

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF ELECTRONIC AND APPLIANCE REPAIR,
HOME FURNISHINGS AND THERMAL INSULATION
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

John Rodriguez
d.b.a. California Home

Respondent.

Case No. AN 2016-242


OAH No. 2016120244

NOTICE OF DECISION AND ORDER

No action having been taken on the attached Proposed Decision, pursuant to Government Code section 11517(c)(2), it is hereby deemed adopted by operation of law on September 20, 2017 by the Director of the Department of Consumer Affairs as his Decision in the above-entitled matter.

Pursuant to Government Code section 11519, this Decision shall become effective on DEC 26 2017.

DATED: November 24, 2017



RYAN MARCROFT
Deputy Director, Legal Affairs
Department of Consumer Affairs

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF ELECTRONIC AND APPLIANCE REPAIR,
HOME FURNISHINGS AND THERMAL INSULATION
STATE OF CALIFORNIA

In the Matter of the (Furniture Retail
License) Application of

JOHN RODRIGUEZ,
d.b.a. CALIFORNIA HOME

Respondent.

Case No. AN 2016-242

OAH No. 2016120244

PROPOSED DECISION

This matter came on regularly for hearing on May 22, 2017, at Los Angeles, California, before Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California.

Complainant Justin Paddock, Bureau Chief (Complainant) was represented by Deputy Attorney General Langston Edwards.

Respondent John Rodriguez did not appear and was not otherwise represented.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant made the Statement of Issues while acting in his official capacity.
2. On November 12, 2015, the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation (Bureau) received an application for a Furniture Retailer License from John Rodriguez, doing business as, California Home (Respondent). The application was certified under penalty of perjury to the truthfulness of all statements, answers and representations. The Bureau denied the application on June 21, 2016. Respondent timely appealed the denial and this hearing ensued.

3. On December 6, 2012 in the Superior Court of California, County of Los Angeles, Case No. 1CA01160, Respondent was convicted, upon his nolo contendere plea, of violating California Business and Professions Code section 7159.5, subdivision (a)(3) [contractor in violation of home improvement contract,] a misdemeanor. Respondent was ordered to pay victim restitution in the amount of \$2000. The circumstances surrounding the conviction are that on August 12, 2009, Respondent entered into a home improvement contract with the victim and charged the victim a down payment exceeding \$1,000, or 10 percent of the contract price, and was not licensed as a contractor at time. Respondent paid the restitution.

4. On July 17, 2009, in the Superior Court of California, County of Los Angeles, Case No. 9WW02147, Respondent was convicted, upon his nolo contendere plea, of violating Penal Code section 242 [battery], a misdemeanor. Respondent was given a suspended sentence and placed on probation for three years with terms and conditions including the payment of fines and fees. The circumstances surrounding the conviction are that on January 23, 2009, Respondent was involved in a physical altercation with a repossession agent who attempted to repossess a vehicle at his residence.

5. On June 8, 2009, in the Superior Court of California, County of Los Angeles, Case No. 9RI00285, Respondent was convicted, upon his nolo contendere plea, of violating Vehicle Code section 14601.1, subdivision (a) [driving with a suspended or revoked license], a misdemeanor, and one count of violating Vehicle Code section 12500 [driving without a valid driver's license], a misdemeanor. Respondent was placed on probation for 18 months with terms and conditions including the payment of fines and fees. The circumstances surrounding the conviction are that on December 11, 2008, Respondent drove a motor vehicle while his driving privilege was suspended or revoked and without a valid driver's license.

6. On June 14, 2006, in the Superior Court of California, County of Los Angeles, Case No. BA296454, Respondent was convicted, upon his nolo contendere plea, of three felony counts of violating Penal Code section 487, subdivision (a) [grand theft: money/labor/property]. Respondent was placed on probation for three years with terms and conditions. The circumstances surrounding the conviction are that on December 2, 2004, Respondent stole, took, and carried away real or person property of another. Respondent was sentenced to 25 days in jail, ordered to pay restitution in the amount of \$131,725.00 (jointly and severally with his co-defendant) and placed on five years' formal probation with terms and conditions. The circumstances of the conviction are that Respondent was involved in a scheme to trade stolen and fraudulent cellular telephones through his business.

7. On May 25, 2000, in the Superior Court of California, County of Los Angeles, Case No. 9WH02294, Respondent was convicted, upon his nolo contendere plea, of violating Vehicle Code section 14601.2, subdivision (a) [driving with a suspended or revoked license], a misdemeanor. Respondent was sentenced to 30 days house arrest and placed on three years' probation with terms and conditions. The circumstances of the conviction are

that on March 10, 1999, Respondent drove a motor vehicle while his driving privilege was suspended or revoked and with knowledge of the status.

