respondent did not recall whether he actually showed the real estate license application to Rosenberg. Respondent submitted a declaration from Lance Rosenberg that stated in part:

On or about March 17, 2010, Mr. Oganyan presented himself in my office to get a better understanding of the term "expungement."

I explained to Mr. Oganyan that an "expungement" was similar to that of a dismissal where he would not have to disclose specific information where he chose not to and further advised him that it acted as if he was never convicted.

Subsequently, Mr. Oganyan asked if he needed to disclose his expunged petty theft matter on his Real Estate application and I

advised him that the same holds true today as it did before and therefore he did not have to.

I understand that Mr. Oganyan's Broker License is on hold primarily due to this specific omission on his application. I hope to have cleared up any and all questions as to why Mr. Oganyan did not disclose this on his application and truly apologize for any troubles this has caused.

Respondent also explained that he had not disclosed his petty theft conviction on other applications he has previously filed, and it has never been a problem.

7. On August 4, 2010, Respondent completed a form entitled, "Confidential – Interview Information Statement," in which he was to summarize and detail his conviction. Interestingly, he listed and described an incident that occurred in which Respondent neglected to pay for a shirt from Broadway Department store. He also listed the dates and fine amount from the Carl's Jr. conviction. At hearing, Respondent explained that the Broadway incident occurred when he was a juvenile and that he wrote about the Broadway incident because he did not remember the Carl's Jr. incident.¹

Additional Evidence of Rehabilitation and Mitigation

8. Respondent committed the crime one month after his 18th birthday. Respondent is now 33 years old. Respondent has not suffered any convictions after his 1995 petty theft conviction.

9. Respondent is the Chief Executive Officer of Oganyan & Associates, a tax and accounting service. He is also the Chief Financial Officer for AJCO Insurance Services, Inc. (AJCO), a business that he co-owns.

10. Respondent is married and has two children. He has a bachelor's degree in Accountancy from California State University, Northridge, as well as an Associate in Arts degree from Los Angeles Valley College.

11. Respondent has a fire and casualty broker-agent's license with the Department of Insurance. His license will expire on March 31, 2011, unless renewed. Respondent is enrolled to practice before the Internal Revenue Service. His enrollment will expire on March 31, 2011, unless renewed.

12. Armen Chalikyan (Chalikyan), Respondent's business partner in AJCO, testified on behalf of Respondent. Chalikyan has known Respondent for the past 15 years

¹ This incident was not alleged in the Statement of Issues. It is also unclear as to whether any conviction arose out of the incident. Respondent testified that he paid a fine, but never appeared in court so he does not think a case was filed.

and has been his business partner for the past four years. He trusts Respondent and has not received any complaints from clients regarding Respondent. Chalikyan learned of Respondent's conviction in 2010.

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's real estate broker's license application pursuant to Business and Professions Code sections 475, subdivision (a)(2), 480, subdivision (a), and 10177, subdivision (b), in that Respondent has been convicted of a crime substantially related to the qualifications, functions, or duties of a licensee of the Department, as set forth in Factual Finding 3.

2. Cause further exists to deny Respondent's real estate broker's 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 5.

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.

[(1)] ... [(1)]

(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.

Respondent's conviction, although very old, fits within the provisions of the

California Code of Regulations, title 10, section 2910, subdivisions (a)(1) and (8), and it is a crime substantially related to the qualifications, functions and duties of a real estate licensee, based on Factual Finding 3.

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.

Respondent has satisfied several of the applicable criteria for rehabilitation. Significantly, it has been more than 15 years from the time Respondent was convicted (Cal. Code Regs., tit 10, § 2911, subd. (a)); Respondent's petty theft conviction was expunged (Cal. Code Regs., tit 10, § 2911, subd. (c)); Respondent is fulfilling his familial and parental responsibilities (Cal. Code Regs., tit 10, § 2911, subd. (h)); Respondent has suffered no other convictions since his petty theft conviction (Cal. Code Regs., tit 10, § 2911, subd. (n)); and Respondent established that he committed the crime when he was very young and he now is a career and family man (Cal. Code Regs., tit 10, § 2911, subd. (n)). The absence of other convictions over an approximately 15-year period of time establishes that Respondent is generally a law-abiding citizen and his conviction is an aberration committed in his younger years.

