

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of

DANIEL ALBERTO RAMIREZ,

Respondent.

DECISION and ORDER

File No. LBB 0015-AP

OAH NO. 12002070194

This matter came on regularly before Vallera J. Johnson, Administrative Law Judge with the Office of Administrative Hearings on September 18, 2002 at San Diego, California. Complainant was represented by Larissa D. Kosits, Staff Counsel. Respondent, Daniel Alberto Ramirez, was present and represented himself.

At the hearing, oral and documentary evidence was received and the matter was submitted for decision. The Administrative Law Judge submitted her proposed decision dated October 1, 2002¹ and recommended it be adopted as the decision of the Insurance Commissioner. The Commissioner considered but did not adopt the proposed decision and advised Respondent of his rejection of the proposed decision by notice dated November 26, 2002. The Department received the transcript of the hearing on January 21, 2003. Pursuant to §11517(c)(2)(E)(iv) of the Government Code, the Department is required to issue its final decision within 100 days of receiving the transcript.

NOW, THEREFORE, having considered the record, including the evidence introduced and the transcript of the proceedings in this matter, the Insurance Commissioner hereby makes the following Findings of Fact, Determination of Issues, and Order.

FINDINGS OF FACT

1. Harry W. Low filed the Statement of Issues in his official capacity as Insurance Commissioner of the State of California (the “Department”).

¹ The Notice to Respondent of the Rejection of the Proposed Decision, dated November 26, 2002, erroneously stated the date the Proposed Decision was received by the Department was April 25, 2002.

- 1 2. Respondent filed an application with the Department dated May 9, 2000, for the
2 issuance of a permanent license to act as a Fire and Casualty Insurance Broker-
3 Agent in the State of California. On June 13, 2000, Respondent filed an amended
4 application to said Fire and Casualty Insurance Broker-Agent license application.
5 3. No license was issued and the application is still pending.
6 4. On March 6, 2002, the Department issued a Statement of Issues in regard to
7 Respondent's application. Respondent requested a hearing and the hearing took
8 place on September 18, 2002.
9 5. On December 9, 1997, in the Municipal Court of the State of California, County of
10 Imperial, Calexico Department, in the case entitled *The People of the State of*
11 *California vs. Daniel Antonio Loza, Daniel Alberto Ramirez*, case number
12 M95574CX(B), respondent was convicted of a violation of Penal Code section
13 594(A) (vandalism).
14 6. As a consequence, the court placed respondent on two years' summary probation
15 and he was ordered to perform 100 hours community service, and not use or
16 possess graffiti in the streets (spray paint, markers, etc.) and pay restitution fine of
17 \$100.00.
18 7. On April 7, 1998, in the Municipal Court of the State of California, County of
19 Imperial, El Centro Department, in the case entitled, *The People of the State of*
20 *California vs. Daniel Alberto Ramirez, Vicente David Reyes*, case number
21 M929599E, on his plea of guilty, respondent was convicted of a violation of Penal
22 Code section 488 (Petty Theft), a misdemeanor.
23 8. As a consequence of the conviction, the court placed respondent on three years'
24 summary probation on terms and conditions that included serving ten days in
25 county jail, staying away from J.C. Penny and paying a fine and penalty
26 assessment in the amount of \$275.00.
27 9. Question 19 of respondent's application and amended application for the issuance
28 of a permanent license to act as a Fire and Casualty Insurance Broker-Agent in the

1 State of California states:

2 **“HAVE YOU EVER BEEN CONVICTED OF A CRIME?”**

3 ‘Crime’ includes a felony or misdemeanor and military offenses.
4 ‘Convicted’ includes, but is not limited to, having been found guilty by verdict of a
5 judge or jury, having entered a pleas of guilty or nolo contendere, having had any
6 charge dismissed or plea withdrawn pursuant to Penal Code Section 1203.4, or
7 having been given probation, a suspended sentence or a fine. You may excluded
8 traffic citations and juvenile offenses.”

