

FILED

MAY 20 2011

BEFORE THE DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
BY: 

STATE OF CALIFORNIA

In the Matter of the Application of

JOSHUA MAURICIO CHAIREZ,

Respondent.

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No. H-36947 LA

OAH No.2010121088

DECISION

The Proposed Decision dated April 19, 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.

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

Conditions "4" and "5" of the Order are not adopted and shall not be a part of the Decision.

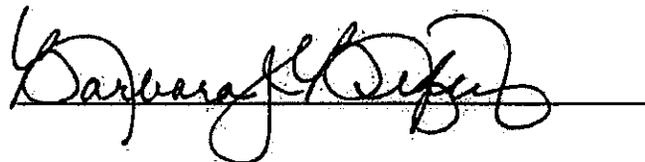
The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson is granted to respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted 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 JUN 09 2011.

IT IS SO ORDERED 5/17 2011.

BARBARA J. BIGBY
Acting Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JOSHUA MAURICIO CHAIREZ,

Respondent.

Case No.: H-36947 LA

OAH No.: 2010121088

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on March 16, 2011.

Julie L. To, Staff Counsel, represented the Complainant.

Respondent appeared in person and represented himself.

Evidence was presented and the matter thereafter submitted.

The record was held open until March 30, 2011 to allow Respondent to file a Sponsoring Broker's testimonial. Same was filed on March 30, 2011 and marked and received as Exhibit A in evidence as administrative hearsay. The case was deemed submitted on March 30, 2011.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

Parties

1. Complainant Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, brought the Statement of Issues in her official capacity.

2. On August 31, 2009, Joshua Mauricio Chairez, Respondent, made application to the Department of Real Estate (Department) of the State of California for a real estate salesperson license.

Prior Application of 2006

3. On July 5, 2006, Respondent, pursuant to the provisions of Code section 10153.3, made a previous application (Prior 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.

4. A Statement of Issues was filed on April 26, 2007, in Department Case No. H-33933 LA, on the Prior Application. This matter went to hearing before Samuel D. Reyes, Administrative Law Judge of the Office of Administrative Hearings on August 7, 2007. Respondent appeared and was represented by attorney Jonathan Kissel. A Proposed Decision was rendered on September 5, 2007, ordering the denial of Respondent's license application. The Decision adopting the Proposed Decision became effective on October 25, 2007.

5. In sum, the denial set forth in Finding 4 issued by reason of the convictions set forth in Findings 7, 8 and 9.

Criminal Convictions

6. During a period of his life when aged in his twenties Respondent committed a series of offenses set forth in Findings 7, 8 and 9. The two DUIs placed Respondent and others at risk of death or disabling injuries. The conduct set forth in Finding 8 is a dishonest act.

7. On October 7, 2000, while having a blood alcohol content greater than .08 percent, Respondent drove on the freeway and rear-ended another vehicle. As a result he was subjected to criminal proceedings. Thereafter, on November 22, 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 (DUI 1). The court suspended imposition of sentence and placed Respondent on summary probation for 36 months on terms and conditions including 48 hours in county jail, payment of \$1,420 in fines and fees, and completion of a three-month alcohol counseling program.

8. On March 29, 2005, Respondent denied to the Police that he was the driver of a vehicle involved in a single-vehicle traffic collision, when in fact he was the driver. As a result he was subjected to criminal proceedings. Thereafter, 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 (dishonest act). The court suspended imposition of sentence and placed Respondent on summary probation for three years on terms and conditions that included payment of \$130 in fines and fees.

9. On June 9, 2006, Respondent, after having consumed at least three or four beers, hit a parked an attempted to leave the scene. A subsequent breath test yielded a .18 percent blood alcohol level. Respondent was arrested and subjected to criminal proceedings. Thereafter, 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 (DUI 2). The court suspended imposition of sentence and placed Respondent on summary probation for 60 months on terms and conditions including 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.

10. Respondent's convictions set forth in Findings 7 and 9 are substantially related to the qualifications, functions and duties of a real estate salesperson in that they are two convictions involving driving and use or consumption of alcoholic beverages¹ and when combined with Finding 8 the two DUIs demonstrate a pattern of repeated and willful disregard of law.

