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AUG - 6 2009

DEPARTMENT OF REAL ESTATE

By H. Mat

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
REYNA AVILA,
Respondent.

No. H-31746 LA

ORDER DENYING REINSTATEMENT OF LICENSE
BUT GRANTING RIGHT TO RESTRICTED LICENSE

On August 1, 2005, in Case No. H-31746 LA, a Decision was entered revoking the real estate salesperson license of Respondent Reyna Avila. The Decision became effective August 25, 2005.

On January 17, 2007, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted real estate salesperson license.

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1 The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State*
2 *Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and
3 integrity than an applicant for first time licensure. The proof must be sufficient to overcome the
4 prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

5 The Decision in this matter found cause to revoke Respondent's license pursuant
6 to the provisions of Sections 490 and 10177(b) of the California Business and Professions Code,
7 on the grounds that, on May 7, 2004, in the Superior Court of the State of California, County of
8 Los Angeles, Respondent was convicted of Grand Theft in violation of Penal Code Section
9 487(a), a felony and a crime involving moral turpitude that is substantially related to the
10 qualifications, functions and duties of a real estate licensee.

11 The Department has developed criteria in Section 2911 of Title 10, California
12 Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for
13 reinstatement of a license. Among the criteria relevant in this proceeding are:

14 Regulation 2911(k) Correction of business practices resulting in injury to others or
15 with the potential to cause such injury.

16 Given the violations found and the fact that Respondent has not engaged as a real
17 estate licensee in the conduct of a real estate business or otherwise acted in a fiduciary capacity,
18 Respondent has not established that Respondent has complied with Section 2911(k).

19 Consequently, I am not satisfied that Respondent is sufficiently rehabilitated to
20 receive an unrestricted real estate salesperson license. Additional time and evidence of correction
21 as a restricted real estate salesperson is necessary to establish that Respondent is rehabilitated.

22 I am satisfied, however, that it will not be against the public interest to issue a
23 restricted real estate salesperson license to Respondent.

24 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
25 reinstatement of Respondent's real estate salesperson license is denied.

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1 A restricted real estate salesperson license shall be issued to Respondent pursuant
2 to Section 10156.5 of the Business and Professions Code, if Respondent satisfies the following
3 conditions prior to and as a condition of obtaining a restricted real estate salesperson license
4 within twelve (12) months from the date of this Order:

5 1. Respondent shall qualify for, take and pass the real estate salesperson
6 license examination.

7 2. Respondent shall submit a completed application and pay the fee for a real
8 estate salesperson license.

9 The restricted license issued to Respondent shall be subject to all of the provisions
10 of Section 10156.7 of the Business and Professions Code and to the following limitations,
11 conditions and restrictions imposed under authority of Section 10156.6 of that Code:

12 A. The restricted license issued to Respondent may be suspended prior to
13 hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or
14 plea of nolo contendere to a crime which is substantially related to Respondent's fitness or
15 capacity as a real estate licensee.

16 B. The restricted license issued to Respondent may be suspended prior to
17 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner
18 that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
19 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
20 license.

21 C. Respondent shall not be eligible to apply for the issuance of an
22 unrestricted real estate license nor the removal of any of the limitations, conditions or restrictions
23 of a restricted license until two (2) years have elapsed from the date of the issuance of the
24 restricted license to respondent.

25 D. Respondent shall submit with any application for license under an
26 employing broker, or any application for transfer to a new employing broker, a statement signed

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1 by the prospective employing real estate broker on a form approved by the Department of Real
2 Estate which shall certify:

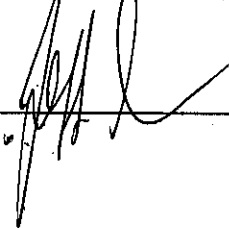
3 1. That the employing broker has read the Decision of the Commissioner
4 which granted the right to a restricted license; and

5 2. That the employing broker will exercise close supervision over the
6 performance by the restricted licensee relating to activities for which a real estate license is
7 required.

8 This Order shall become effective at 12 o'clock noon on AUG 27 2009.

9 DATED: 7/28/09

10 JEFF DAVI
11 Real Estate Commissioner

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FILED
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DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

Laura B. ...

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)
REYNA AVILA dba Ortiz)
Insurance Brokerage,)
Respondent.)

No. H-31746 LA
L-2005040353

DECISION

The Proposed Decision dated July 13, 2005, 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 Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on AUG 25 2005.

IT IS SO ORDERED 8-1-05

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

REYNA AVILA dba Ortiz Insurance
Brokerage,

Respondent.

Case No. H-31746 LA

OAH No. L2005040353

PROPOSED DECISION

This matter came on regularly for hearing before Mark E. Harman, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on June 13, 2005.

