

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
SEP 03 2004  
DEPARTMENT OF REAL ESTATE

*Shelly [Signature]*

\* \* \*

In the Matter of the Application of)  
MIGUEL A. CUEVAS, )  
Respondent. )  
\_\_\_\_\_ )

NO. H-2981 SD  
OAH No. L2004050215

**DECISION**

The Proposed Decision dated August 3, 2004, 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. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon  
on September 23, 2004.

IT IS SO ORDERED August 17, 2004.

JOHN R. LIBERATOR  
Acting Real Estate Commissioner

*John R. Liberator*  
\_\_\_\_\_

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

MIGUEL A. CUEVAS,

Respondent.

Case No. H-2981 SD

OAH No. L2004050215

**PROPOSED DECISION**

On July 27, 2004, in San Diego, California, Steven V. Adler, Presiding Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Truly Sughrue, Real Estate Counsel appeared on behalf of complainant J. Chris Graves, Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Adam M. Ruben, attorney at law, appeared and represented respondent Miguel A. Cuevas, who was also present at the hearing.

The matter was submitted on July 27, 2004.

**FACTUAL FINDINGS**

1. On April 20, 2004, a Statement of Issues (Case No. H-2981 SD) was filed by J. Chris Graves (complainant) in his official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of California against Miguel A. Cuevas (respondent).

Respondent applied for a real estate salesperson license. His application was denied because (1) he had been convicted of crimes involving moral turpitude and/or substantially related to the qualifications, functions or duties of a real estate salesperson; and (2) he attempted to procure a license by fraud, misrepresentation or deceit by making a material misstatement in his application. Respondent requested a hearing, and this administrative hearing followed.

2. On August 20, 2002, respondent submitted an application to the Department of Real Estate (hereinafter referred to as "the Department") for licensure as a real estate salesperson. The Department requested additional information on October 10, 2002, and later denied the application.

3. On August 4, 1995, in the South Bay Municipal Court, respondent was convicted of a violation of Penal Code section 166.4 based on his admission that he falsely reported his car had been stolen, a misdemeanor. This violation involved moral turpitude and is substantially related to the qualifications, functions, and duties of a real estate licensee under Title 10, California Code of Regulations, section 2910. Respondent was sentenced to pay a \$200.00 fine. Respondent paid the fine.

4. On August 4, 1995, in the South Bay Municipal Court, respondent was convicted of a violation of Vehicle Code section 23152, subdivision (a), drunk driving, a misdemeanor.

Respondent was placed on summary probation for three years. He was sentenced to serve 48 hours in jail, fined \$1,400.00, required to complete the First Conviction program, and comply with other probation requirements.

This crime does not involve moral turpitude, but it is substantially related to the qualifications, functions, and duties of a real estate licensee under Title 10, California Code of Regulations, section 2910, subdivision (10) because it demonstrates a pattern of repeated and willful disregard of the law when considered with his conviction for filing a false report.

5. On November 10, 1999, in the South Bay Division of Superior Court, respondent was convicted of a violation of Vehicle Code section 23152, subdivision (a), drunk driving, a misdemeanor. He was sentenced to pay a fine of \$1,500.00, but was permitted to pay the fine through volunteer work. His driver's license was suspended for two years and he was required to complete an SB 38 program.

Respondent completed all requirements imposed on him as a result of this conviction.

There was insufficient evidence to establish that this violation involved moral turpitude, but it is substantially related to the qualifications, functions, and duties of a real estate licensee under Title 10, California Code of Regulations, section 2910, subdivision (11), two or more convictions of driving under the influence.

6. In respondent's application to the Department for licensure as a real estate salesperson, he answered, "yes" to the question, "Have you ever been convicted of any violation of law?" In the space set aside for an explanation, respondent revealed his 1999 drunk driving conviction, but failed to reveal his 1995 drunk driving conviction or his conviction for filing a false police report.

7. Respondent testified about his convictions. His two 1995 convictions were handled by the same attorney in one sentencing hearing. At the time of the May 1995, drunk driving offense, respondent was 21 years old and "young and reckless," in his words. He recalls that his blood alcohol level was 0.15%. His conviction for filing a false report arose out of loaning a car to a friend, who kept the car longer than agreed. Respondent falsely told the police that the car had been stolen rather than informing them that the loaned car had not been returned on time.