The only factor weighing against Respondent's rehabilitation is the recent false statement he made in his application. Respondent's failure to disclose his conviction is material. The lack of disclosure, although material, was not intentional. Respondent did not intend to deceive the Department. Respondent relied on the advice of an attorney; however, the explicit language on the application states that "(c)onvictions expunged under Penal Code section 1203.4 must be disclosed." Real estate brokers are fiduciaries and must pay careful attention to the forms they fill out. It was incumbent upon Respondent to either show Rosenberg the actual license application or make sure that Rosenberg is aware of the exact language on the form. Given the facts and circumstances surrounding his non-disclosure, the chance of recurrence is minimal and the public would not be at risk if Respondent were to be issued a restricted broker's license.

ORDER

Respondent Hagop Jack Oganyan's application for a real estate broker's license is denied; provided however, a restricted real estate broker's license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to the 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 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 the 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

(b) 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.

DATED: March 3, 2011



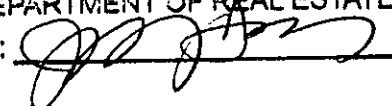
JANKHANA DESAI
Administrative Law Judge
Office of Administrative Hearings

JULIE L. TO, Counsel (SBN 219482)
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DEPARTMENT OF REAL ESTATE
BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of) NO. H-36911 LA
)
HAGOP JACK OGANYAN,) STATEMENT OF ISSUES
)
Respondent.)

The Complainant, Robin Trujillo, a Deputy Real Estate
Commissioner of the State of California, for Statement of Issues
against HAGOP JACK OGANYAN ("Respondent"), is informed and
alleges as follows:

1.

The Complainant, Robin Trujillo, a Deputy Real Estate
Commissioner of the State of California, makes this Statement of
Issues against Respondent in her official capacity.

2.

On or about April 19, 2010, Respondent made
application to the Department of Real Estate of the State of
California for a real estate broker license.

1 FIRST CAUSE FOR DENIAL

2 CRIMINAL CONVICTION

3 3.

4 On or about April 24, 1995, in the Superior Court of
5 the State of California, County of Los Angeles, in Case No.
6 95P03044-01, Respondent was convicted of Penal Code Section
7 484(A) (theft), a misdemeanor. Respondent was sentenced to
8 three days in jail and ordered to pay fines.

9 4.

10 This crime, by its facts and circumstances, bears a
11 substantial relationship under Section 2910, Title 10, Chapter
12 6, California Code of Regulations, to the qualifications,
13 functions or duties of a real estate licensee.

14 5.

15 The crime of which Respondent was convicted,
16 constitutes cause for denial of Respondent's application for a
17 real estate license under Business and Professions Code Sections
18 475(a)(2), 480(a), and 10177(b).

19
20 SECOND CAUSE FOR DENIAL

21 (FAILURE TO DISCLOSE)

22 6.

23 In response to Question 19 of his license application,
24 to wit: "HAVE YOU EVER BEEN CONVICTED OF A MISDEMEANOR OR
25 FELONY? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4
26 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT TRAFFIC CITATIONS
27 WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE"

Respondent checked "No" and did not disclose the conviction listed in Paragraph 3.

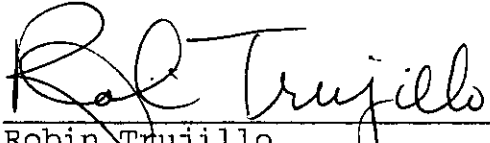
7.

Respondent's failure to reveal the conviction set forth herein in Paragraph 3 in his license application constitutes 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 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/or 10177(a).

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, HAGOP JACK OGANYAN, and for such other and further relief as may be proper in the premises.

Dated at Los Angeles, California

this 5 day of November, 2010.


Robin Trujillo
Deputy Real Estate Commissioner

cc: HAGOP JACK OGANYAN
Robin Trujillo
Sacto