Maria Suarez, complainant, was represented by Kelvin K. Lee, counsel for the Department of Real Estate (the Department). Reyna Avila dba Ortiz Insurance Brokerage (Respondent) appeared personally and was represented by Phach T. Ngo, Attorney at Law.

Oral and documentary evidence was received. The record was closed and the matter deemed submitted on June 13, 2005.

FACTUAL FINDINGS

1. The Accusation was made by Maria Suarez, who is a Deputy Real Estate Commissioner of the State of California, acting in her official capacity.
2. Respondent is presently licensed as a real estate salesperson. Respondent was originally licensed by the Department as a real estate salesperson on November 22, 1997. Her license will expire on April 25, 2006, unless renewed.
3. On May 7, 2004, in the Superior Court of California, County of Los Angeles, in Case No. VA081862, Respondent was convicted, upon her plea of guilty, of a violation of Penal Code section 487, subdivision (a), grand theft, a felony involving moral turpitude which is substantially related to the qualifications, functions and duties of a real estate salesperson.
4. Imposition of sentence was suspended and Respondent was placed on formal probation for a period of 36 months under certain terms and conditions including

incarceration for one day, with one day credited for time served, submission to 30 days of house arrest, performance of 20 days of community service, payment of restitution as determined by the probation officer, payment of a restitution fine of \$200 and a prohibition from associating with or being near Ricardo Iniquez (Iniquez), the victim.

5a. The facts and circumstances underlying Respondent's conviction are as follows: Respondent was the sole owner and operator of a business licensed by California Department of Motor Vehicles (DMV) as a registration service. The business solicited or received applications for registration, renewal of registration, or transfer of registration or ownership of vehicles and processed these applications for filing with the DMV. In September 2003, Iniquez, on behalf of Iniquez Trucking (IT), paid Respondent \$2,500 to resolve IT's past registration problems and to obtain a motor vehicle carrier permit by renewal.¹ IT purportedly operated under a Temporary Operating Authority (TOA), a required form for international carriers requesting to drive their trucks in and through California. Since IT had failed to pay renewal fees, the DMV had not approved IT's TOA in either 2002 or 2003.

5b. Respondent cut and pasted together a counterfeit TOA and submitted it by facsimile to the DMV, in an apparent attempt to make valid IT's expired TOA, to allow IT to be able to continue operating a trucking company in California and to avoid payment of all fees due and owing to the DMV. At the same time, Respondent submitted less than \$600 to the DMV in connection with IT's renewal application, and retained the balance of approximately \$1,900 instead of returning it to Iniquez.

6. The DMV detected the counterfeit TOA and initiated an investigation. A DMV investigator met with Respondent, showed her the TOA, and asked if she recognized it. She later signed an affidavit stating that she had prepared the counterfeit TOA and sent it to the DMV. In June 2004, the DMV filed an Accusation to revoke Respondent's Vehicle Registration Service license. Respondent did not file a notice of defense on the accusation, and on September 9, 2004, the DMV issued its decision revoking Respondent's DMV registration services license, effective October 12, 2004. The DMV disciplinary action was based, in part, upon Respondent's conviction referred to in paragraph 3, above.

7. Respondent claimed that she did not commit the offenses for which she was convicted and disciplined. She claimed her failure was in neglecting to supervise her employee, Yvonne Oviedo (Oviedo), who had processed the application for Iniquez. When the DMV investigator contacted Respondent and showed her the TOA, Respondent was "shocked" and told him she "needed to check it out." She asked Oviedo about it, who admitted to changing the dates on the TOA by cutting and pasting. Respondent told this to the investigator, but "he did not want to hear it" and he told her to "sign" the affidavit.

¹ The record was not clear as to why IT deposited \$2,500 with Respondent, but Respondent's explanation for this was that money was supposed to be spent to obtain and verify insurance and identification information necessary to obtain the permit, and that later, in October 2003, Respondent learned from Iniquez that he owed past due fees to the DMV.

8. Respondent's sister had processed the DMV applications for Respondent's business and Oviedo apparently had assisted Respondent's sister. Respondent's sister died in April 2002; afterward, Oviedo took over processing these applications, although Respondent had never actually hired Oviedo. She terminated Oviedo's employment after the incident

9. Respondent showed little emotion during her testimony at the hearing. Her denials of responsibility were not entirely credible. She recalled many details about the particular transaction, even though she had "never met Iniquez." She presented no corroborating evidence showing that Oviedo acted alone. Respondent was the owner of this business, and she had at least a peripheral involvement with the transaction. Respondent did not express anger about Oviedo's misconduct or its subsequent impact on her.

10. Respondent pled guilty to the criminal charge because she "just wanted to get it over with." Respondent paid the court fines and costs, made restitution to the victim, completed 20 days of community service, and served 20 days of house arrest. She has never been convicted or arrested before or after this incident.