Respondent also explained the circumstances of his 1999 drunk driving conviction. He had gone to a party in Tijuana with relatives, and his sister was to be his designated driver. However, the group got separated and respondent decided to return home, leaving his sister and others to find their way back across the border. He was arrested when he tried to cross the border; his blood alcohol was 0.12%.

Respondent did not mention his first two convictions on his application to the Department because he thought that they had been "expunged." He did not ask for legal advice, or show anyone else the forms before he submitted them. Respondent thought he did not have to reveal the convictions because they would not be found if his records were searched, and because he had been told that after seven years, the first drunk driving conviction could not be used to enhance his sentence.

8. Respondent's second drunk driving conviction got his attention and changed his life. He almost lost his job at the San Ysidro School District, but was fortunate in being allowed to stay as an employee. While employed there, he helped the school district qualify for the state's free lunch program by following up with parents to make sure that their applications were accurate and complete.

He no longer runs with the same crowd, got married, and has one child with another on the way. His wife is his companion and his best friend, and they attend church together. He now socializes only with his and his wife's families. Although he still drinks, he never drinks and drives.

Respondent is the main provider for his family; his wife is a paralegal who works part-time. He has been working for loan companies and presented letters of recommendation from several. He studied real estate in college, where he graduated with a bachelor's degree in business administration (National University, 1999.) Respondent wants to work in the real estate field because he wants to help people; he feels the job is a productive one, and he looks forward to the challenge of selling real estate.

Respondent testified that he has been patient in waiting to submit his application. He has passed the examination to become a real estate salesperson. He has been working for Novastar Home Mortgage, an entity licensed by the Department of Corporations, State of California as well as the State Banking Department of the State of Arizona.

9. Respondent's wife, Elizabeth Cuevas, also presented testimony. They met in September 2002, and were married a year later. She and her husband have one child and are

expecting another in four months. She stated that her husband is a good person who made an honest mistake. He no longer drinks to excess, socializes with their families, and is never intoxicated. He works hard to support their family and she supports his application for licensure. She has known respondent since they were in elementary school and gave assurance that he is a changed man.

## LEGAL CONCLUSIONS

1. Cause was established to deny respondent a license as a real estate salesperson pursuant to Business and Professions Code section 480, subdivision (a) and section 10177, subdivision (a) in that he attempted to procure a real estate license by fraud, misrepresentation or deceit. The claim that respondent forgot the 1995 conviction for falsely reporting a crime and/or that he did not think he had to report the two 1995 convictions does not excuse the failure to reveal the convictions to the Department. *Madrid v. Department of Real Estate* (1984) 152 Cal.App.3d 454, 456-457.

Although respondent claims he forgot the crimes, he also testified that he thought that he did not have to reveal them because of their age. He felt secure in concealing the crimes from the Department since he thought they had been expunged and the Department would not be able to discover the convictions. It is clear that respondent knowingly omitted the two convictions because he mistakenly thought that they would not be discovered by the Department.

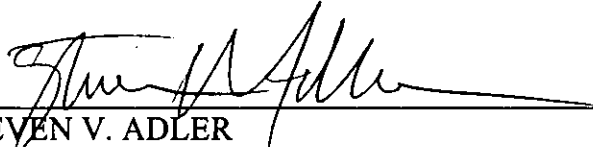
2. Cause was established to deny respondent a license as a real estate salesperson pursuant to Business and Professions Code section 480, subdivision (a) and section 10177, subdivision (b) in that respondent was convicted of drunk driving in 1995 and 1999 and of making a false report of a crime in 1995. These convictions are substantially related to the qualifications, functions or duties of a licensee as set forth in Title 10, California Code of Regulations, section 2910, subdivisions (10) and (11).

Respondent is seeking licensure after submitting an application in which he willfully omitted two convictions. Although it seems clear that his life has changed and he has the education and training to qualify for a license, the public would not be protected if the Department were to issue a license to a person who willfully and knowingly concealed criminal convictions in his application for licensure.

ORDER

The respondent's application for a real estate salesperson's license is DENIED.

DATED: Aug. 3, 2004



STEVEN V. ADLER  
Presiding Administrative Law Judge  
Office of Administrative Hearings

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

**FILED**

**MAY 13 2004**

**DEPARTMENT OF REAL ESTATE**

By *Lauree G. Ben*

*In the Matter of the Application of*

MIGUEL ALEJANDRO CUEVAS,

Case No. H-2981 SD

OAH No.