11. Respondent's conduct set forth in Finding 8 constitutes the employment of a falsehood to achieve and end. Accordingly, the misdemeanor bears a substantial relationship to the qualifications, functions or duties of a real estate licensee.²

Rehabilitation

12. The 2007 Decision (Finding 4) found as follows with regard to rehabilitation:

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 socialized with those he was acquainted with at the time of the last conviction.

¹ California Code of Regulations, title 10 (Regulations) section 2910 subdivision (a)(10) and (a)(11).

² Regulation 2910, subdivision (a)(4).

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.

13. Respondent has continued the rehabilitative efforts set forth in Finding 12. He is now only on probation for DUI 2 and that summary probation will end in October of this year. He has met all court ordered sanctions including the completion of an 18 month program of alcohol treatment and counseling. His driving privileges have been fully restored.

14. Since the time of his last conviction Respondent has suffered no other conviction. He has been gainfully employed in positions of trust including as an agent assistant for Las Casas Realty. At present he is in conformity to society's norms and rules of civil behavior.

15. Respondent has taken the necessary pre-licensing real estate courses and did take and pass the licensing examination. He was so notified by the Department on March 1, 2010. He, therefore, has completion of training courses for economic self improvement. Additionally, as time permits, he is pursuing an AA degree at Pasadena/Glendale Community College.

16. Respondent and his girlfriend Joselyn live together and expect a child in the near future. Respondent will provide the financial support for Joselyn (who is presently employed at the Circle of Help Foundation) and their baby. Respondent remains close to his mother and to his older brother. Each Sunday he picks up his mother and together they attend mass at St. Teresa of Avila Catholic Church. Respondent has stability of family life and fulfills familial and parental responsibilities.

17. Respondent is presently employed as an agent assistant at Real Estate Heaven for Real Estate Broker Paul Argueta. Mr. Argueta, on behalf of Respondent, submitted the following written, credible testimonial:

I have had the pleasure and liberty of knowing and working with Joshua Chairez as my administrative assistant since Since then I have seen the evolution of Mr. Chairez as he has grown from a young boy into a mature young man capable of making wise decisions in his personal and professional life.

Joshua exemplifies persistence and dedication to all that he does. He is one of the first people to get to the office and one of the last ones to leave. His family knows that he is dependable and can be called on for any type of assistance regardless of the

time of day. Joshua is about to become a father and is beaming at the opportunity to raise his son and be an actively participating father while at the same time one that can financially provide a better life for him. This includes attending better schools, being involved in church activities and sports. His office family is excited for this new chapter in his life and looks forward to him rising to the occasion as he so often does.

Joshua is loyal, honest, and forthcoming with everyone he meets. He singlehandedly manages my desk and keeps my day organized. He definitely makes me look better than I am while I manage contract negotiations and day to day dealings with my clients. I trust Joshua implicitly and feel no hesitancy when recommending that the CA Department of Real Estate allow Joshua the opportunity to work as a Licensed Salesperson. He is true professional and I welcome him as a colleague in our profession.

Robert E. Silva, Real Estate Broker/owner and Respondent's sponsoring broker submitted the following written, credible testimonial:

It has been close to 5 years since my last written communication in regards to Joshua Chairez and his attempt to secure a Real Estate license. Since then, I have seen Joshua Chairez work harder than ever. Now living with his girlfriend and a baby on the way, he waists (*sic*) no time to get work. Many times, he is the first one there and the last one to lock up.

I fist met Joshua back in 2004. He started out in our office as a part timer, he carried a full time job working with disabled children. After hours, he worked with our staff, evenings and weekends. This was truly a pleasant surprise, a young man working two jobs and wanting to learn a potential career. Around October 2005, a position for an assistant was available; we all felt he was the right person for the job. He accepted and made the move.

