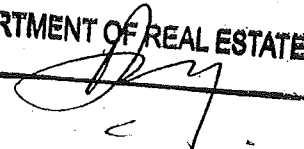


BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**

JAN 11 2013

DEPARTMENT OF REAL ESTATE  
BY: 

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In the Matter of the Application of )  
ERICK HUMBERTO GUZMAN, ) DRE No. H-38316 LA  
Respondent. ) OAH No. 2012100176

DECISION

The Proposed Decision dated December 12, 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.

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 31, 2013

IT IS SO ORDERED

1/8/13

Real Estate Commissioner



Awet P. Kidane  
Chief Deputy Commissioner

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

In the Matter of the Statement of Issues  
Against:

ERICK HUMBERTO GUZMAN,

Respondent.

Case No. H-38316 LA

OAH No. 2012100176

**PROPOSED DECISION**

This matter was heard on November 14, 2012, by Laurie R. Pearlman, Administrative Law Judge with the Office of Administrative Hearings, in Los Angeles.

Amelia V. Vetrone, Staff Counsel, represented Robin Trujillo (Complainant), a Deputy Real Estate Commissioner for the Department of Real Estate (Department), State of California.

Erick Humberto Guzman (Respondent) represented himself.

Oral and documentary evidence was received and argument was heard. The matter was submitted for decision on November 14, 2012.

**FACTUAL FINDINGS**

1. Complainant filed the Statement of Issues in her official capacity on August 2, 2012.

2. On January 20, 2012, Respondent applied to the Department for a real estate salesperson license.

*Respondent's Conviction*

3. On July 10, 2007, in the Superior Court of California, County of Los Angeles, case number KA078524, Respondent was convicted on his plea of nolo contendere of violating Penal Code section 594, subdivision (a) (Vandalism Over \$400 Damage), a felony. He was sentenced to serve sixteen months in state prison and was ordered to pay restitution and fines. After serving half of his sentence in

state prison, he was released for good behavior. He was placed on parole for three years, but was released from parole for good behavior after one year.

4. The facts and circumstances underlying this conviction occurred on February 24, 2007. Respondent's wife had been seeing another man. When the man was driving in a car with Respondent's wife, Respondent drove after him and cut him off, forcing him to stop the car. Respondent struck the man's windshield with the butt of a handgun, causing the glass to crack. Respondent opened the car door and struck the man on the back of the head with the handgun, which was unloaded. Respondent then held the handgun barrel to the man's check and told him that if he ever saw him again, Respondent would kill him.

5. Respondent had been drinking that night. He was immature and was not thinking rationally; he reacted out of rage. He acknowledged that he made a big mistake that was life-changing for him.

#### *Respondent's Application*

6. 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.

7. Respondent answered "Yes" to Question 23 of the application. He also provided detailed information regarding his conviction in answering Question 27. However, in the Conviction Detail Report which he submitted three months later, Respondent mentioned breaking the car windshield, without providing other details of the assault.

#### *Rehabilitation*

8. Respondent is 29 years old. He has two children, an eight-year-old daughter and a three-year-old son. He and his wife are currently separated, but Respondent is very involved with his children – he spends eight hours with them each weekday and has them every other weekend. His children look up to him, he has a good relationship with their mother, and he supports the family. He worked at 24-

Hour Fitness, started his own business providing copying services for attorneys, and he works as an associate at a real estate brokerage. He successfully completed his real estate courses in 2010 and passed the licensing examination in 2011. He has different friends than he had at the time of the conviction and is in the process of enrolling in college.

9. It has been more than five years since his conviction. Aside from this single conviction, Respondent has no prior or subsequent criminal record. He has paid all fines and restitution and he was released early from both prison and parole for good behavior. Respondent provided a handwritten note from his parole agent, Elizabeth DeSilva, who stated that she is proud of his outstanding adjustment while on parole and opined that he will continue to be a success in whatever he does. This document was admitted into evidence as “administrative hearsay” to supplement Respondent’s direct testimony as to his parole.<sup>1</sup> Additionally, as a document from an individual familiar with Respondent’s previous conduct and with his subsequent attitudes and behavioral patterns, this document also serves to establish rehabilitation. (Cal. Code Regs., tit. 10, § 2911, subd. (n)(2).)

