

BEFORE THE  
INSURANCE COMMISSIONER  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

RICARDO JESUS SANCHEZ

Respondent.

File No. LBB 3476-AP (AR)

OAH No. N2006090638

**PROPOSED DECISION**

On October 27, 2006, in Sacramento, California, Leonard L. Scott, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Darrel P. Secrest, Counsel, represented complainant.

Ricardo Jesus Sanchez, respondent, appeared in his own behalf.

Evidence was received, the record was closed and the matter was submitted.

**FACTUAL FINDINGS**

1. Cynthia A. Orr, Investigative Analyst, Department of Insurance (Department), State of California, on behalf of John Garamendi, Insurance Commissioner, filed the Statement of Issues against respondent. Orr acted in her official capacity.

2. On or about April 15, 2006, respondent filed an application for licensure to act as a life agent in the State of California with the Insurance Commissioner of the State of California. The license has not been issued and the matter is pending the outcome of this hearing.

3. On or about January 16, 1996, in the Superior Court, County of Sacramento, State of California, in the matter entitled *People v. Ricardo Jesus Sanchez*, case number 96M00527, respondent was convicted on his plea of guilty of violating of Penal Code section 12025, subdivision (b) (carry concealed weapon on person), a misdemeanor.

Imposition of sentence was suspended and he was placed on informal probation for a period of three years, with various terms and conditions including serving 30 days in jail and not to own or possess a firearm.

The facts and circumstances of respondent's crime are that on December 13, 1995, respondent was stopped in a shopping mall while carrying a loaded pistol in a holster hidden under his clothing.

4. On or about February 19, 2003, in the Superior Court, County of Sacramento, State of California, in the matter entitled *People v. Ricardo Jesus Sanchez*, case number 02F10769, respondent was convicted on his plea of nolo contendere of violating of Penal Code section 32 (accessory), a misdemeanor.

Imposition of sentence was suspended and he was placed on informal probation for a period of three years, with various terms and conditions including 150 hours of community service, not to own or possess a firearm and payment of fines and fees.

The facts and circumstances of respondent's crime are that on or about November 21, 2002, respondent and a friend named Israel Dominguez (Dominguez) were sitting in respondent's car near a high school in Elk Grove, California. Dominguez became embroiled in an argument with Ignacio Leyva (Leyva). Leyva walked over to his own car, picked up a steering wheel lock and walked back to respondent's car. Leyva broke out the driver's window in respondent's car with the steering wheel lock.

Respondent drove a short distance down the street and stopped. He walked to the trunk of his car, took out his .40 caliber Glock pistol and loaded it. Respondent got back into his car with the loaded pistol. As this was occurring, Leyva dropped off his girlfriend at the high school, then drove up behind respondent's car and rammed it. Dominguez picked up respondent's loaded pistol and fired four to six shots at Leyva. The police report refers to both Dominguez and Leyva as known gang members.

5. Respondent testified that he is 31 years of age and single. He is a high school graduate and has studied at the University of Phoenix and at Capitol Bible College. Respondent said that he had reached a plateau at his former employment for an audio-video services company and would like to sell insurance to advance his career and earn more money. He studied for and passed the license tests to sell life, health and disability insurance. He works for the Sacramento Urban Resource Center, seeking to develop funding for their programs to help those on drugs or with gang affiliations.

Respondent said that he attends church regularly and is active as a volunteer with the church.

6. Respondent presented four hearsay character reference letters from former employers.

7. Respondent has two criminal convictions in the last ten years involving unlawfully carrying or assisting in the use of loaded firearms. His crimes involve violence in a public place, actual or potential, in that he was convicted for having a loaded firearm on his person in a public shopping mall during the Christmas shopping season and for being an accessory when his friend fired his pistol at another man near a high school. Clearly, he did not learn his lesson after the first conviction, and so became embroiled in an even worse crime where shots were actually fired. His second conviction occurred only about three and a half years ago and he is only recently off probation. Too little time has elapsed since he completed probation to be able to determine whether he has rehabilitated himself.

## LEGAL CONCLUSIONS

1. Respondent applied for and was denied licensure as a life agent, then appealed the denial. The issue of which party has the burden of proof in such circumstances was dealt with by the court of appeal in *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, as follows:

"As in ordinary civil actions, the party asserting the affirmative at an administrative hearing has the burden of proof, including both the initial burden of going forward and the burden of persuasion by a preponderance of the evidence..."

Respondent is asserting the affirmative by claiming that he should be granted a license and has the burden of proof, which means that he was required to prove by a preponderance of the evidence that he is an appropriate person to be granted a license.

2. Insurance Code section 1668 provides:

Grounds for denial

The commissioner may deny an application for any license issued pursuant to this chapter if:

- (a) The applicant is not properly qualified to perform the duties of a person holding the license applied for;
- (b) The granting of the license will be against public interest;
- (c) The applicant does not intend actively and in good faith to carry on as a business with the general public the transactions which would be permitted by the issuance of the license applied for;
- (d) The applicant is not of good business reputation;
- (e) The applicant is lacking in integrity;
- (f) The applicant has been refused a professional, occupational or vocational license or had such a license suspended or revoked by any licensing authority for reasons that should preclude the granting of the license applied for;
- (g) The applicant seeks the license for the purpose of avoiding or preventing the operation or enforcement of the insurance laws of this state;
- (h) The applicant has knowingly or willfully made a misstatement in an application to the commissioner for a license, or in a document filed in support of such an application, or has made a false statement in testimony given under oath before the commissioner or any other person acting in his stead;
- (i) The applicant has previously engaged in a fraudulent practice or act or has conducted any business in a dishonest manner;
- (j) The applicant has shown incompetency or untrustworthiness in the conduct of any business, or has by commission of a wrongful act or practice in the course of any business exposed the public or those dealing with him to the danger of loss;
- (k) The applicant has knowingly misrepresented the terms or effect of an insurance policy or contract;

(l) The applicant has failed to perform a duty expressly enjoined upon him by a provision of this code or has committed an act expressly forbidden by such a provision;

(m) The applicant has been convicted of:

(1) A felony;

(2) A misdemeanor denounced by this code or other laws regulating insurance;  
or

(3) A public offense having as one of its necessary elements a fraudulent act or an act of dishonesty in acceptance, custody or payment of money or property;

(n) The applicant has aided or abetted any person in an act or omission which would constitute grounds for the suspension, revocation or refusal of a license or certificate issued under this code to the person aided or abetted;

(o) The applicant has permitted any person in his employ to violate any provision of this code; or

(p) The applicant has violated any provision of law relating to conduct of business which could lawfully be done only under authority conferred by such license.

(q) The applicant has submitted to the commissioner a false or fraudulent certificate pursuant to subdivision (d) of Section 1749.5.

A judgment, plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

3. Cause for denial of respondent's application for a license was established for violation of the California Insurance Code section 1668, subdivision (b), because it would be against the public interest to permit respondent to transact insurance in the State of California, as found in Findings 3 to 7.

4. Cause for denial of respondent's application for a license was not established for violation of the California Insurance Code section 1668, subdivision (e), because his crimes did not involve a lack of integrity and it was not shown that he is lacking in integrity, as found in Findings 3 to 7.

ORDER

The application of respondent Ricardo Jesus Sanchez for licensure as a life agent is denied pursuant to Legal Conclusion 3.

Dated:

November 15, 2006



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LEONARD L. SCOTT

Administrative Law Judge

Office of Administrative Hearings