Part of our office training is to learn various systems for our staff to follow. He asked a lot of questions and made copious notes. He embraced the tasks and made

their his. He followed each and every step to perfection. I have never known for Joshua to be lazy and afraid of hard work. Now with new personnel, I have seen Joshua step out of his job and teach others without receiving anything in return.

In the Real Estate Industry, our clients entrust us with many personal information (ie: social security number, bank statements, ect). He has never violated that customer trust and has shown me to be loyal person and trustworthy individual.

I ask you again to please give this young bright man another opportunity by issuing him his Salesperson License. I know he will not let us and your Department down.

18. Respondent was open and honest in his testimony and was open and honest with the Department during the pendency of this matter. He is contrite about his past, wrongful conduct as was demonstrated by his sincere demeanor while testifying. It is his ambition to be a competent and trustworthy real estate salesperson and to make a financial contribution to his family.

19. Respondent has a change in attitude from that which existed at the time of his past convictions as evidenced by the credible testimony of Respondent and the credible testimonials in Finding 17. A number of factors contributed to that change including:

- Respondent's continuing maturation.
- Respondent's desire to be a productive member of society.
- Respondent's stability of family life.
- Respondent's contrition.
- Respondent's new and different social relationships.

LEGAL CONCLUSIONS

Applicable Authority

1. 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 Government Code of the State of California.

Violations

2. Cause exists for denial of Respondent's application for a real estate license pursuant to Business and Professions Code section 475, subdivision (a) (2), 480, subdivision (a) and 10177, subdivision (b) by reason of Findings 7 and 9 in combination with Finding 10 and, separately, Finding 8 in combination with Finding 11.

Licensing Considerations

3. California Code of Regulations, title 10, section 2911 sets forth criteria for rehabilitation in an application case involving past criminal conduct. Respondent's last conviction is more than two years remote and, thus, Respondent has met the initial factor set forth in the criteria. By reason of his rehabilitative efforts set forth in Findings 12 to 19 he has met or is meeting most applicable criteria with the caveat that no convictions have been expunged.

4. The objective of a license application proceeding is to protect the public, the licensed profession, maintain integrity, high standards, and preserve public confidence in licensees of the Department.³ The purpose of proceedings of this type is not to punish the Respondent. In particular, the statutes relating to Department licensees are designed to protect the public from any potential risk of harm. The law looks with favor upon those who have been properly rehabilitated. At present Respondent is a socially and professionally responsible person. Accordingly, licensure of Respondent, under restriction, and under the supervision of his sponsoring broker is consistent with the public interest.

5. The Prior Decision of the Department found that the rehabilitation set forth in Finding 12 was not yet sufficient for licensure. Four years have passed and Respondent has since achieved the rehabilitation set forth in Findings 13 through 19. Respondent's total rehabilitation since his last conviction is clear and convincing rehabilitation and, in the public interest, sufficient for licensure on a restricted status.

ORDER

Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to section 10153.5 of the Business and Professions Code. The restricted license issued to the Respondent shall be subjected 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:

³*Camacho v. Youde* (1975) 95 Cal.App 3d, 165; *Clerical v. Department of Motor Vehicles* (1990) 224 Cal.App.3rd 1016, 1030-1031; *Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 816.

1. The license shall not confer any property right in the privileges to be exercised and the Real Estate Commissioner may be 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; or
- (b) The receipt of evidence that Respondent has violated provisions of 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.

3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

- (a) That the employing broker has read the Decision which is the basis for the issuance of 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.

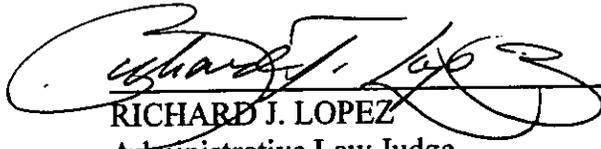
4. Respondent's restricted real estate salesperson's license is issued subject to the requirements of section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in section 10153.5, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.

Not adopted

Not adopted

5. Pursuant to section 10154, if Respondent has not satisfied the requirements for an unqualified license under section 10153.5, 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 10153.5 until four years after the date of the issuance of the preceding restricted license.

