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FILED  
FEB 02 2007

DEPARTMENT OF REAL ESTATE

By Juan Armenta

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of ) No. H-8267 SF  
JUAN JOSE MONTOYA, )  
Respondent. )

ORDER GRANTING UNRESTRICTED LICENSE

On May 15, 2003, a Decision was rendered herein denying Respondent's application for a real estate salesperson license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on June 16, 2003, and Respondent has operated as a restricted licensee without cause for disciplinary action against him since that time.

On July 18, 2006, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

///  
///

1 I have considered Respondent's Petition and the  
2 evidence submitted in support thereof including Respondent's  
3 record as a restricted licensee. Respondent has demonstrated to  
4 my satisfaction that Respondent meets the requirements of law for  
5 the issuance to Respondent of an unrestricted real estate  
6 salesperson license and that it would not be against the public  
7 interest to issue said license to Respondent.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's  
9 petition for removal of restrictions is granted and that a real  
10 estate salesperson license be issued to Respondent if Respondent  
11 satisfies the following conditions within nine (9) months from  
12 the date of this order:

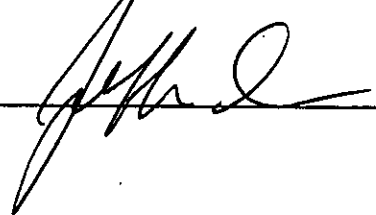
13 (a) Submittal of a completed application and payment  
14 of the appropriate fee for a real estate salesperson license, and

15 (b) Submittal of evidence satisfactory to the Real  
16 Estate Commissioner that Respondent has, since the most recent  
17 issuance of an original or renewal real estate license, taken and  
18 successfully completed the continuing education requirements of  
19 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a  
20 real estate license.

21 This Order shall become effective immediately.

22 IT IS SO ORDERED

23 1-24-07  
24 JEFF DAVI  
25 Real Estate Commissioner

26   
27

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
MAY 27 2003  
DEPARTMENT OF REAL ESTATE

\* \* \*

In the Matter of the Application of)  
JUAN JOSE MONTOYA, )  
Respondent. )

NO. H-8267 SF  
OAH No. N2003010311

*Shelly Ely*

**DECISION**

The Proposed Decision dated April 25, 2003, 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. 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 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 appended hereto.

This Decision shall become effective at 12 o'clock noon  
on JUNE 16, 2003.

IT IS SO ORDERED May 15 2003.

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

*Paula Reddish Zinnemann*

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

In the Matter of the Application of

JUAN JOSE MONTOYA,

Respondent

Case No. H-8267 SF

OAH No. N2003010311

**PROPOSED DECISION**

This matter was heard before Robert R. Coffman, Administrative Law Judge, Office of Administrative Hearings, State of California, in Oakland, California, on April 16, 2003.

The respondent, Juan Jose Montoya, was personally present and was represented by his attorney, James Leininger.

David B. Seals, Counsel for the Department of Real Estate, represented the complainant, Les R. Bettencourt.

**FACTUAL FINDINGS**

1. Les R. Bettencourt made the Statement of Issues in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Respondent made application to the Department of Real Estate for a real estate salesperson license on or about February 11, 2002, with the knowledge and understanding that any license issued as a result of his application would be subject to the conditions of section 10153.4 of the Business and Professions Code.

3. On or about December 30, 1984, in the United States District Court, Southern District of Florida, respondent was convicted of violating Title 18 U.S.C. 371 (conspiracy to defraud the United States), a felony and a crime involving moral turpitude which bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee.

4. On or about August 28, 1995, in the Municipal Court of California, Santa Clara County Judicial District, respondent was convicted of violating Vehicle Code section 23152(a) (driving under the influence).

5. In response to Question 25 on his application for real estate salesperson license, "Have you ever been convicted of any violation of Law?" respondent answered yes, listing the above 1995 conviction. However, he failed to list the above 1984 conviction.

