

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

In the Matter of the Statement of Issues
Against:

AGGY FURNITURE,

Respondent.

Case No. AN 2016-313

OAH No. 2017010725

ORDER OF DECISION

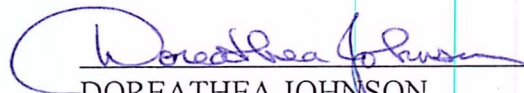
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Electronic and Appliance Repair, Home Furnishings and Therma as its Decision in the above-entitled matter.

MAY 18 2017

This Decision shall become effective on _____.

IT IS SO ORDERED this 17th day of April.



DOREATHEA JOHNSON
Deputy Director
Division of Legal Affairs
Department of Consumer Affairs

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:

GERARDO R. GUERRERO-ARRIAGA

Furniture and Bedding Retailer License
Applicant,

Respondent.

Case No. AN-2016-313

OAH No. 2017010725

PROPOSED DECISION

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on March 7, 2017.

Deputy Attorney General Lauro A. Paredes represented complainant, Justin Paddock, Bureau Chief, Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation, Department of Consumer Affairs.

Respondent, Gerardo R. Guerrero-Arriaga, represented himself.

The matter was submitted on March 7, 2017.

FACTUAL FINDINGS

1. On April 14, 2016, respondent submitted three applications to the bureau for Furniture and Bedding Retailer Licenses, to do business as Aggy Furniture at a location in San Bernardino, California, and at two other business locations in Beaumont, California.

2. By letter, dated September 8, 2016, the bureau notified respondent that his applications had been denied based on his criminal conviction for filing fraudulent insurance claims.

3. On December 28, 2016, complainant, while acting in his official capacity as Bureau Chief, filed a statement of issues against respondent. Respondent timely requested a hearing and the instant hearing ensued.

Respondent's March 13, 2015, Criminal Conviction

4. On March 13, 2015, in Riverside County Superior Court, respondent was convicted, on his plea of guilty, of violating Penal Code section 550, subdivision (b)(1) (willfully and unlawfully present or cause to be presented any written or oral statement as part of, or in support of . . . a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact), a felony, reduced to a misdemeanor pursuant to Penal Code section 17, subdivision (b). As a result of his conviction respondent was placed on summary probation for three years and he was ordered to pay restitution to the insurance company in the amount of \$65,236.49. Pursuant to California Code of Regulations, title 16, section 2767, subdivision (b), respondent's conviction was substantially related to the qualifications, functions and duties of a Furniture and Bedding Retailer because the conviction was for a crime involving fiscal dishonesty.

Respondent's Testimony

5. In 1997 respondent began selling furniture as a home furnishings salesman at La Fiesta Furniture. In 2001 respondent began working for another company. In 2009-2010 "they [the company managers] began to start doing illegal things." The company had "a lot of lawsuits" based on what they were having respondent and other employees "do with clients." Respondent testified that "they would have me do illegal things like delivering T.V.'s after hours." The company's stores "started closing because of bankruptcy." In 2011, respondent filed a disability claim based on a purported work-related injury. Later, based on his guilty plea in the criminal case, respondent admitted that his injury claim was bogus and the insurance claim was false/fraudulent.

6. Respondent testified that he has a least one employee and "I don't pay Workers Comp. for him even though I know I am supposed to because it [the Workers' Compensation Insurance] was canceled because I could not pay for it." Respondent is married with three children ages 13, 12, and eight. Respondent's wife works "seasonally" and respondent is the "primary wage earner for the family." If respondent receives a license his "goal is to grow my business so my family can have a future."

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Factors Related to Mitigation and Rehabilitation

7. Respondent disclosed his conviction in each of his applications.
8. During the instant hearing respondent's testimony was candid and sincere, as revealed by his answers and demeanor.
9. Although respondent is still on criminal probation he is in full compliance with the terms and conditions of his probation, including being current on his monthly restitution payments.
10. Respondent presented 11 character reference letters and the testimony of one witness, all attesting to his excellent work ethic, his fair treatment of customers, his success as a husband and father, and the fact that he has a reputation for having a "moral character" and being an "honest, reliable, hardworking, conscientious and courteous" man.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a)(1), authorizes the bureau to deny a license if the applicant has been convicted of a crime.¹
2. Business and Professions Code section 9841, subdivision (a)(7), authorizes the director to deny an application if the applicant was convicted of a substantially related crime.
3. California Code of Regulations, title 16, section 2767 states, in pertinent part:

For the purpose of denial . . . of the registration . . . a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a service dealer if to a substantial degree it evidences present or potential unfitness of a service dealer to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

[¶] . . . [¶]

¹ Business and Professions Code section 480, subdivision (a)(2), authorizes the bureau to deny a license if the applicant engaged in an act of dishonesty. Although this code section was plead in the body of the accusation at paragraph 6, it was not plead as a cause for denial at paragraph 13.

