

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 20 2005
DEPARTMENT OF REAL ESTATE

By 

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In the Matter of the Accusation of) No. H-31915 LA
MARIO EMILIO MEDRANO,) L-2005060317
Respondent.)

DECISION

The Proposed Decision dated September 22, 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.

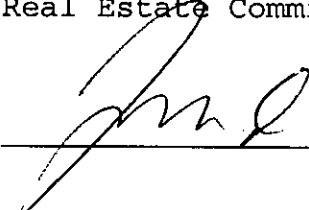
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

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 November 9, 2005.

IT IS SO ORDERED 10-18-05

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MARIO EMILIO MEDRANO,

Respondent.

Case No. H-31915 LA

OAH Case No. L2005060317

PROPOSED DECISION

This matter came on regularly for hearing before Mark T. Roohk, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California on August 29, 2005.

Martha J. Rosett, Real Estate Counsel, represented Complainant Maria Suarez (Complainant).

Respondent Mario Emilio Medrano (Respondent) was present throughout the hearing and represented himself.

Oral and documentary evidence was received, the matter argued, the record was closed at the conclusion of the hearing and the case submitted for decision.

FACTUAL FINDINGS

1. Complainant Maria Suarez, Deputy Real Estate Commissioner of the State of California, made and filed the Accusation in this proceeding in her official capacity and not otherwise.

2. Respondent Mario Emilio Medrano is licensed by the Department as a real estate salesperson, license ID# 01383702. The license was originally issued on or about June 3, 2003. Respondent's license is current, with an expiration date of June 2, 2007. (Exhibit 2.)

3. The Accusation in this matter was filed on May 16, 2005, and was served on Respondent. Respondent timely filed a Notice of Defense contesting the charges set forth therein, and this hearing followed.

4. On August 7, 2003, Respondent was convicted in case number 3JM05706 of the Superior Court of the State of California, County of Los Angeles, on his plea of nolo contendere to one count of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level above .08). The date of the underlying offense was June 7, 2003. Respondent was placed on summary probation for three years under terms and conditions, including participation in a three month first offender alcohol program, a driving restriction limiting him to going to and from work and the alcohol program, and payment of fines and fees totaling \$1,565. (Exhibit 3.)

5. On April 1, 2004, while still on probation for the conviction set forth in Factual Finding 4, Respondent was convicted in case number 3AT06298 of the Superior Court of the State of California, County of Los Angeles, on his plea of nolo contendere to one count of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level above .08). The date of the underlying offense was December 10, 2003. Respondent was placed on summary probation for five years under terms and conditions including 30 days in county jail, participation in an 18-month alcohol treatment or counseling program (which appears to have superseded the earlier first offender program), suspension of his driver's license, and payment of fines and fees totaling \$1,902. (Exhibit 4.) By virtue of this conviction, Respondent was also deemed to be in violation of his probation in case number 3JM05706. (Exhibit 3.)

6. On November 10, 2004, Respondent was convicted in case number 4NE02901 of the Superior Court of the State of California, County of Los Angeles, on his plea of nolo contendere to one count of violating Vehicle Code section 14601.2, subdivision (a) (driving while privileges were suspended for prior driving under the influence conviction). The date of the underlying offense was September 23, 2004. Respondent was placed on summary probation for three years under terms and conditions including 15 days in county jail, and payment of fines and fees totaling \$260. (Exhibit 5.)

7. Considered in conjunction with one another, Respondent's convictions are found to be substantially related to the qualifications, functions, and duties of a real estate salesperson, pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(10) and (11).

8. Respondent is currently in full compliance with the terms of his various probations. He has paid all required fines and fees. (Exhibit B.) He has completed most of his 18-month alcohol treatment program, and is scheduled to finish the program in December 2005. (Exhibit A.) Respondent's driver's license remains suspended, however he will be eligible to apply for a restricted license once he completes his treatment program. Respondent is scheduled to remain on probation until 2009.

9. Respondent admits all of his convictions, expresses remorse for his actions, and takes full responsibility for his misconduct. He also admits to having a drinking problem, dating back to when he first came to this country from El Salvador in 2000. He has attempted to address the problem by participating in weekly Alcoholics Anonymous meetings as well as in his court-ordered program. In January 2005, Respondent was diagnosed with diabetes, and was instructed by his physician not to consume any alcohol, as such could seriously compromise his health. Respondent has complied with this, and in fact has not consumed alcohol since the summer of 2004.

