

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

JUL 11 2014

BUREAU OF REAL ESTATE

By *[Signature]*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	Cal BRE No. H-39321 LA
)	OAH No. 2014020617
DANIEL PENA FELIX, JR.,)	
)	
)	
Respondent.)	
)	

STIPULATION AND WAIVER

&

DECISION AFTER REJECTION

The California Bureau of Real Estate ("Bureau") filed a Statement of Issues against DANIEL PENA FELIX, JR. ("Respondent") on February 19, 2014. On March 18, 2014, a hearing was held and evidence was received; the case was deemed submitted on March 18, 2014.

///

1 On April 9, 2014, the Proposed Decision of the
2 Administrative Law Judge ("ALJ") Gloria A. Barrios was issued,
3 and determined, among other things, that Respondent's
4 application for an unrestricted real estate salesperson license
5 should be denied; provided, however, Respondent shall be issued
6 a restricted salesperson license by the Real Estate Commissioner
7 pursuant to section 10156.5 of the Business and Professions
8 Code.
9

10 On May 31, 2014, the Commissioner rejected the
11 Proposed Decision of April 9, 2014.

12 The parties wish to settle this matter without further
13 proceedings.

14 IT IS HEREBY STIPULATED by and between Respondent,
15 DANIEL PENA FELIX, JR., representing himself, and the Bureau,
16 acting by and through Julie To, Counsel for the Bureau of Real
17 Estate, as follows for the purpose of settling and disposing of
18 the Statement of Issues filed by the Bureau.
19

20 1. It is understood by the parties that the Real
21 Estate Commissioner may adopt the Stipulation and Waiver and
22 Decision After Rejection as his decision in this matter, thereby
23 imposing the restrictions on Respondent's application for a real
24 estate salesperson license as set forth in the below "Decision
25 and Order". In the event the Commissioner in his discretion
26

1 does not adopt the Stipulation, the Stipulation shall be void
2 and of no effect; the Commissioner will review the transcript
3 and the evidence in the case, and will issue his Decision after
4 Rejection as his Decision in this matter.

5
6 2. By reason of the foregoing and solely for the
7 purpose of settlement of the Statement of Issues without further
8 administrative proceedings, it is stipulated and agreed that the
9 following shall be adopted as the Commissioner's Decision:

10 FACTUAL FINDINGS

11
12 1. Complainant brought the Statement of Issues in
13 her official capacity.

14 2. On March 30, 2012, Respondent submitted an
15 application for a real estate salesperson license. The
16 application was denied and the denial was the subject of the
17 hearing on March 18, 2014.

18 3. On or about July 28, 2005 in the Superior Court of
19 the State of California, in Riverside County Case No. INF051333,
20 Respondent was convicted for violation of California Penal Code
21 Section 496(A) (receiving known stolen property), a felony.
22 Respondent was sentenced to 36 months formal probation, 180 days
23 in jail, and ordered to pay fines. This conviction was
24 dismissed pursuant to Penal Code Section 1203.4 on August 4,
25 2009.

1
2
3 4. On or about February 22, 2005 in the Superior
4 Court of the State of California, in Riverside County Case No.
5 INF049212, Respondent was convicted for violation of California
6 Penal Code Section 459 (burglary) and Section 475(A) (possession
7 of a forged/altered/counterfeit check), felonies. Respondent
8 was sentenced to 36 months probation; ordered to attend
9 Narcotics Anonymous (or similar); and ordered to pay fines. In
10 addition, Respondent was ordered to stay away from the victim
11 and his co-defendants. This conviction was dismissed pursuant
12 to Penal Code Section 1203.4 on October 24, 2008

13 5. On or about February 22, 2005 in the Superior
14 Court of the State of California, in Riverside County, Case No.
15 INF049197, Respondent was convicted for violation of California
16 Penal Code Section 496(A) (receiving known stolen property), a
17 felony. Respondent was sentenced to 36 months probation;
18 ordered to attend Narcotics Anonymous (or similar); and ordered
19 to pay fines. In addition, Respondent was ordered to stay away
20 from the victim and his co-defendants. This conviction was
21 dismissed pursuant to Penal Code Section 1203.4 on August 4,
22 2009.