(b) Conviction of a crime involving fiscal dishonesty.

4. Cause for denial of respondent's applications exists pursuant to Business and Professions Code sections 480, subdivision (a)(1) and 9841, subdivision (a)(7), based on respondent's March 13, 2015, misdemeanor conviction for a crime involving fraud and fiscal dishonesty, which pursuant to California Code of Regulations, title 16, section 2767, subdivision (b), is substantially related to the qualifications, functions and duties of a Furniture and Bedding Retailer.

5. In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show that he is qualified to hold the license. The standard of proof is a preponderance of the evidence. (*California Administrative Hearing Practice* (Cont.Ed.Bar (2d ed. 1997) The Hearing Process, §§ 7.51-7.53, pp. 365-367).) Therefore, in the present case it was incumbent upon respondent to prove that he has been rehabilitated to the point where allowing him to be licensed/registered as a Furniture and Bedding Retailer would not pose a threat to the public health, safety and/or welfare.

6. The bureau has established guidelines for assessing rehabilitation in California Code of Regulations, title 16, section 2768, subdivision (b). Pursuant to subdivision (b), the following criteria are to be used:

(1) The nature and severity of the act(s) or offense(s) under consideration.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial . . . under Section 480 of the Business and Professions Code. . . .

[¶] . . . [¶]

(4) The time that has elapsed since commission of the act(s) or crime(s) under consideration.

(5) The extent to which the applicant . . . has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant. . . .

(6) Evidence, if any, of rehabilitation submitted by the applicant. . . .

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Evaluation

7. Obtaining a benefit from an insurance policy by making a false or fraudulent claim is a serious crime. Although respondent has suffered no criminal convictions since his March 13, 2015, conviction, it has only been approximately two years since that conviction.² Other than the March 13, 2015, conviction, respondent has no record of any other conviction(s). Respondent is in compliance with all the terms and conditions of his probation; however, his probation is not due to terminate until March of 2018.³ Respondent's character reference letters and testimony failed to specifically address what steps respondent has taken towards rehabilitation and his testimony indicated that although he has had no convictions since his 2015 conviction, he has admittedly violated the law by not obtaining Workers' Compensation Insurance for his employee even though he knew of that requirement. In sum, it is just too soon to determine if respondent is rehabilitated. He fell short establishing at this hearing, by a preponderance of the evidence, that he is currently of such good character that he should be licensed.

8. Additionally, pursuant to Business and Professions Code section 19211, respondent shall be prohibited from serving as a member of any licensed partnership, or as an officer or director of any licensed corporation, or as an officer or person acting in a managerial capacity of any licensed firm or association.

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² The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) As Chief Justice Lucas observed, "The amount of evidence of rehabilitation required to justify admission varies according to the seriousness of the misconduct at issue." (*Kwasnik v. State Bar, supra.*, at 1070.)

³ Since persons under the direct supervision of judicial or correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or continue inappropriate behavior while under supervision. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

ORDERS

1. The bureau's denials of respondent's applications for Furniture and Bedding Retail Licenses are affirmed. Respondent's applications are denied.

2. Respondent is prohibited from serving as a member of any licensed partnership, or as an officer or director of any licensed corporation, or as an officer or person acting in a managerial capacity of any licensed firm or association.

Dated: March 27, 2017.

DocuSigned by:

Roy Hewitt

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ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Statement of Issues
13 Against:
14 **GERARDO R. GUERRERO-ARRIAGA**
15 **Furniture and Bedding Retailer License**
16 **Applicant**
17 Respondent.

Case No. AN 2016-313

STATEMENT OF ISSUES

18 Complainant alleges:

19 **PARTIES**

20 1. Justin Paddock (Complainant) brings this Statement of Issues solely in his official
21 capacity as the Bureau Chief of the Bureau of Electronic and Appliance Repair (Bureau), Home
22 Furnishings and Thermal Insulation, Department of Consumer Affairs.

