

FILED

DEC 20 2012

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

* * * * *

In the Matter of the Application of)	DRE No. H-38257 LA
)	OAH No. 2012080584
MANUEL R. AVILA ARCEO,)	
)	
Respondent.)	
_____)	

DECISION

The Proposed Decision dated November 15, 2012, 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) (2) of the Government Code, the following corrections are made to the Proposed Decision:

Proposed Decision, Page 1, Paragraph 2, line 1, "Maria Suazrez" is corrected to read "Maria Suarez."

Proposed Decision, Page 5, Paragraph 4, line 7, "[k]knowingly making a false statement of material fact" is corrected to read "[k]nowingly making a false statement of material fact."

Proposed Decision, Page 5, Paragraph 4 is corrected by adding an end quotation mark to the end of the paragraph.

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to respondent. 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 January 9, 2013 .

IT IS SO ORDERED

12/14/12

Real Estate Commissioner

[Signature]

By WAYNE J. BELL
Chief Counsel

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues
Against:

MANUEL R. AVILA ARCEO,

Respondent.

Case No. H-38257 LA

OAH No. 2012080584

PROPOSED DECISION

This matter was heard on October 26, 2012, by Erlinda G. Shrenger, Administrative Law Judge with the Office of Administrative Hearings, in Los Angeles.

Diane Lee, Staff Counsel, represented Maria ^{Suarez}~~Suarez~~ (Complainant), a Deputy Real Estate Commissioner for the Department of Real Estate (Department), State of California.

Manuel R. Avila Arceo (Respondent) represented himself.

Oral and documentary evidence was received and argument was heard. The matter was submitted for decision on October 26, 2012.

FACTUAL FINDINGS

1. Complainant filed the Statement of Issues in her official capacity on July 12, 2012.
2. On August 4, 2011, Respondent applied to the Department for a real estate salesperson license.

Respondent's Convictions

3. On April 9, 1997, in the Municipal Court, Southeast Judicial District, County of Los Angeles, case number 7SE00949, Respondent was convicted on his plea of nolo contedere of violating Penal Code section 417.4 (brandishing a replica gun), a misdemeanor. He was placed on summary probation for three years under terms and conditions including that he serve 90 days in county jail (with credit given for 53 days), he not associate with any person believed to be a member of a gang, and he not be within 50 yards of any member of the West 13 Gang. The facts and circumstances underlying this conviction occurred on

March 7, 1997, when Respondent willfully and unlawfully drew and exhibited a replica of a firearm in a threatening manner against R.G. in such a way as to cause a reasonable person apprehension and fear of bodily harm.

4. On September 22, 1997, in the Superior Court, County of Los Angeles, case number VA043774, Respondent was convicted on his plea of guilty of violating Penal Code section 12020, subdivision (a) (possession of deadly weapon), a misdemeanor. He was placed on formal probation for three years under terms and conditions including that he serve 180 days in county jail (with credit given for 97 days), he stay away from and do not associate with members of the West Trece Gang, and he not own, use or possess any dangerous or deadly weapons, including any firearms, knives or other concealable weapons. The facts and circumstances underlying this conviction are: On July 20, 1997, Respondent was in possession of an instrument and weapon of the kind commonly known as a sawed off shotgun.

5. On July 27, 1998, in the Municipal Court, Metropolitan Courthouse, County of Los Angeles, case number 8MT08416, Respondent was convicted on his plea of nolo contendere of violating Vehicle Code section 12500, subdivision (a) (driving without a license), a misdemeanor. He was placed on summary probation for 24 months under terms and conditions including that he serve eight days in county jail (with credit given for two days) and he pay fines and assessments totaling \$587. The facts and circumstances underlying this conviction occurred on July 26, 1998.

6. On January 12, 2000, in the Municipal Court, Huntington Park Courthouse, County of Los Angeles, case number 9SE05053, Respondent was convicted on his pleas of nolo contendere of violating Vehicle Code sections 14601.1, subdivision (a) (driving when privilege suspended or revoked), a misdemeanor, and 16028, subdivision (a) (driving without evidence of financial responsibility), an infraction.¹ The facts and circumstances underlying this conviction occurred on September 29, 1999.

7. On June 16, 2008, in the Superior Court, Whittier Courthouse, County of Los Angeles, case number 16946AS, Respondent was convicted of violating Vehicle Code section 40508, subdivision (a) (fail to appear, written promise), a misdemeanor. Respondent was sentenced to pay a fine.² The facts and circumstances underlying this conviction are: On October 25, 2005, Respondent was issued a Notice to Appear by the California Highway

¹ The Accusation erroneously indicates the violation of section 16028 was a misdemeanor. The court records (Exh. 6) indicate the violation of section 16028 was an infraction.