23 6. Respondent testified at hearing that his
24 convictions were caused by drug addiction and association with
25 other drug addicts. He testified he has not used drugs
26 (methamphetamine) in eight years and no longer associates with

1 Issues is the appropriate initial pleading in matters where a
2 respondent requests that an agency take some action regarding
3 whether a right, authority, license or privilege should be
4 granted, issued or renewed and the agency has refused to do so.
5 Section 11504 places the burden of proof upon the Respondent to
6 establish why the agency should grant the applied for right,
7 authority, license or privilege.
8

9 3. This conclusion is supported by the decision in
10 *McCoy v. Board of Retirement* (1986) 183 Cal. App. 3d 1044, where
11 the Court of Appeal, in considering the issue of who has the
12 burden of proof in an administrative hearing, stated:

13 As in ordinary civil actions, the party asserting
14 the affirmative at an administrative hearing has the
15 burden of proof, including both the initial burden of
16 going forward and the burden of persuasion by
17 preponderance of the evidence....
18

19 4. Respondent is asserting the affirmative in this
20 matter by claiming that he should be granted the applied-for-
21 license. Therefore he has the burden of proof. The standard of
22 proof is a preponderance of the evidence.
23

24 5. Business and Professions Code section 10177
25 provides:
26
27

1 The commissioner may suspend or revoke the license
2 of a real estate licensee, or may deny the issuance of
3 a license to an applicant, who has done any of the
4 following, or may suspend or revoke the license of a
5 corporation, or deny the issuance of a license to a
6 corporation, if an officer, director, or person owning
7 or controlling 10 percent or more of the corporation's
8 stock has done any of the following:
9

10 [¶]...[¶]

11 (b) Entered a plea of guilty or nolo contendere
12 to, or been found guilty of, or been convicted of, a
13 felony, or a crime substantially related to the
14 qualifications, functions, or duties of a real estate
15 licensee, and the time for appeal has elapsed or the
16 judgment of conviction has been affirmed on appeal,
17 irrespective of an order granting probation following
18 that conviction, suspending the imposition of
19 sentence, or of a subsequent order under Section
20 1203.4 of the Penal Code allowing that licensee to
21 withdraw his or her plea of guilty and to enter a plea
22 of not guilty, or dismissing the accusation or
23 information.
24
25
26
27

1 privileges granted under this restricted license in the event
2 of:

3 (a) The conviction of Respondent (including a plea of
4 nolo contendere) of a crime which is substantially related to
5 Respondent's fitness or capacity as a real estate licensee; or
6

7 (b) The receipt of evidence that Respondent has
8 violated provisions of the California Real Estate Law, the
9 Subdivided Lands Law, Regulations of the Real Estate
10 Commissioner or conditions attaching to this restricted license.

11 2. Respondent shall not be eligible to apply for the
12 issuance of an unrestricted real estate license nor the removal
13 of any of the conditions, limitations, or restrictions attaching
14 to the restricted license until two (2) years have elapsed from
15 the effective date of this Decision.
16

17 3. With the application for license, or with the
18 application for transfer to a new employing broker, Respondent
19 shall submit a statement signed by the prospective employing
20 real estate broker on form RE 552 (Rev. 4/88) approved by the
21 Bureau of Real Estate which shall certify as follows:
22

23 (a) That the employing broker has read the Decision
24 which is the basis for the issuance of the restricted license;
25 and

26 (b) That the employing broker will carefully review

1 all transaction documents prepared by the restricted licensee
2 and otherwise exercise close supervision over the licensee's
3 performance of acts for which a license is required.

4 4. Respondent shall notify the Commissioner in
5 writing within 72 hours of any arrest by sending a certified
6 letter to the Commissioner at the Bureau of Real Estate, Post
7 Office Box 137013, Sacramento, CA 95813-7013. The letter shall
8 set forth the date of Respondent's arrest, the crime for which
9 Respondent was arrested, and the name and address of the
10 arresting law enforcement agency. Respondent's failure to
11 timely file written notice shall constitute an independent
12 violation of the terms of the restricted license and shall be
13 grounds for the suspension or revocation of that license.
14
15

16 6-24-14

17 DATED



17 JULIE TO, Counsel
18 BUREAU OF REAL ESTATE

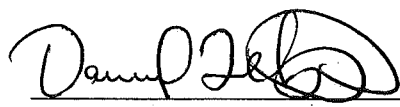
19 * * *

20 I have read the Stipulation and Waiver and Decision
21 after Rejection, and its terms are understood by me and are
22 agreeable and acceptable to me. I willingly and voluntarily
23 agree to enter into this Stipulation and Waiver and Decision
24 after Rejection.
25