6. On February 7, 2002, when respondent's wife found his application for a real estate license on the dresser next to her own application she mailed both to the Department, under the mistaken belief that respondent's application was complete. In fact, respondent had not completed the portion of his application requiring disclosure of criminal convictions. That evening, February 7, respondent was made aware that his wife had mailed his application although he had not authorized her to do so.<sup>1</sup>

Respondent was aware that he had to disclose his 1984 conviction on his application. He intended to do so, but had not yet listed it on his application because he had no records regarding the conviction. He was in the process of obtaining the records so that he would have accurate information to place on the application.

The next morning, February 8, 2002, respondent called the Department of Real Estate and advised the Department employee to whom he was referred what had happened, that his application was submitted by mistake. The Department representative told respondent he would have to wait until the Department sent him a letter, that he would then have an opportunity to explain what occurred to the Department employee assigned to the matter. The Department also advised respondent to submit a check for the license application fee, as his wife had neglected to submit the fee.

Respondent made several calls to the Florida court before the court could locate his file and provide him with information regarding the 1984 conviction. Upon receipt of such information the respondent sent copies to the Department.

7. The circumstances surrounding the 1995 conviction are that in July 1995 respondent attended a soccer match between two rival South American teams. He consumed too much at the game and was stopped on his way home. He was sentenced to probation on conditions, including payment of a fine and participation in a weekend work program. He successfully completed his probation.

8. The circumstances surrounding the 1984 conviction are that respondent participated in a money laundering scheme in March and April 1984. At the urging of a

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<sup>1</sup> Respondent's wife routinely handled respondent's correspondence and similar matters for the family. Her act of mailing a document for respondent without conferring with him was not an abnormal occurrence in the Montoya household.

trusted relative respondent took cash to San Francisco area banks and purchased cashiers checks. He was unaware the checks he purchased would be part of a criminal enterprise, but when informed that that was the case he acknowledged his role in the scheme and pled guilty.

In December 1984 he was sentenced to four years imprisonment. He served two years and eight months in a minimum security facility in California. He was subject to a six month probation which he successfully completed in 1987.

9. During the past nine years respondent has owned and operated a building maintenance company in Morgan Hill.

Respondent is active in church activities. He is a volunteer in YMCA youth programs. He also speaks to junior high school students about his conviction and the impact it has had on his life, stressing the importance of avoiding illegal activities.

Respondent lives with his wife and three children, including a three-month-old infant. His activities are mainly centered around his family. He vows he would never put the welfare and security of his family in jeopardy by engaging in any illegal activity.

In September 2002 respondent was interviewed by a Department of Real Estate Deputy Commissioner who subsequently recommended his application be granted.

10. Respondent was 22 years old when he participated in money laundering. The conduct occurred 19 years ago. He takes full responsibility for his conduct. The likelihood is remote that he would again engage in illegal conduct, or commit unethical acts while performing activities as a licensed real estate agent.

#### LEGAL CONCLUSIONS

1. Cause was established to deny the application under section 480(a) and 10177(b) of the Business and Professions Code, under the facts set forth in Finding 3.

2. Evidence did not establish that respondent's one driving under the influence conviction, now eight years old, was one substantially related to the functions, duties or qualifications of a real estate licensee.

3. Respondent's failure to disclose his 1984 conviction was the product of several mistakes, one by respondent for leaving his incomplete application next to his wife's application, one by respondent's wife for mailing it, and one by the Department for not accepting respondent's immediate notification the application was incomplete. It is not necessary to determine whether or not the respondent's application was withdrawn before the Department received it. The important fact is that respondent notified the Department that he had not completed the application. Under the circumstances the only

just conclusion is that respondent did not violate sections 480(c) and 10177(a) of the Business and Professions Code.

### 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 10156.5 of the Business and Professions Code. The restricted license issued to 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 the 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 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; or
  - (b) 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.
  
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for 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:
  - (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 performance by the restricted licensee relating to activities for which a real estate license is required.

4. Respondent's restricted real estate salesperson license is issued subject to the provisions 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 two of the courses listed in section 10153.2, 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 the respondent of lifting of the suspension.

5. Pursuant to section 10154, if respondent has not satisfied the requirements for an unqualified license under section 10153.4, 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 10153.4 until four years after the date of the issuance of the preceding restricted license.

DATED: April 25, 2003.