10. In Spring 2009, while on parole, Respondent applied for and was accepted into the Re-integration Academy at California State Polytechnic University in Pomona. Out of 522 applicants, only 20 were accepted when Respondent applied. This program brings parolees to the University for one quarter for an immersion program in academic development, life skills, and career development. Renford R. Reese, Ph.D., the Director of the Prison Education Project and a Political Science professor at the University who runs the Re-integration Academy, testified at the hearing on Respondent’s behalf. During his time at the University, Respondent was attentive, punctual, completed all assignments, and interacted well with others in the program. Respondent was a leader and showed the others how to dress and behave. Dr. Reese stated that he has known Respondent for over three and one-half years and can confidently say that he has been rehabilitated and could carry out the duties of a Real Estate salesperson, as he has demonstrated good character, maturity, professionalism and integrity. Dr. Reese testified that Respondent shows humility and remorse for his prior actions and has the ambition of someone who wants to make a positive impact on society. Respondent is now a volunteer with the Re-integration Academy—he speaks to current participants and gives them life lessons to motivate and inspire them.

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<sup>1</sup> The term “administrative hearsay” is a shorthand reference to the provisions of Government Code section 11513, subdivision (d), to the effect that hearsay evidence that is objected to, and is not otherwise admissible, may be used to supplement or explain other evidence but may not, by itself, support a factual finding. It may be combined with other evidence to provide substantial evidence sufficient to support a finding. (*Komizu v. Gourley* (2002) 103 Cal.App.4th 1001.)

11. Respondent also submitted letters from two personal and professional contacts praising his intelligence, work ethic and integrity and supporting his bid to obtain a Real Estate salesperson license. These letters were admitted as administrative hearsay to supplement Respondent's direct testimony as to matters set out in Factual Finding 8. Additionally, as documents from individuals familiar with Respondent's previous conduct and with his subsequent attitudes and behavioral patterns, these letters also serve to establish rehabilitation. (Cal. Code Regs., tit. 10, § 2911, subd. (n)(2).)

12. Respondent was born in Mexico. He did not live with his parents after they separated when he was 14-years-old. They were not really there for him for a couple of years after that and they eventually divorced. He was careless, immature, acted out of emotion, and "hung out with the wrong people."

13. Respondent regrets his actions which led to this conviction. He accepts responsibility and has expressed remorse for his crime. Respondent is clearly motivated to change his life and to support and be a role model for his children. Respondent appeared sincere in his demeanor while testifying 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. The Department's criteria of substantial relationship are set forth at California Code of Regulations, title 10, section 2910. Respondent's crime is substantially related to the qualifications, functions and duties of a real estate licensee because it involved doing an unlawful act with the intent or threat of doing substantial injury to the person or property of another. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

3. 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 a crime that is substantially related to the qualifications, functions, and duties of a real estate licensee, based on the matters in Factual Findings 3-5 and Legal Conclusion 2.

4. 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.

5. Respondent has established sufficient rehabilitation for issuance of a restricted salesperson license. Respondent is fulfilling his parental responsibilities. (Cal. Code Regs., tit. 10, § 2911, subd. (h).) Providing for his family and being a good father for his two children is a motivating factor for Respondent to keep his life on the right track. He appeared sincere in expressing his determination to do so. Respondent has one conviction which occurred nearly 6 years ago. Respondent is 29 years old now and has demonstrated a change in attitude since the time of his conviction in 2007. More than two years have passed since Respondent's conviction (Cal. Code Regs., tit. 10, § 2911, subd. (a).) Respondent has fully paid all fines and restitution. (Cal. Code Regs., tit. 10, § 2911, subds. (b) and (g).) Respondent obtained early discharge from parole. (Cal. Code Regs., tit. 10, § 2911, subd. (e).) Respondent completed his real estate courses and the University Reintegration Program and now does volunteer work to assist other parolees enrolled in that program. (Cal. Code Regs., tit. 10, § 2911, subds. (i) and (l).) Respondent has new and different social and business contacts from those he had at the time of the criminal conduct. (Cal. Code Regs., tit. 10, § 2911, subd. (m).) And finally, Respondent established at hearing that he has undergone a change in attitude. (Cal. Code Regs., tit. 10, § 2911, subd. (n).) A restricted salesperson license, under the terms and conditions set forth in the Order below, will protect the public from any potential risk of harm.

#### ORDER

Respondent Erick Humberto Guzman'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.

4. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of Respondent's arrest, the crime for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: December 12, 2012



LAURIE R. PEARLMAN  
Administrative Law Judge  
Office of Administrative Hearings