11. Respondent did not contest the DMV administrative action because she was no longer interested in operating a vehicle registration services business. Her real estate activities are her primary source of income. She also has had a tax preparer's license since 2002, and a notary commission since 1994.

12. Respondent is married and has three children. Since her conviction, she has become a more active member of her church, giving money, attending a bible study and Sunday worship services on a regular basis, and helping with the church's fundraising. She is more careful now, taking responsibility and reviewing all documents before approving them.

13. Respondent's pastor testified that he believes Respondent is an honest person who failed to supervise her employee. The pastor knew Respondent's sister and counseled Respondent after her sister's death. The pastor observed that Respondent was truly ashamed over the incident, and took responsibility because she felt she had been neglectful. According to the pastor, Respondent has made changes and is trying to put more attention to her business transactions. Her pastor has asked her to take charge of some activities in the church.

LEGAL CONCLUSIONS

Based upon the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to revoke or suspend Respondent's real estate salesperson license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), for conviction of a crime, as set forth in Findings 3, 4 and 5. The crime of which Respondent has been convicted is a felony and involves moral turpitude.

2. Cause exists to revoke or suspend Respondent's real estate salesperson license pursuant to Business and Professions Code section 10177, subdivision (f), because Respondent has had a license revoked by the California Department of Motor Vehicles for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate licensee. Finding 6.

3. Criteria have been developed by the Department pursuant to Business and Professions Code section 482, subdivision (b), for the purpose of evaluating the rehabilitation of a licensee in considering whether to suspend or revoke a license on account of a crime committed by the licensee. (Cal. Code Regs., tit. 10, § 2912.) Respondent has met some of the applicable criteria. Her testimony and the testimony of her pastor indicate that she has made some corrections of the unlawful business practices giving rise to her conviction. She has a stable family life and is involved in her church. She has paid the fines imposed by the court, made restitution to the victim and completed the other terms of her probation. Nevertheless, less than two years has passed since her conviction. Her probation is due to continue until May 2007. Findings 10 through 13.

4. The issue in this case is whether Respondent has established that she is fit to hold a real estate salesperson's license. Respondent's conviction involves a serious crime that has a clear nexus to the qualifications, functions and duties of a real estate salesperson. In *Golde v. Fox* (1979) 98 Cal.App.3d 167, 177-178, the court stated:

A real estate broker often acts in a confidential and fiduciary capacity for his clientele. The term 'honesty' as used in section 10152 is to be given the broadest possible meaning. [Citation omitted.] The real estate profession has, over a period of years, excluded unfit persons and as a result thereof an appreciable amount of public trust and confidence has been built up. The public exposing themselves to a real estate licensee has reason to believe that the licensee must have demonstrated a degree of honesty and integrity in order to have obtained such a license.

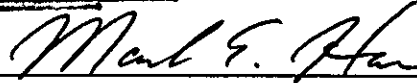
Respondent has taken responsibility for a crime she claims she did not commit. Her willingness to suffer the harsh consequences based on her responsibility as a business owner appears to show fortitude. Even still, her plea and conviction of the criminal charge is conclusive evidence of her guilt in this proceeding. (*Arneson v. Fox* (1980) 28 Cal.3d 440.) Respondent failed to provide independent corroboration of her testimony that she did not commit the wrongful act.

Her testimony also fails to adequately explain why she did not contest either the criminal or administrative cases against her. Under all the circumstances, the evidence of rehabilitation does not fully address the Department's reasonable concerns for public safety. A longer period to establish a track record of rehabilitation is necessary before the Department concludes that the public welfare, safety and interest can be adequately protected should Respondent be permitted to act as a real estate salesperson license.

ORDER

All licenses and licensing rights of Respondent, Reyna Avila dba Ortiz Insurance Brokerage, under the Real Estate Law are revoked.

DATED: July 13, 2005



MARK E. HARMAN

Administrative Law Judge

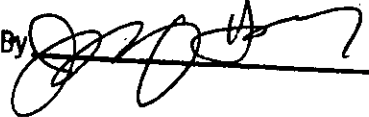
Office of Administrative Hearing

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FILED
MAR 10 2005

DEPARTMENT OF REAL ESTATE

By 

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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H- 31746 LA
12 REYNA AVILA dba Ortiz Insurance)
13 Brokerage,) A C C U S A T I O N
14 Respondent.)

15 The Complainant, Maria Suarez, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against REYNA AVILA dba Ortiz Insurance Brokerage ("Respondent")
18 alleges as follows:

19 1.

20 The Complainant, Maria Suarez, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation
22 in her official capacity.

23 2.