  
ROBERT R. COFFMAN  
Administrative Law Judge  
Office of Administrative Hearings



BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
FEB 07 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

JUAN JOSE MONTOYA

} Case No. H-8267 SF Shelly Ely  
} OAH No. N2003010311

Respondent

**FIRST CONTINUED**  
**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, ELIHU M. HARRIS BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612 on WEDNESDAY--APRIL 16, 2003, 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 Hearing 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 for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: FEBRUARY 7, 2003

By David B. Seals  
DAVID B. SEALS, (S.E.) Counsel

FILED  
JAN 07 2003

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

DEPARTMENT OF REAL ESTATE

By Shelly Ely

*In the Matter of the Application of*

JUAN JOSE MONTOYA

}  
}

Case No. H-8267 SF

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, ELIHU M. HARRIS BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612 on FRIDAY--FEBRUARY 7, 2003, at the hour of 1:30 P.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 Hearing 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 for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

*Dated:* JANUARY 7, 2003

DEPARTMENT OF REAL ESTATE  
By David B. Seals  
DAVID B. SEALS, Counsel

*flag*

1 DAVID B. SEALS, Counsel (SBN 69378)  
DEPARTMENT OF REAL ESTATE  
2 P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4 Telephone: (916) 227-0789  
-or- (916) 227-0792 (Direct)

FILED  
NOV 26 2002

DEPARTMENT OF REAL ESTATE  
By *Shelly Co*

8 BEFORE THE  
9 DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Application of )  
13 )  
14 JUAN JOSE MONTOYA, )  
15 )  
16 Respondent. )

NO. H-8267 SF  
STATEMENT OF ISSUES

17 The Complainant, LES R. BETTENCOURT, a Deputy Real  
18 Estate Commissioner of the State of California, for Statement of  
19 Issues against JUAN JOSE MONTOYA (hereinafter "Respondent")  
20 alleges as follows:

21 I

22 Respondent made application to the Department of Real  
23 Estate of the State of California for a real estate salesperson  
24 license on or about February 11, 2002 with the knowledge and  
25 understanding that any license issued as a result of said  
26 application would be subject to the conditions of Section 10153.4  
27 of the California Business and Professions Code.

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II

Complainant, LES R. BETTENCOURT, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity.

III

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

IV

In response to #27 which asked for a explanation of items 24 - 26 Respondent, revealed a "1996" conviction in Santa Clara County for "DUI".

V

On or about December 30, 1984 in the United States District Court, Southern District of Florida, Respondent was convicted of violation of Title 18 U.S.C. 371 (Conspiracy to Defraud the United States), a felony and a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations (herein "the Regulations"), to the qualifications, functions, or duties of a real estate licensee.

VI

On or about August 28, 1995 in the Superior Court Northern Branch of the State of California in and for the County of San Mateo, Respondent was convicted of violation of California Vehicle Code Section 23152(a) or (b) (Driving Under the Influence of Alcohol), a crime involving moral turpitude which bears a

1 substantial relationship under Section 2910 of the Regulations,  
2 to the qualifications, functions, or duties of a real estate  
3 licensee.


4 VII

5 Respondent's failure to reveal the conviction set forth  
6 in Paragraph V above in said application constitutes the attempt  
7 to procure a real estate license by fraud, misrepresentation, or  
8 deceit, or by making a material misstatement of fact in said  
9 application, which failure is cause for denial of Respondent's  
10 application for a real estate license under Sections 480(c) and  
11 10177(a) of the Code.

12 VIII

13 The crimes of which Respondent was convicted, as  
14 alleged in Paragraphs V and VI, above, constitute cause for  
15 denial of Respondent's application for a real estate license  
16 under Sections 480(a) and 10177(b) of the Code.

17 WHEREFORE, the Complainant prays that the above-  
18 entitled matter be set for hearing and, upon proof of the charges  
19 contained herein, that the Commissioner refuse to authorize the  
20 issuance of, and deny the issuance of, a real estate salesperson  
21 license to Respondent, and for such other and further relief as  
22 may be proper under other provisions of law.

23  
24   
25 LES R. BETTENCOURT  
26 Deputy Real Estate Commissioner

26 Dated at Oakland, California,  
27 this 19th day of November, 2002.