

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
CEMETERY AND FUNERAL BUREAU
STATE OF CALIFORNIA

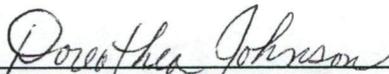
In the Matter of the Statement of Issues Against:) Case No. A1-2009-222
)
NICOLAS ERNESTO CRESPIN,) OAH No. 2010080119
)
Applicant for Cemetery Salesperson License,)
)
Respondent.)
_____)

DECISION

The attached Proposed Decision and Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective December 5, 2010.

IT IS SO ORDERED this 5th day of November, 2010.



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

**BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
CEMETERY AND FUNERAL BUREAU
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

NICOLAS ERNESTO CRESPIN,

Respondent.

Case No. A1-2009-222

OAH No. 2010080119

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on September 9, 2010, in Los Angeles. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Brian G. Walsh, Deputy Attorney General, represented Richard L. Wallinder, Jr. (Complainant).

Nicolas Ernesto Crespin (Respondent) was present and represented himself, through the aid of an interpreter.

FACTUAL FINDINGS

Parties and Jurisdiction

1. On October 30, 2009, the Cemetery and Funeral Bureau (Bureau), which is within the Department of Consumer Affairs, received an Application for Cemetery Salesperson License (application) from Respondent. The Bureau denied the application on November 16, 2009.

2. Complainant brought the Statement of Issues in his official capacity as Bureau Chief. The Statement of Issues alleges grounds exist to affirm the denial of the application by virtue of Respondent's conviction described below. Respondent submitted a written request for a hearing to contest the denial of his application.

Respondent's Conviction

3. On May 17, 1999, in the Municipal Court of Los Angeles County, State of California, Respondent was convicted, after pleading nolo contendere, of violating Penal Code section 243.4, subdivision (a), sexual battery, a felony. On May 24, 2004, the charge was reduced to a misdemeanor pursuant to Penal Code section 17, subdivision (B)(3).

4. Imposition of sentence was suspended, and Respondent was placed on five years of formal probation, under terms including that he serve 96 days in jail (he served 64 days and was given credit for the remainder), perform 20 days of CalTrans community service, pay fines totaling \$200, stay away from the victim of his crime, register as a sex offender, and complete two years of sex offender therapy classes. Respondent successfully completed the terms of his probation, which expired on July 9, 2004.

5. The circumstances underlying the conviction are that, in the fall of 1998, when Respondent returned home one evening extremely inebriated, he sexually molested his then fourteen-year-old daughter.

6. Respondent's crime is substantially related to the qualifications, functions and duties of a cemetery salesman because it evidences a present or potential unfitness to perform the functions authorized by such a license in a manner consistent with the public health, safety, or welfare. (Cal. Code Regs, tit. 16, § 2330.)

7. At the time of the events in question, Respondent was suffering from depression from the recent lost of his beloved parents. He abused alcohol and drugs as a way of coping with his loss. He was so inebriated on the night in question that he does not remember what he did to his daughter.

8. Respondent is extremely remorseful for his crime. His counselor from the court-ordered sex offender therapy noted that Respondent "showed insight and expressed remorse for his offense." Respondent has tried to make amends for his misconduct, including apologizing to his daughter and begging for her forgiveness, which she has given. The two now have a good relationship, including regular visits. Although he and his wife have separated, they still have regular contact and get along when they see each other. Respondent stopped using drugs after his arrest and he only drinks small amounts of alcohol during social or work events. No evidence was presented indicating that Respondent has any other criminal record.

9. Respondent works now for Verizon as a customer service representative. He would like a cemetery salesperson license so that he can work in this field. He has an open job offer from the sales manager of the Inglewood Cemetery, who was impressed by Respondent's character and work ethic when he worked for another cemetery before his application was denied. The sales manager, Mr. Eugenio Godoy Bernard, also testified that a cemetery salesperson is unlikely to be in the presence of an unaccompanied minor while engaging in the functions and duties of such a position.

LEGAL CONCLUSIONS

1. *Cause for Denial.* Respondent's application is subject to denial under Business and Professions Code section 480, subdivision (a)(1), in that Respondent was convicted of a crime which is substantially related to the duties, functions and qualifications of a Bureau licensee. (Factual Findings 1-6).

