

FILED
APR 06 2006

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
By Anne Shawver

* * *

In the Matter of the Application of)	
)	NO. H-9414 SF
JOSE PEREZ)	
)	OAH NO.L2005120926
Respondent.)	
_____)	

DECISION

The Proposed Decision dated March 8, 2006, 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 APR 26 2006

IT IS SO ORDERED 4-5, 2006.

JEFF DAVI
Real Estate Commissioner

Jeff Davi

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JOSE PEREZ,

Respondent.

No. H-9414 SF

OAH No. N2005120926

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on February 15, 2006, in Oakland, California.

Department of Real Estate Counsel Truly Sughrue represented complainant E.J. Haberer II, Deputy Real Estate Commissioner, State of California.

Thomas C. Lasken, Attorney at Law, represented respondent Jose Perez, who was present.

The matter was submitted on February 15, 2006.

FACTUAL FINDINGS

1. Respondent Jose Perez submitted to the Department of Real Estate an application for a real estate salesperson license. The application was dated January 18, 2005, and the department received it on January 31, 2005.

2. On May 3, 1996, respondent was convicted on his plea of nolo contendere of a violation of Penal Code section 192, subdivision (c)(1) (vehicular manslaughter). Respondent was placed on probation for three years and required to serve one year in county jail.

3. The facts and circumstances of this conviction are that in the early morning of March 10, 1996, respondent was driving his vehicle and crashed into a parked vehicle, injuring himself and his passenger, a close friend. Sometime later, after several surgeries, respondent's friend died from his injuries. Respondent has no memory of the accident, although he learned from the statement of a witness that he lost control of his vehicle. Respondent and his friend had been at a gathering of friends, but respondent had not been

drinking or using drugs. He and his friend were going to get cigarettes, and respondent recalls some of their drive together. His next memory is of wandering around and eventually falling asleep or passing out after falling down some stairs. When he woke up, respondent's head and stomach hurt and he wondered what he was doing there. He got up and found a street he recognized and then walked home. Once he got home and made some calls, respondent found out that there had been an accident in which his friend was injured and the police were looking for the driver. Three days after the accident, respondent turned himself in and was arrested for hit-and-run. He was 23 years old at the time.

4. On January 6, 2003, respondent was convicted on his plea of nolo contendere of a violation of Penal Code section 415, subdivision (1) (fighting in a public place or challenging another person in a public place to fight). Respondent was placed on probation for two years and required to serve two days in the weekend work program.

5. The facts and circumstances of this conviction are that on September 29, 2002, respondent was arrested for vandalism after his ex-girlfriend told police that he had broken a window of her car. Respondent denied breaking the car window, and he got into an argument with police. In his testimony at the hearing, respondent was adamant that he did not break the car window.

6. Respondent accepts responsibility for the 1996 accident that killed his friend and for arguing with police when he was arrested in 2002. The 1996 incident is extremely painful for respondent, because his actions, although unintentional, led to the death of a close friend. Also, respondent's incarceration in jail was a terrible experience, because he had to cope with physical violence and threats from other inmates at a time when he felt emotionally devastated.

7. Respondent successfully completed probation on both his convictions.

8. Respondent is a 33-year-old unmarried man who was born in Mexico but came to the United States in the 1980's. He graduated from high school in Los Angeles. Respondent has a seven-year-old son and a four-year-old daughter, and he contributes to their support.

9. Respondent attends church regularly. Dalia Herrera, a friend from church who has known respondent for five years, wrote a letter on his behalf dated February 1, 2006. In that letter, Herrera described respondent as an honest and responsible person with strong family and religious values.

10. From 1998 to 2000, respondent was employed by L&W Gypsum Drywall Supply in San Jose. He started as a commercial driver making deliveries, and then he moved into an office position involving customer contact. Respondent's supervisor, Hector Valdez, became a personal friend of his. In a letter dated January 3, 2005, Valdez praised respondent as good-natured, reliable and trustworthy.

11. Before his current job, respondent attended a two-year trade school program in sound and communications through an electrical union local.

12. For about a year, respondent has worked for San Jose real estate broker Alfredo Barajas, doing office work and training to be a real estate salesperson. Barajas met respondent about four years ago, and they became good friends. He came to the hearing to testify on respondent's behalf. Barajas explained that respondent told him about his vehicular manslaughter conviction shortly after they became friends, and respondent told him about his last conviction soon after it happened. Barajas described respondent as a hardworking, honest and reliable person whom he trusts to represent his business. Barajas plans to employ respondent as a real estate salesperson if he is granted a license.

13. When respondent applied for a real estate license, he disclosed his criminal convictions on the application.

14. Respondent has not completed all the courses required under Business and Professions Code section 10153.4.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), authorizes the denial of a license if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed business or profession. Business and Professions Code section 10177, subdivision (b), which is specific to real estate licenses, authorizes the denial of a license if the applicant has been convicted of a felony or a crime involving moral turpitude.