- 6 10. Respondent answered “No” to this question on both applications. He knew that
7 this answer was false because he had been convicted of the offenses set forth in
8 Findings 5 and 7.
- 9 11. After respondent submitted his application and amended application, the
10 Department sent respondent a letter, dated April 23, 2001 (Exh. 5) requesting,
11 among other things, that he explain the reason that he answered “No” to question
12 19 and that he provide the Department with a copy of the court documents from
13 criminal case number M95574CX(B), the case involving the first conviction
14 (Finding 5), and related arrest report. Respondent provided the Department with
15 the court documents but did not explain the reason that he responded “No” to
16 question 19.
- 17 12. The Department sent a second letter to respondent, dated May 9, 2001 (Exh. 6),
18 and again asked him to explain the reason that he answered “No” to question 19 on
19 his application, and that he provide the Department with a certified copy of court
20 documents from criminal case number M92599AE, the case involving his second
21 conviction (Finding 7) and related arrest report. Respondent did not provide the
22 explanation regarding his response.
- 23 13. Complainant argues that respondent has suffered two convictions (Findings 5 and
24 7), that he made misrepresentations on two applications that he filed with the
25 Department (Finding 10) and that, on two occasions, he failed to explain his
26
27
28

1 answer to question 19 (Findings 11 and 12). Given the foregoing, the Department
2 asserts that respondent has demonstrated that he is lacking in honesty and integrity
3 and has failed to present satisfactory evidence to the Department that he is
4 qualified for the license for which he has applied. Based thereon, the Department
5 argued that respondent's application should be denied.
6

7 14. Respondent does not dispute the facts set forth in findings 2 through 13. He
8 candidly admitted that he did not reveal the convictions on his applications
9 because he thought that disclosure might result in the denial of his license and that
10 he wanted the license. Respondent did not provide an explanation for his response
11 to question 19 because he had no logical explanation for his misconduct. He
12 realizes that he was dishonest, that he made a mistake, and expressed remorse
13 therefor.
14

15 15. The Department has a responsibility to protect the public, to scrutinize applicants
16 and not to grant a license to anyone who demonstrates that he/she will be dishonest
17 or unscrupulous in dealings with the public.

18 16. Respondent has suffered two convictions.
19

20 LEGAL CONCLUSIONS

21 Pursuant to the foregoing factual findings, the Commissioner makes the following
22 determination of issues:

23 1. Pursuant to the provisions of California Insurance Code section 1668(b), cause
24 exists to deny the issuance of a license to respondent for acts which demonstrate
25 that it would be against the public interest to do so, by reason of findings 5 through
26 10.

27 2. Pursuant to California Insurance Code section 1668(e), cause exists to deny the
28

1 issuance of a license to respondent for acts, which demonstrate that he is lacking in
2 integrity, by reason of findings 5 through 10.

3 3. Pursuant to California insurance Code section 1668(m)(3), cause exists to deny the
4 issuance of a license to respondent in that he has been convicted of a public
5 offense that has as one of its necessary elements a fraudulent act or an act of
6 dishonesty in the acceptance, custody or payment of money or property, by reason
7 of Finding 7.

8
9 4. Pursuant to California insurance Code section 1668(i), cause exists to deny the
10 issuance of a license to respondent in that he has previously engaged in a
11 fraudulent practice or act, by reason of Finding 7.

12 5. Pursuant to California Insurance Code section 1668(h), cause exists to deny the
13 issuance of a license to respondent in that he knowingly and willfully made a
14 misstatement in an application or in a document filed in support of such
15 application for a license filed with the Commissioner, by reason of Findings 5
16 through 10.

17
18 6. Respondent has not established that he has satisfied the criteria set forth in
19 California Insurance Code section 1666 and, therefore, is not qualified for the
20 license for which he applied and it would be contrary to the public interest to issue
21 him a restricted license at this time, by reason of Findings 5-16 and Legal
22 Conclusions 1, 2, 3, and 4.

23
24 ORDER

25 WHEREFORE, THE FOLLOWING ORDER is hereby made:

26 ///

27 The application(s) of Respondent Daniel Ramirez for issuance of a Fire and Casualty
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Broker-Agent license is denied.

Dated: March , 2003.

JOHN GARAMENDI
Insurance Commissioner

By _____
Connie M. Perry
Deputy Chief Counsel