24 Respondent is presently licensed and/or has license
25 rights under the Real Estate Law, Part 1 of Division 4 of the
26

1 California Business and Professions Code ("Code"), as a real
2 estate salesperson.

3 3.

4 On or about September 7, 2004, in File No. REG-04-
5 0235, The Director of the California Department of Motor
6 Vehicles (DMV) ordered the license of the Respondent, REYNA
7 AVILA doing business as ORTIZ INSURANCE BROKERAGE, to act as a
8 Vehicle Registration Service and authority to process vehicle
9 registrations be revoked, effective October 12, 2004. Said
10 discipline was based, in part, on the following conclusions of
11 law:

12 a. It would be against the public interest to
13 permit the Respondent to continue transacting vehicle
14 registration business in the State of California and the
15 Director of the Department of Motor Vehicles had grounds to
16 suspend or revoke the licenses and licensing rights of the
17 Respondent pursuant to the provisions of Sections 20 and 11405
18 subdivisions (f) and (g) of the California Vehicle Code. The
19 facts and circumstances are that on or around September 23,
20 2003, the respondent sent a facsimile to the Industry Operations
21 Division (IOD) of the DMV in Sacramento that contained a
22 counterfeited DMV form REG 3100, called a Temporary Operating
23 Authority. Respondent attempted to make valid a previously
24 expired Temporary Operating Authority to allow a client to be
25 able to continue operating a trucking operation in California.
26 On October 28, 2003, a DMV investigator confronted that
27

1 respondent about the form that she faxed to the IOD. The
2 respondent admitted at that time that she cut other forms up,
3 and pasted them to another form to make the Temporary operating
4 Authority that she submitted appear valid. She also admitted
5 faxing the cut and pasted counterfeit form to the IOD.

6 b. The Respondent was convicted on or about May
7 7, 2004 in the Superior Court, County of Los Angeles on a plea
8 of guilty of the criminal offense of Grand Theft of Property
9 valued over \$400, Section 487, subdivision (a) of the California
10 Penal Code, a felony and crime involving moral turpitude which
11 is substantially related to the qualifications, functions or
12 duties of the licensed activity. The facts and circumstances
13 were that the respondent received \$2,500 from a victim, a
14 trucking company who used the respondent to get his motor
15 vehicle carrier permit renewed by the Department. The
16 respondent submitted less than \$600 of the \$2500 paid by the
17 victim to the Department of Motor Vehicles, retaining a balance
18 of over \$1,900 without returning it to her clients.

19 Respondent's conviction constitutes a separate cause for license
20 discipline pursuant to Vehicle Code 11405, subdivision (a).
21

22 4.

23 Respondent's discipline by the California Department
24 of Motor Vehicles, as described in Paragraph 3, constitutes
25 cause under Section 10177(f) of the Code for the suspension or
26 revocation of all license and license rights of Respondent under
27 the Real Estate Law.

5.


1
2 Respondent's conviction on or about May 7, 2004 on a
3 plea of guilty to the criminal offense of Grand Theft of
4 Property valued over \$400, Section 487, subdivision (a) of the
5 California Penal Code, as described in Paragraph 3b constitutes
6 cause under Section 2910, subdivision (a)(1), (a)(2), (a)(8) and
7 (a)(10) of the California Code of Regulations to the
8 qualifications, functions, or duties of a real estate licensee.
9 This also constitutes cause under Code Sections 490 and 10177(b)
10 to suspend or revoke respondent's licenses and license rights
11 under the Real Estate law.

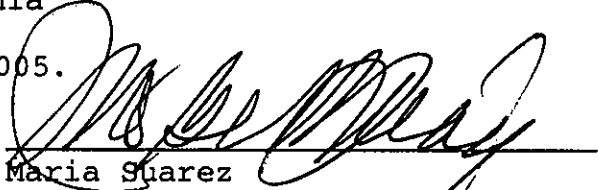
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13 6.

14 Respondent's actions as described in paragraphs 3a and
15 3b involve conduct which warrant revocation of her license to
16 serve as a vehicle registration service under the regulations of
17 the Department of Motor Vehicles. These acts, if done by a real
18 estate licensee, would have undoubtedly served as grounds for
19 the suspension or revocation of a California real estate
20 license. The California Department of Motor Vehicles revoked
21 the Respondent's license to transact insurance after giving her
22 fair notice of the charges, an opportunity for hearing, and
23 other due process protections she was entitled to under the
24 Administrative Procedure Act. Likewise, cause exists under
25 Section 10177(f) of the Business and Professions Code for the
26 suspension or revocation of all licenses and license rights of
27 the Respondent under the Real Estate law.

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all the licenses and license rights of Respondent, REYNA AVILA, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California
this  day of February, 2005.



Maria Suarez
Deputy Real Estate Commissioner

cc: REYNA AVILA
Maria Suarez
Sacto.
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