California Code of Regulations, title 10, section 2910, sets forth the criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. A crime is deemed to be substantially related if it involves "[d]oing of any unlawful act . . . with the intent or threat of doing substantial injury to the person or property of another" (subd. (a)(8)) or "[c]onduct which demonstrates a pattern of repeated and willful disregard of the law" (subd. (a)(10)).

2. Respondent's 1996 vehicular manslaughter conviction was for a crime involving moral turpitude that is substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(8).

Penal Code section 192 defines manslaughter as "the unlawful killing of a human being without malice." There are several types of vehicular manslaughter, and respondent was convicted of violating subdivision (c)(1) of Penal Code section 192. That provision defines vehicular manslaughter as "driving a vehicle in the commission of an unlawful act, not amounting to a felony, and with gross negligence; or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, and with gross

negligence.” By contrast, subdivision (c)(2) defines vehicular manslaughter as “driving a vehicle in the commission of an unlawful act, not amounting to a felony, but without gross negligence; or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence.” As a matter of law, then, respondent’s offense involved unlawful conduct and the grossly negligent operation of a vehicle. The reckless disregard for the safety or property of others makes this crime one of moral turpitude. Similarly, because the crime involved the commission of an unlawful act with the threat of doing substantial injury to the person or property of another, it is substantially related to the qualifications, functions or duties of a real estate licensee.

The conviction constitutes cause to deny respondent’s license application under Business and Professions Code section 480, subdivision (a), and section 10177, subdivision (b).

3. A violation of Penal Code section 415, subdivision (1) (fighting in a public place or challenging another person in a public place to fight) does not involve moral turpitude as a matter of law, and the facts and circumstances of respondent’s 2003 conviction do not indicate moral turpitude. Respondent’s offense is not substantially related to the qualifications, functions or duties of a real estate licensee. Neither as a matter of law nor by its facts and circumstances did the crime involve the intent or threat of doing substantial injury to the person or property of another. And, while respondent had one previous conviction, his violation of Penal Code section 415, subdivision (1), did not demonstrate a pattern of repeated and willful disregard of the law.

Respondent’s 2003 conviction does not constitute cause for denial under Business and Professions Code section 480, subdivision (a), or section 10177, subdivision (b).

4. Almost ten years have elapsed since respondent’s vehicular manslaughter conviction, and he completed his probation for that offense almost seven years ago. Since then, respondent has pursued vocational training, and he has been employed in jobs where he proved to be reliable and trustworthy. Respondent contributes to the support of his children, and he regularly attends church. He was forthright about his criminal history on the license application and with the broker for whom he currently works in a non-licensed capacity. Respondent has established that he is sufficiently rehabilitated that it would not be contrary to the public interest to grant him a restricted real estate license.

ORDER

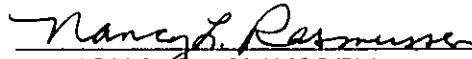
The application of respondent Jose Perez for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to him pursuant to Business and Professions Code section 10156.5. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that 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. Respondent's conviction, including by 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. 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 the restricted license.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or 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 real estate license is required.
4. Respondent's restricted real estate salesperson license is issued subject to the requirements of Business and Professions Code section 10153.4, to wit: respondent shall, within 18 months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in Business and Professions Code 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 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 respondent of lifting of the suspension.

5. Pursuant to Business and Professions Code section 10154, if respondent has not satisfied the requirements for an unqualified license under Business and Professions Code 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: March 8, 2006


NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings

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FILED
OCT 11 2005

DEPARTMENT OF REAL ESTATE

By Jason Brown

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 JOSE PEREZ,)
13 Respondent.)

No. H- 9414 SF

STATEMENT OF ISSUES

14
15 The Complainant, E. J. HABERER II, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against JOSE PEREZ (hereinafter "Respondent"), is informed and
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 January 31, 2005, with the knowledge and
23 understanding that any license issued as a result of said
24 application would be subject to the conditions of Section 10153.4
25 of the Business and Professions Code.

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II

Complainant, E. J. HABERER II, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity and not otherwise.

III

On or about May 3, 1996, in the Superior Court, County of Los Angeles, Respondent was convicted of a violation of Section 192(c)(1) of the California Penal Code (Vehicular Manslaughter), a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

IV

On or about January 6, 2003, in the Superior Court, County of Santa Clara, Respondent was convicted of a violation of Section 415(1) of the California Penal Code (Disorderly Conduct), a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

VI

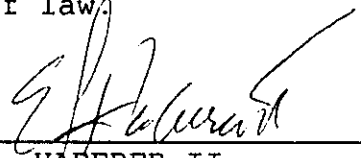
The crimes of which Respondent was convicted, as alleged above, constitute cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

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VII

Respondent's failure to reveal the convictions set forth in Paragraph IV in said application constitutes the procurement of 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.

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.


E. J. HABERER II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 3rd day of October, 2005.