23 2. On or about April 14, 2016, the Bureau received three applications for Furniture and
24 Bedding Retailer Licenses from Gerardo R. Guerrero-Arriaga (Respondent), to do business as
25 Aggy Furniture at a location in Perris, and at two separate locations in Beaumont, California. On
26 or about April 2, 2016, Gerardo R. Guerrero-Arriaga certified under penalty of perjury to the
27 truthfulness of all statements, answers, and representations in the applications. The Bureau denied
28 the applications on September 8, 2016.

1 **JURISDICTIONAL & STATUTORY PROVISIONS**

2 3. This Statement of Issues is brought before the Director of Consumer Affairs (Director)
3 for the Bureau under the authority of the following laws. All section references are to the
4 Business and Professions Code (Code) unless otherwise indicated.

5 4. Business and Professions Code section 22, subdivision (a), states:

6 "Board" as used in any provision of this Code, refers to the board in which the
7 administration of the provision is vested, and unless otherwise expressly provided, shall
8 include "bureau," "commission," "committee," "department," "division," "examining
committee," "program," and "agency."

9 5. Section 475 of the Code states:

10 (a) Notwithstanding any other provisions of this code, the provisions of this
11 division shall govern the denial of licenses on the grounds of:

12 (1) Knowingly making a false statement of material fact, or knowingly omitting to
state a material fact, in an application for a license.

13 (2) Conviction of a crime.

14 (3) Commission of any act involving dishonesty, fraud or deceit with the intent to
15 substantially benefit himself or another, or substantially injure another.

16 (4) Commission of any act which, if done by a licentiate of the business or
profession in question, would be grounds for suspension or revocation of license.

17 (b) Notwithstanding any other provisions of this code, the provisions of this
18 division shall govern the suspension and revocation of licenses on grounds specified in
paragraphs (1) and (2) of subdivision (a) .

19 (c) A license shall not be denied, suspended, or revoked on the grounds of a lack of
20 good moral character or any similar ground relating to an applicant's character,
reputation, personality, or habits.

21 6. Section 480 of the Code states:

22 (a) A board may deny a license regulated by this code on the grounds that the
23 applicant has one of the following:

24 (1) Been convicted of a crime. A conviction within the meaning of this section
means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
25 Any action that a board is permitted to take following the establishment of a conviction
may be taken when the time for appeal has elapsed, or the judgment of conviction has
26 been affirmed on appeal, or when an order granting probation is made suspending the
imposition of sentence, irrespective of a subsequent order under the provisions of
27 Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

28 (2) Done any act involving dishonesty, fraud, or deceit with the intent to
substantially benefit himself or herself or another, or substantially injure another.

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(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(3)(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

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9. Section 9841 of the Code states:

(a) The director may deny, suspend, revoke, or place on probation the registration of a service dealer for any of the following acts or omissions done by himself or herself or any employee, partner, officer, or member of the service dealer and related to the conduct of his or her business:

...

(7) Conviction of a crime that has a substantial relationship to the qualifications, functions and duties of a registrant under this chapter, in which event the record of the conviction shall be conclusive evidence thereof. . .

10. Section 19211 of the Code states:

Any person who has been denied a license, or who has had his or her license revoked, or whose license is under suspension, or who has failed to renew his or her license while it was under suspension, or any person who has been a member of any partnership, or an officer or director of any corporation, or an officer or person acting in a managerial capacity of any firm or association, whose license has been revoked, or whose license is under suspension, or who has failed to renew a license while it was under suspension, and while acting as a member, officer, director, or person acting in a managerial capacity, participated in any of the prohibited acts for which the license was suspended, or revoked, shall be prohibited from serving as a member of any licensed partnership, or as an officer or director of any licensed corporation, or as an officer or person acting in a managerial capacity of any licensed firm or association, and the employment, election, or association of a person in this capacity by a licensee shall constitute grounds for disciplinary action against the licensee.

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 2767 states:

For the purposes of denial, suspension, or revocation of the registration of a repair service dealer pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a service dealer if to a substantial degree it evidences present or potential unfitness of a service dealer to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 20, Division 3 of the Business and Professions Code.

(b) Conviction of a crime involving fiscal dishonesty.