10. Respondent's first employment after obtaining his license in 2003 was with Anaverde Realty, but he was dismissed from that position around the time of his second conviction due to his drinking. Respondent was then hired by We The People as a real estate salesperson in April 2004. He remained there until May 2005, when he left to start his own business, Terranova Realty. Because he does not have a driver's license at this time, Respondent employs his office assistant, Vanessa Ayerdis, to drive him to and from work and to appointments. (Exhibit D.) Although he has left We The People, Respondent has retained the same supervising broker, Michael Dale Funk. Funk testified in Respondent's behalf at the hearing. He is fully aware of both Respondent's convictions and his drinking problem. He has never seen Respondent under the influence of alcohol, and would terminate his relationship with Respondent if he believed Respondent was using alcohol. He is located approximately eight miles from Respondent's office, and he usually comes by the office twice a week to supervise and review documents. In his opinion, Respondent has performed his work "excellently" and he has no qualms about Respondent keeping his salesperson license.

11. Respondent is married with two children, ages seven and five. His wife used to assist him in his work while at We The People, including driving him around, but she currently stays in the home full time. He provides full financial support for his family.

LEGAL CONCLUSIONS

Cause exists to suspend or revoke Respondent's real estate salesperson license pursuant to the provisions of Business and Professions Code sections 490 and 10177, subdivision (b), for conviction of crimes which are substantially related to the qualifications, functions, and duties of a real estate license, as set forth in Factual Findings 4, 5, and 6.

As a part of the regulations governing the practice of real estate in the State of California, the Department has developed certain criteria, set forth in the California Code of Regulations, title 10, section 2912, for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a conviction.

A review of those criteria applicable to the facts of this case reveals the following:

A. The Guidelines recommend the passage of not less than two years since the most recent criminal conviction that is substantially related to the qualifications, functions, and duties of a real estate license. Respondent's convictions occurred within a 15 month period between August 2003 and November 2004, and the most recent conviction occurred less than one year ago.

B. The Guidelines recommend considering payment of all fines in connection with convictions. Respondent has paid all fines and fees required of him.

C. The Guidelines recommend considering expungement of Respondent's conviction, or successful completion or early discharge from probation or parole. Respondent has not yet

completed his probation, and in fact violated probation on one occasion in early 2004. Because Respondent remains on probation in more than one case, the last of which is scheduled to terminate in 2009, he is not yet eligible to file a petition pursuant to Penal Code section 1203.4 for expungement.

D. The Guidelines recommend considering abstinence from the use of controlled substances or alcohol for not less than two years if the conviction was attributable in part to such use. Respondent quit drinking in the summer of 2004, a little more than one year ago.

E. The Guidelines recommend considering stability of family life. Respondent's family life appears to be stable.

The Guidelines also recommend evaluating several factors relating to changes in the licensee's attitude since the time of the convictions. The evidence establishes that Respondent has appeared to have changed his attitude in the past two years. Much of this has to do with the fact that he has stopped drinking alcohol. Since so doing, Respondent has successfully opened his own real estate office, and unlike in the past, when he continued to drive despite the loss of his driver's license, he has now made arrangements with his assistant to do his driving for him. Respondent's diabetes diagnosis earlier this year has also contributed to his change in attitude. Although Respondent had stopped drinking prior to this, the diagnosis gives him a serious added incentive to stay sober, something he has addressed by weekly participation in Alcoholics Anonymous in addition to his court-ordered program.

As is apparent from a review of the Guidelines set forth above, the greatest concern in this case is the recency of Respondent's convictions. Although, as indicated above, Respondent has taken both responsibility for his past misconduct and significant steps to address his problems for the future, the fact remains that Respondent's three convictions all occurred within the last one to three years, and the last two of them occurred in direct violation of probation terms. Not only does this mean that Respondent remains on probation and will remain on probation for a significant time, it also provides a very limited period of rehabilitation to evaluate. However, all of Respondent's convictions involved either drinking alcohol and/or driving illegally, and at this time, Respondent has specific safeguards in place, both literally and figuratively, to address both of those issues. In addition, even though Respondent apparently was terminated from his first salesperson's job because of his drinking, there is no evidence that his drinking resulted in any client harm, and the testimony of his supervising broker for the past 18 months indicates that Respondent's work has been more satisfactory during that time, and that alcohol consumption has played no role in his work whatsoever. Further, Respondent has been candid and truthful with the Department about his convictions and his drinking during this proceeding. Therefore, because Respondent has taken clear steps to address and remedy his past misconduct, and because there is no evidence of dishonesty or fraud in his work, outright revocation of Respondent's real estate license to ensure protection of the public interest is not required in this case. However, because of the recency of both Respondent's convictions and his alcohol usage, and because he remains on probation at this time, his license should be subject to appropriate conditions and restrictions.