8. On August 17, 1999, in the Superior Court of California, County of Los Angeles, Case No. 9EL01864, Respondent was convicted, upon jury verdict, of violating Vehicle Code section 23152, subdivision (b) [driving while having .08 percent or more, by weight alcohol, in his blood], a misdemeanor. Respondent was sentenced to 30 days in jail and placed on three years' probation with terms and conditions. The circumstances of the conviction are that on January 31, 1999, Respondent drove a motor vehicle while under the influence of alcohol or drugs and while having .08 percent or more, blood alcohol level.

9. On August 17, 1999, in the Superior Court of California, County of Los Angeles, Case No. 6EL00288, Respondent was convicted, upon his nolo contendere plea, of violating Vehicle Code section 14601.1, subdivision (a) [driving with a suspended or revoked license], a misdemeanor. Respondent was sentenced to 11 days in jail and placed on 12 months' probation with terms and conditions. The circumstances of the conviction are that on December 15, 1995, Respondent drove a motor vehicle while his drivers' license was suspended or revoked.

10. On April 29, 1994, in the Superior Court of California, County of Los Angeles, Case No. 94M01304, Respondent was convicted, upon his nolo contendere plea, of violating Penal Code section 148.9, subdivision (a), [false identification to a peace officer], a misdemeanor, and one count of violating Vehicle Code section 14061.1, subdivision (a) [driving with a suspended or revoked license], a misdemeanor. Respondent was sentenced to 12 months' probation with terms and conditions. The circumstances of the conviction are that on February 13, 1994, Respondent falsely represented or identified himself as another person or as a fictitious person to a peace officer during a lawful detention or arrest and drove a motor vehicle while his driving privilege was suspended or revoked.

11. On March 3, 1992, in the Superior Court of California, County of Los Angeles, Case No. 91M04799, Respondent was convicted, upon his nolo contendere plea, of violating Vehicle Code section 14601.1, subdivision (a) [driving with a suspended or revoked license], a misdemeanor. Respondent was sentenced to 12 months' probation with terms and conditions. The circumstances of the conviction are that on March 4, 1991, Respondent drove a motor vehicle while his driving privilege was suspended or revoked.

12. Complainant failed to establish that Respondent was convicted on August 17, 1999 of violating Vehicle Code section 12500 [driving without a valid driver's license], a misdemeanor in the Superior Court of California, County of Los Angeles, Case No. 95M11687. Instead, the evidence only established that Respondent was arrested and charged with the offense. The evidence did not establish that Respondent was convicted of the offense.

13. Respondent has a long history of misdemeanor violations of the law, primarily concerning the operation of a motor vehicle and including convictions for driving with a blood alcohol level in excess of legal limits. Respondent also has misdemeanor convictions for construction contract violations and battery as well as three felony convictions for grand theft arising from a fraudulent scheme to obtain and sell cellular telephones. Respondent's criminal record evidences a history of disregard for the law, the safety and property of others, and dishonest dealings and, as such, his crimes, individually, and in the aggregate, are substantially related to the qualification, functions, or duties of a furniture retailer.

14. Respondent failed to disclose his convictions as set forth in Factual Findings 3-13 on the application he submitted to the Bureau.

15. There was no evidence of mitigation or rehabilitation.

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's application pursuant to Business and Professions Code sections 9841, subdivision (a)(7) and 480, subdivision (a)(1), because Respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a furniture retailer by reason of Factual Findings 1-13.

2. Cause exists to deny Respondent's application pursuant to Business and Professions Code section 9841, subdivision (b), in that Respondent committed acts involving dishonesty, fraud or deceit with the intent to substantially benefit himself, or substantially injure another by reason of Factual Findings 1-13.

3. Cause exists to deny Respondent's application pursuant to Business and Professions Code section 9841, subdivision (a), and Business and Professions Code section 480, subdivision (d), in that Respondent knowingly made a false statement of fact by failing to disclose his criminal convictions, on his application. In addition, Respondent signed his application under penalty of perjury certifying that the information contained on the application was correct. (Factual Findings 1-15.)

4. Cause exists to deny Respondent's application pursuant to Business and Professions Code sections 9841, subdivision (b), and 480, subdivision (a)(3)(A) and (B), in that Respondent committed acts which if done by a licensee of the Bureau, would be grounds for suspension or revocation of his license. Respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a licensed furniture retailer which to a substantial degree evidences his present or potential unfitness to perform the functions authorized by such a license in a manner consistent with the public health, safety, or welfare, in violation of Business and Professions Code section 9841, subdivision (a)(7) and 490, in conjunction with California Code of Regulations, title 16, section 2767. (Factual Findings 1-15 and Legal Conclusions 1-3.) In the absence of mitigation or rehabilitation, the interests of public protection requires that the application be denied.

ORDER

Respondent's application for a Furniture Retailer license is denied.

Dated: June 7, 2017

DocuSigned by:

Glynda B. Gomez

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GLYNDA B. GOMEZ

Administrative Law Judge
Office of Administrative Hearings