12. California Code of Regulations, title 16, section 2768 states:

(a) The Bureau shall evaluate the rehabilitation of the applicant, registrant, or petitioner and his or her present eligibility for a registration:

1 (1) When considering the denial of a registration under the provisions of
2 Section 480 of the Code;

3 (2) When considering the suspension or revocation of a registration on the
4 grounds that a service dealer has been convicted of a crime;

5 (3) When considering a petition for reinstatement of a registration under the
6 provisions of Section 11522 of the Government Code.

7 (b) In evaluating the rehabilitation of the applicant, registrant, or petitioner, the
8 Bureau shall consider the following criteria:

9 (1) The nature and the severity of the act(s) or crime(s) under consideration.

10 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
11 under consideration as grounds for denial which also could be considered as grounds for
12 denial under Section 480 of the Business and Professions Code when considering an
13 applicant pursuant to subsection (a)(1) of this section.

14 (3) Total criminal record when considering a person pursuant to subsections
15 (a)(2) and (a)(3) of this section.

16 (4) The time that has elapsed since commission of the act(s) or crime(s) under
17 consideration.

18 (5) The extent to which the applicant, registrant, or petitioner has complied
19 with any terms of parole, probation, restitution, or any other sanctions lawfully imposed
20 against the applicant, registrant, or petitioner.

21 (6) Evidence, if any, of rehabilitation submitted by the applicant, registrant, or
22 petitioner. Such evidence may include, but is not limited to, proof of additional training or
23 education, evidence of service to the community, and, if applicable, evidence of
24 expungement proceedings, pursuant to Section 1203.4 of the Penal Code.

25 CAUSE FOR DENIAL OF APPLICATION

26 (March 13, 2015 Criminal Conviction for Insurance Fraud)

27 13. Respondent's applications are subject to denial under sections 480(a)(1) and
28 9841(a)(7) of the Code in he was convicted of a crime that is substantially related to the
29 qualifications, duties, and functions of a Furniture Retailer. The circumstances are as follows:

30 a. On or about March 13, 2015, in a criminal proceeding entitled *People of the*
31 *State of California v. Gerardo Guerra, aka Gerardo Rafael Guerreroarriaga, Gerardo Rafael*
32 *Guerrero, aka Gerardo Rafael Arriaga, aka Gerardo Rafael Guerrero Arriaga*, in Riverside
33 County Superior Court, case number RIF1411993, Respondent was convicted on his plea of guilty
34 to violating Penal Code section 550(b)(1), obtaining a benefit from an insurance policy by making
35 a false or fraudulent written or oral statement, a felony reduced to a misdemeanor by the court

1 pursuant to Penal Code section 17(b). In exchange for the guilty plea, the court dismissed three
2 felony counts of concealing or failing to disclose information regarding the initial or continued
3 right of entitlement to an insurance benefit (Pen. Code, § 550(b)(3)), and two felony counts of
4 perjury for making claims to the Worker's Compensation Review Board that he was unable to lift
5 heavy items, and that he was not currently working at his personal furniture business.

6 b. As a result of the conviction, Respondent was granted summary probation
7 for three years, and he was committed to the custody of the sheriff's Work Release Program for 30
8 days, with pre-custody credit for two days. Respondent was ordered to pay restitution to the
9 victim insurance company in the amount of \$65,236.49. Respondent was further ordered to pay
10 fees and fines, submit to a Fourth Amendment waiver, and comply with probation terms.

11 OTHER MATTERS

12 14. Pursuant to Code section 19211, in the event that the applications of Gerardo R.
13 Guerrero-Arriaga are denied, Gerardo R. Guerrero-Arriaga shall be prohibited from serving as a
14 member of any licensed partnership, or as an officer or director of any licensed corporation, or as
15 an officer or person acting in a managerial capacity of any licensed firm or association, and the
16 employment, election, or association of Gerardo R. Guerrero-Arriaga in this capacity by a licensee
17 shall constitute grounds for disciplinary action against the licensee.

18 PRAYER

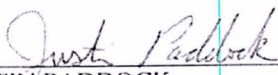
19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the Director of Consumer Affairs issue a decision:

21 1. Denying the applications of Gerardo R. Guerrero-Arriaga, for Furniture and Bedding
22 Retailer Licenses to do business as Aggy Furniture;

23 2. Taking such other and further action as deemed necessary and proper.

24 DATED: _____

DEC 28 2016


JUSTIN PADDOCK
Bureau Chief
Bureau of Electronic and Appliance Repair, Home
Furnishings and Thermal Insulation
Department of Consumer Affairs
State of California
Complainant

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