ORDER

The licenses and licensing rights of Respondent Mario Emilio Medrano under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days of the effective date of this Decision. 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 that Code:

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

2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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.

3. 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 of a restricted license until three years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing broker on a form 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 licensee's performance of activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewed real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until

Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Within 30 days of the effective date of this Decision, Respondent shall begin attendance at a chemical dependency support group (e.g., Alcoholics Anonymous). Verified documentation of attendance shall be submitted by Respondent on a monthly basis. Respondent shall continue attendance in such a group for the duration of probation.

7. Respondent shall completely abstain from the use of alcoholic beverages during the period of probation, and shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs, as defined in Business and Professions Code sections 4021 and 4022, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

DATED: _____

9/22/05



MARK T. ROOHK
Administrative Law Judge
Office of Administrative Hearings

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FILED
MAY 17 2005
DEPARTMENT OF REAL ESTATE

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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of) No. H-31915 LA
12)
13 MARIO EMILIO MEDRANO,) A C C U S A T I O N
14)
15 Respondent.)

16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against MARIO EMILIO MEDRANO (hereinafter "Respondent"), is
19 informed and alleges as follows:

20 1.

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

24 2.

25 At all times herein mentioned, Respondent was and still
26 is licensed and/or has license rights under the Real Estate Law
27 (Part 1 of Division 4 of the Business and Professions Code) as a

1 real estate salesperson. Respondent was first licensed by the
2 Department on or about June 3, 2003.

3 3.

4 On or about August 7, 2003, in the Superior Court of
5 California, County of Los Angeles, in Case No. 3JM05706,
6 Respondent was convicted of violating California Vehicle Code
7 Section 23152(b) (Driving with Blood Alcohol of .08% or more), a
8 misdemeanor. Respondent was placed on summary probation for a
9 period of three years under terms and conditions which included
10 payment of fines to the court totaling \$1,565.00, or in lieu of
11 fine, serving 23 days of community service, and successful
12 completion of a three month first offender alcohol and other drug
13 education and counseling program. In addition, Respondent was
14 ordered not to drive a motor vehicle unless lawfully licensed and
15 insured, and not to drive with any measurable amount of alcohol
16 in his blood.

17 On March 9, 2004, Respondent was found to be in
18 violation of his probation for the arrest that led to the
19 conviction set forth below in Paragraph 4, and for failure to
20 comply with the health office. On March 10, 2004, Respondent's
21 probation was revoked and reinstated with the modification that
22 he serve 30 days in county jail.

23 4.

24 On or about April 1, 2004, in the Superior Court of
25 California, County of Los Angeles, in Case No. 3AT06298,
26 Respondent was convicted of one count of violating Vehicle Code
27 Section 21352(b) (Driving with Blood Alcohol level of .08% or

1 more), a misdemeanor and crime of moral turpitude which is
2 substantially related to the qualifications, functions and duties
3 of a real estate licensee. Respondent was placed on summary
4 probation for a period of 60 months, under terms including
5 serving 30 days in jail, payment of fines totaling \$1,902.00 (or
6 performing 237 hours of community service in lieu of fines), and
7 attending and completing an 18 month alcohol program. In
8 addition, Respondent's license was suspended for two years, and
9 he was required to install an ignition interlock device in his
10 automobile.

11 5.

12 On or about November 10, 2004, in the Superior Court of
13 California, in Case No. 4NE02901, Respondent was convicted of
14 violating Vehicle Code Section 14601.2 (driving with a suspended
15 license), a misdemeanor which is substantially related to the
16 qualifications, functions and duties of a real estate licensee.
17 Respondent was sentenced to 36 months summary probation, to
18 include 15 days in jail and fines of \$260.00.

19 6.

20 Respondent's convictions, as set forth in Paragraphs 3,
21 4 and 5 above, constitute cause for the revocation or suspension
22 of Respondent's license and/or license rights pursuant to
23 Business and Professions Code Sections 490 and/or 10177(b).

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1 WHEREFORE, the Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and/or license rights of Respondent,
5 MARIO EMILIO MEDRANO, under the Real Estate Law and for such
6 other and further relief as may be proper under applicable
7 provisions of law.

8 Dated at Los Angeles, California
9 this 16th day of May, 2005.

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13 Deputy Real Estate Commissioner
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23 cc: Mario Emilio Medrano
24 Michael Dale Funk
25 Sacto.
26 Maria Suarez
27 LF