Dated: April 19, 2011


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:ref

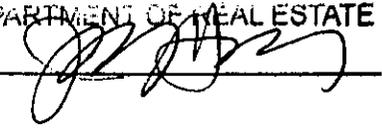
1 JULIE L. TO, Counsel (SBN 219482)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

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6 (Direct) (213) 576-6916

DEPARTMENT OF REAL ESTATE

BY: 

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of) NO. H-36947 LA
12)
13 JOSHUA MAURICIO CHAIREZ,) STATEMENT OF ISSUES
14)
15 Respondent.)

16 The Complainant, Robin Trujillo, a Deputy Real Estate
17 Commissioner of the State of California, for Statement of Issues
18 against JOSHUA MAURICIO CHAIREZ ("Respondent"), is informed and
19 alleges as follows:

20 1.

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

24 PRESENT APPLICATION OF 2009

25 2.

26 On or about August 31, 2009, Respondent made
27 application to the Department of Real Estate of the State of

1 California for a real estate salesperson license.

2 CRIMINAL CONVICTION

3 3.

4 On or about September 8, 2005, in the Superior Court
5 of the State of California, County of Los Angeles, in Case No.
6 5AL02325, Respondent was convicted of violating Vehicle Code
7 Section 31 (false information to peace officer), a misdemeanor
8 Respondent was sentenced to three years probation, ordered to
9 complete 15 days of Cal Trans, and ordered to pay fines.

10 4.

11 In aggravation, on or about October 26, 2006, in the
12 Superior Court of the State of California, County of Los
13 Angeles, in Case No. 6MP06110, Respondent was convicted of
14 violating Vehicle Code Section 23152(B) (driving under the
15 influence with blood alcohol at or above 0.08%), a misdemeanor.
16 Respondent was sentenced to sixty months probation, 96 hours in
17 jail, and ordered to pay fines (or complete 15 days of Cal
18 Trans).

19 5.

20 In aggravation, on or about November 2, 2000, in the
21 Superior Court of the State of California, County of Los
22 Angeles, in Case No. OMT11316, Respondent was convicted of
23 violating Vehicle Code Section 23152(B) (driving under the
24 influence with blood alcohol at or above 0.08%), a misdemeanor
25 Respondent was sentenced to three years probation, 48 hours in
26 jail, and ordered to pay fines (or serve 13 days in jail).

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6.

The crime described in Paragraph 3, by its facts and circumstances, 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.

7.

The crime of which Respondent was convicted, as described in Paragraph 3, constitutes cause for denial of Respondent's application for a real estate license under Business and Professions Code Sections 475(a)(2), 480(a), and 10177(b).

PRIOR APPLICATION OF 2006

8.

On or about July 5, 2006, Respondent, pursuant to the provisions of Code Section 10153.3, made a previous application ("Prior 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 Code Section 10153.4.

9.

A Statement of Issues was filed on April 26, 2007 in Department Case No. H-33933 LA, on the Prior Application. This matter went to hearing before the Office of Administrative Hearings on August 7, 2007. Respondent appeared and was represented by attorney Jonathan Kissel. A Proposed Decision

1 was rendered on September 5, 2007, ordering the denial of
2 Respondent's license application. The Decision adopting the
3 Proposed Decision became effective on October 25, 2007.

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

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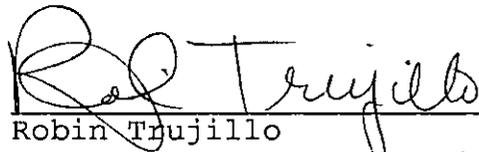
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1 WHEREFORE, the Complainant prays that the above-
2 entitled matter be set for hearing and, upon proof of the
3 charges contained herein, that the Commissioner refuse to
4 authorize the issuance of, and deny the issuance of, a real
5 estate salesperson 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 29 day of November, 2010.

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12 Robin Trujillo
13 Deputy Real Estate Commissioner
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26 cc: JOSHUA MAURICIO CHAIREZ
27 Las Casas Realty, Inc.
Robin Trujillo
Sacto