² The court records (Exh. 7) are not clear regarding the violation for which Respondent was convicted. Respondent's criminal history record maintained by the California Department of Justice (Exh. E) indicates he was convicted of violating Vehicle Code section 40508.

Patrol, which indicates a violation of Vehicle Code sections 12500 (unlicensed driver), a misdemeanor, and 5204, subdivision (a) (not displaying current year), an infraction.

8. On December 4, 2009, in the Superior Court, County of Los Angeles, case number 8DY04544, Respondent was convicted on his plea of nolo contendere of violating Vehicle Code section 14601.1, subdivision (a) (driving with a suspended license), a misdemeanor. Imposition of sentence was suspended. Respondent was placed on summary probation for 36 months under terms and conditions including that he pay \$1,417.47, he perform 10 days of Cal Trans service, and he not drive a motor vehicle without a valid driver's license in his possession. The facts and circumstances underlying this conviction occurred on June 7, 2008.

Respondent's Application

9. The application form submitted by Respondent to the Department contained a series of questions for Respondent to answer, including Question 23, which asks,

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.

Two boxes, one designated "No" and one designated "Yes," are provided on the application form. If the answer to Question 23 was "Yes," Respondent was required to complete Question 27, which requires disclosure of detailed information for each conviction.

10. Respondent answered "Yes" to Question 23 of the application. Therefore, he was required to provide detailed information regarding his all of his convictions. Respondent failed to disclose his July 27, 1998 and December 4, 2009 convictions.

11. At the hearing, Respondent testified that he relied on the convictions listed on his criminal history record from the California Department of Justice (DOJ) to fill out his application. (Exh. E.) Respondent received his criminal history record from DOJ by letter dated October 26, 2009. The DOJ record does not excuse Respondent's failure to disclose his most recent conviction on December 4, 2009, which occurred after he received the DOJ criminal history record on October 26, 2009. The DOJ record does, however, mitigate Respondent's failure to disclose his July 27, 1998 conviction, as there is no entry on the DOJ record for that conviction.

12. By failing to disclose his December 4, 2009 conviction in his application, Respondent made a material misstatement of fact in his license application, and knowingly made a false statement of fact required to be revealed in his application.³

³ The term "misrepresentation" means more than verbal misstatements or positive assertions. "A representation may be either expressed or implied . . . and may arise from silence . . . or nondisclosure." (*Hale v. Wolfson* (1969) 276 Cal.App.2d 285, 291.)

Rehabilitation

13. Respondent is 33 years old and married. He and his wife have been together for 16 years and have four children, ages 15, 14, 5 and 6.

14. Respondent's wife is a licensed real estate agent and is currently the primary source of financial support for the family. The family has also been receiving public assistance for the past few months. Respondent's wife paid Respondent to work as her assistant when she worked at Re/Max from 2007 to 2009 and Century 21 from 2010 to 2012. Respondent's wife is currently employed at Real Estate Heaven. She pays Respondent to work as her assistant at Real Estate Heaven. Respondent presented a letter by Eliazar Felix, owner of Re/Max VIP Real Estate, in which he wrote that his company commits to employ Respondent once he becomes licensed as a real estate salesperson. Respondent also presented character letters from the brokers at Century 21 and Real Estate Heaven, which generally attest to his good character, honesty, and professionalism. Respondent testified those brokers have also offered to employ him if he is issued a real estate license.

15. Respondent's probation for his most recent conviction is not scheduled to end until December 4, 2012. His convictions have not been expunged.

16. Respondent was born in Mexico. His parents abandoned him when he was 12 years old, and he has lived on his own since that time. He did not get a "green card" until 2005. He did not get a California driver's license until 2007. Prior to 2007, Respondent drove without a license because he had to get to his job and work to support his family. Respondent testified his driver's license is presently suspended due to an unpaid ticket for having no tags and no license plate on his vehicle. The ticket went to collections. Respondent needs \$200 to get the suspension lifted off his driver's license.

17. Respondent regrets the poor choices he has made in his life. He accepts responsibility for his convictions and has expressed remorse for his crimes. Respondent was motivated to change his life because of his children. He is committed to being a good father and providing for his family. He sees life differently because of his children. He does not want them to grow up as he did, with no parents and no one to tell them right from wrong. Respondent wants a real estate license in order to better provide for his family. Respondent was emotional and appeared sincere in his demeanor while testifying about his family, and he was respectful of the proceedings.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivision (b), provides, in pertinent part, that the Department may deny the issuance of a license to an applicant who has entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee. Similarly, Business and Professions Code section 480, subdivision (a)(1), provides that a board may deny a license on the grounds that the applicant has been

convicted of a crime, including a conviction following a plea of nolo contendere. Pursuant to Business and Professions Code section 475, subdivision (a)(2), conviction of a crime is a ground for denial of a license.