26 Respondent can signify acceptance and approval of the

1 terms and conditions of this Stipulation and Waiver and Decision
2 after Rejection by faxing a copy of the signature page, as
3 actually signed by Respondent, to the Bureau at fax number (213)
4 576-6917. Respondent agrees, acknowledges and understands that
5 by electronically sending to the Bureau a fax copy of his actual
6 signature as it appears on the Stipulation and Waiver and
7 Decision After Rejection, that receipt of the faxed copy by the
8 Bureau shall be as binding on Respondent as if the Bureau had
9 received the original signed Stipulation and Waiver and Decision
10 After Rejection.
11

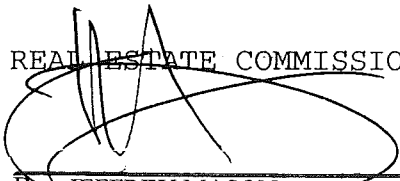
12
13 6/19/14
14 DATED


15 DANIEL PENA FELIX, JR.
16 Respondent

17 * * *

18 The foregoing Stipulation and Waiver and Decision
19 After Rejection is hereby adopted as my Decision in this matter
20 and shall become effective at 12 o'clock noon on
21 AUG 01 2014.

22 IT IS SO ORDERED JUL 10 2014

23
24 REAL ESTATE COMMISSIONER
25 
26 By: JEFFREY MASON
27 Chief Deputy Commissioner

Sachs Flag

1 JULIE L. TO, Counsel (SBN 219482)
Bureau of Real Estate
2 320 West 4th Street, Suite 350
3 Los Angeles, California 90013
4 Telephone: (213) 576-6982
(Direct) (213) 576-6916
5
6
7

FILED

FEB 19 2014

BUREAU OF REAL ESTATE

By *[Signature]*

8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of) No. H-39321 LA
12 DANIEL PENA FELIX, JR.,) STATEMENT OF ISSUES
13 Respondent.)
14 _____)

15 The Complainant, Veronica Kilpatrick, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against DANIEL PENA FELIX, JR., a.k.a. Daniel Felix or
18 Daniel Pena ("Respondent") alleges as follows:

19 1.

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

23 2.

24 On or about March 30, 2012, Respondent made
25 application to the Bureau of Real Estate of the State of
26 California for a real estate salesperson license.

27 ///

1 3.

2 On or about July 28, 2005 in the Superior Court of the
3 State of California, in Riverside County Case No. INF051333,
4 Respondent was convicted for violation of California Penal Code
5 Section 496(A) (receiving known stolen property), a felony.
6 Respondent was sentenced to 36 months formal probation, 180 days
7 in jail, and ordered to pay fines. This conviction was
8 dismissed pursuant to Penal Code Section 1203.4 on August 4,
9 2009.

10 4.

11 On or about February 22, 2005 in the Superior Court of
12 the State of California, in Riverside County Case No. INF049212,
13 Respondent was convicted for violation of California Penal Code
14 Section 459 (burglary) and Section 475(A) (possession of a
15 forged/altered/counterfeit check), felonies. Respondent was
16 sentenced to 36 months probation; ordered to attend Narcotics
17 Anonymous (or similar); and ordered to pay fines. In addition,
18 Respondent was ordered to stay away from the victim and his co-
19 defendants. This conviction was dismissed pursuant to Penal
20 Code Section 1203.4 on October 24, 2008

21 5.

22 On or about February 22, 2005 in the Superior Court of
23 the State of California, in Riverside County, Case No.
24 INF049197, Respondent was convicted for violation of California
25 Penal Code Section 496(A) (receiving known stolen property), a
26 felony. Respondent was sentenced to 36 months probation;
27 ordered to attend Narcotics Anonymous (or similar); and ordered

1 to pay fines. In addition, Respondent was ordered to stay away
2 from the victim and his co-defendants. This conviction was
3 dismissed pursuant to Penal Code Section 1203.4 on August 4,
4 2009.

5 6.

6 These crimes bear a substantial relationship to the
7 qualifications, functions or duties of a real estate licensee
8 under Section 2910, Title 10, Chapter 6, California Code of
9 Regulations.

10 7.

11 The crimes of which Respondent was convicted
12 constitute cause for denial of Respondent's application for a
13 real estate license under California Business and Professions
14 Code Sections 475(a)(2), 480(a), and 10177(b).

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

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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, DANIEL PENA FELIX, JR., and for such other and further relief as may be proper under other applicable provisions of law.

Dated at San Diego, California: February 4th, 2014.



Veronica Kilpatrick
Deputy Real Estate Commissioner

cc: Daniel Pena Felix, Jr.
Veronica Kilpatrick
Sacto