*Respondent*

**NOTICE OF HEARING ON APPLICATION**

**To the above named respondent:**

**You are hereby notified** that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, 1350 FRONT STREET, SUITE 6022, SAN DIEGO, CA 92101** on **TUESDAY, JULY 27, 2004**, at the hour of **9:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: MAY 13, 2004

DEPARTMENT OF REAL ESTATE

By *David B. Seals*  
DAVID B. SEALS, Counsel (L2)

1 DAVID B. SEALS, Counsel (SBN 69378)  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007  
5 Telephone: (916) 227-0789  
6 -or- (916) 227-0792 (Direct)  
7

FILED  
APR 20 2004

DEPARTMENT OF REAL ESTATE

By Laurie J. Jan

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Application of )	
12 MIGUEL ALEJANDRO CUEVAS, )	No. H-2981 SD
13 Respondent. )	<u>STATEMENT OF ISSUES</u>
14 )	

15 The Complainant, J. Chris Graves, a Deputy Real Estate  
16 Commissioner of the State of California, for Statement of Issues  
17 against MIGUEL ALEJANDRO CUEVAS (hereinafter "Respondent")  
18 alleges as follows:

19 I

20 Respondent made application to the Department of Real  
21 Estate of the State of California for a real estate salesperson  
22 license on or about August 26, 2002.

23 II

24 Complainant, J. Chris Graves, a Deputy Real Estate  
25 Commissioner of the State of California, makes this Statement of  
26 Issues in his official capacity.

27 ///



1 III

2 In response to Question 25 of said application, to  
3 wit: "Have you ever been convicted of any violation of law? ...  
4 If yes, complete #27 below.", Respondent answered "Yes".

5 IV

6 In response to Item 27 which asked for a explanation  
7 of items 24 - 26 Respondent revealed the conviction discussed in  
8 Paragraph V below.

9 V

10 On or about November 10, 1999, in the San Diego  
11 Superior Court, South County Division, Respondent was convicted  
12 of violation of California Vehicle Code Section 23152(b) with a  
13 prior (Driving While Having a 0.08 or Higher Blood Alcohol), a  
14 crime involving moral turpitude and/or which is substantially  
15 related under Section 2910, Title 10, California Code of  
16 Regulations (hereinafter the "Regulations") to the  
17 qualifications, functions or duties of a real estate licensee.

18 VI

19 On or about August 4, 1995, in the Municipal Court of  
20 California, County of San Diego, South Bay Judicial District,  
21 Respondent was convicted of violation of California Vehicle Code  
22 Section 23152(b) (Driving While Having a 0.08 or Higher Blood  
23 Alcohol), a crime involving moral turpitude and/or which is  
24 substantially related under Section 2910 of the Regulations to  
25 the qualifications, functions or duties of a real estate  
26 licensee.

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VII

On or about August 4, 1995, in the Municipal Court of California, County of San Diego, South Bay Judicial District, Respondent was convicted of violation of California Penal Code Section 148.5 (Falsely Reporting Crime), a crime involving moral turpitude and/or which is substantially related under Section 2910 of the Regulations to the qualifications, functions or duties of a real estate licensee.

VIII

Respondent's failure to reveal the convictions set forth in Paragraphs VI and VII above in said application constitutes the attempt to procure a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said application, which failure is cause for denial of Respondent's application for a real estate license under Sections 480(c) and 10177(a) of the California Business and Professions Code.

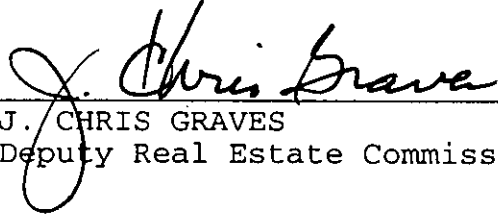
IX

Respondent's criminal convictions, as alleged in Paragraphs V through VII above, constitute cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

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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, and for such other and further relief as may be proper under other provisions of law.

  
\_\_\_\_\_  
J. CHRIS GRAVES  
Deputy Real Estate Commissioner

Dated at San Diego, California,  
this 14<sup>th</sup> day of April, 2004.