2. Cause exists to deny Respondent's application for a real estate salesperson license under Business and Professions Code sections 10177, subdivision (b), 480, subdivision (a)(1), and 475, subdivision (a)(2), in that Respondent was convicted of crimes that are substantially related to the qualifications, functions, and duties of a real estate licensee, based on the matters in Factual Findings 3-8 and Legal Conclusion 3.

3. The Department's criteria of substantial relationship are set forth at California Code of Regulations, title 10, section 2910. Respondent's crimes are substantially related to the qualifications, functions and duties of a real estate licensee because they involved doing an unlawful act with the intent or threat of doing substantial injury to the person of another, and/or involve conduct which demonstrates a pattern of repeated and willful disregard of law. (Cal. Code Regs., tit. 10, § 2910, subs. (a)(8) and (10).)

4. Business and Professions Code section 10177, subdivision (a), provides that the Department may deny the issuance of a license to an applicant who has "[p]rocured, or attempted to procure, a real estate license or license renewal, for himself or herself, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement." Similarly, Business and Professions Code section 475, subdivision (a)(1), provides that a license may be denied on the grounds of "[k]nowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license." Business and Professions Code section 480, subdivision (c), provides, in part: "A board may deny a license . . . on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license."

5. Cause exists to deny Respondent's application for a real estate salesperson license under Business and Professions Code sections 10177, subdivision (a), 475, subdivision (a)(1), and 480, subdivision (c), in that Respondent made a material misstatement of fact in his application, and he knowingly made a false statement of material fact required to be revealed in his application for a license, based on the matters in Factual Findings 3-12.

6. The statutes relating to real estate licenses are designed to protect the public from any potential risk of harm. (*Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.) The Department's criteria for evaluating the rehabilitation of an applicant for a license, which are set forth at California Code of Regulations, title 10, section 2911, have been considered.

7. Respondent has established sufficient rehabilitation for issuance of a restricted salesperson license. More than two years have passed since Respondent's most recent conviction. (Cal. Code Regs., tit. 10, § 2911, subd. (a).) Respondent has a stable family life

and is fulfilling his parental responsibilities. (Cal. Code Regs., tit. 10, § 2911, subd. (h).) Providing for his family and being a good father for his four children is the motivating factor for Respondent to keep his life on the right track. He was emotional and appeared sincere in expressing his determination to do so. Respondent's more serious crimes occurred 15 years ago when he was 19 years old. His more recent convictions are for driving without a license or while his license was suspended, which he did in order to get to work to support his family. Respondent is 33 years old now and has demonstrated a change in attitude since the time of his earlier convictions. Respondent's failure to disclose one of his convictions on his application was due to his reliance on his DOJ criminal history record, which did not list the conviction. At this time, Respondent cannot establish he is fully rehabilitated because he is scheduled to remain on probation until December 2012 and his convictions have not yet been expunged. But he has shown sufficient rehabilitation and change in attitude for issuance of a restricted salesperson license under the terms and conditions set forth in the Order below, which will protect the public from any potential risk of harm.

ORDER

Respondent Manuel R. Avila Arceo'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 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 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.

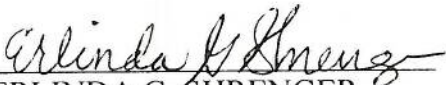
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to Respondent.

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.

DATED: November 15, 2012


ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings

Section 11522 of the Government Code of the State of California:

11522. Reinstatement of License or reduction of Penalty. A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision, or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty. (Added by Stats. 1945; Ch. 867; Amended by Stats. 1985, Ch. 587.)

CRITERIA OF REHABILITATION (*Denial*)

RE 573 (Rev. 10/03)

Your application for a real estate license or your petition to reinstate your real estate license has been denied. The reason(s) for denial is on the grounds set forth in the attached Decision or Order Denying Reinstatement. Set forth below is the Criteria of Rehabilitation. These criteria have been developed by the Department of Real Estate as guidelines to assist an applicant or former licensee to establish a rehabilitation program and in the presentation of his or her case should application again be made for licensure or a petition filed for either reinstatement of a license or removal of restrictions from a restricted license.

Not all of the factors listed in the criteria will be applicable in the case of every person who has had a license application or petition for reinstatement or removal of restrictions denied. Nor will each factor necessarily be given equal weight in evaluating the person's rehabilitation. Each person must decide which of these factors are applicable to his or her case and should then take appropriate steps toward rehabilitation to the end of satisfying the Real Estate Commissioner that it would not be against the public interest to grant the license in question.

2911. Criteria of Rehabilitation (*Denial*). 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 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:

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| <ul style="list-style-type: none"> (a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a 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 or discontinuance of a requirement of registration pursuant to 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. | <ul style="list-style-type: none"> (i) Completion of, or sustained enrollment in, formal educational 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: <ul style="list-style-type: none"> (1) Testimony of 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. |
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