2. *Disposition.* This case involves one serious conviction which occurred several years ago. The circumstances that existed at that time, which contributed to Respondent's misconduct, are no longer present, i.e., the depression stemming from the death of his parents and his need/urge to abuse drugs. Since then, Respondent developed a long record of good conduct. He also has taken measures to rehabilitate himself, including complying with the terms of his criminal probation, abstaining from drugs, making amends to the victim of his crime, and displaying genuine remorse. Since Respondent would not be routinely in the presence of minors as part of licensed activity, the public risk presented in this case is minimal. However, a significant period of probation under appropriate terms and conditions is still warranted for purposes of public protection. (Factual Findings 1-9.)

ORDER

The application of Respondent Nicolas Ernesto Crespín for a cemetery salesperson license is granted. The license, once issued, shall be immediately revoked; the revocation will be stayed; and Respondent placed on probation for a period of four years under the following terms:

1. **Obey All Laws**

Respondent shall comply with all conditions of probation and obey all federal, state and local laws, and all rules and regulations governing the programs regulated by the department.

2. **Quarterly Reports**

Respondent shall submit quarterly declarations under penalty of perjury, in a format designated by the department, stating whether or not Respondent has been in compliance with all the conditions of probation. Respondent shall also submit such additional written reports and verifications of actions requested by the department. Should the final probation report not be made as directed, the period of probation shall be extended until such time as the final report is made.

3. **Interview with Department Representative**

As necessary, Respondent shall appear in person for scheduled interviews with the director or other designated representative for the purpose of monitoring compliance with the terms of this decision.

4. **Out-of-State Residence or Operation**

Should Respondent leave California to reside or operate outside this state, Respondent must notify the Department in writing of the dates of departure and return. Reporting in person may be waived if the Respondent moves out of the state.

However, Respondent shall continue compliance with other terms of probation to retain California licensure. Periods of residency, business operation or employment outside California shall not reduce the probationary period.

5. Completion of Probation

Upon successful completion of probation, Respondent's license will be fully restored.

6. Violation of Probation

Should Respondent violate probation in any respect, the director of the Department of Consumer Affairs, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If an Accusation or Petition to Revoke Probation is filed against Respondent during probation, the department shall have continuing jurisdiction until the matter is final, and the probation shall be extended until the matter is final.

7. License Issued During Probation

Any license or registration issued to Respondent by the department during the period of probation shall be issued as a probationary license or registration and is subject to all the terms and conditions set forth herein. Respondent must comply with terms and conditions herein and demonstrate no cause for disciplinary action or denial of an application.

8. Notification to Clients

Respondent shall provide to any employer licensed by the Bureau with a copy of the decision before rendering services. Upon request, Respondent shall provide the department with proof of providing a copy of said decision.

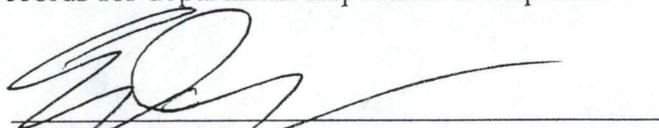
9. Limitation of Duties

Respondent shall not be left alone in the presence of a minor while engaging in duties which require a Bureau license.

10. Provision of Records

Respondent shall provide specific records for department inspection as required.

DATED: October 7, 2010


ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings

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8 **BEFORE THE DIRECTOR**
9 **OF THE DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE CEMETERY AND FUNERAL BUREAU**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
13 Against:

Case No. A1-2009-222

14 **NICOLAS ERNESTO CRESPIN**
5323 Lemon Grove Avenue, #4
15 Los Angeles, CA 90038

STATEMENT OF ISSUES

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Richard L. Wallinder, Jr. (Complainant) brings this Statement of Issues solely in
20 his official capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of
21 Consumer Affairs.

22 2. On or about October 30, 2009, the Cemetery and Funeral Bureau (Bureau)
23 received an application for a Cemetery Salesperson License from Nicolas Ernesto Crespin
24 (Respondent). The Bureau denied the application on November 16, 2009.

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JURISDICTION

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

4. Section 475 states, in relevant part:

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

....

"(2) Conviction of a crime.

5. Section 477 states, in relevant part:

"As used in this division:

"(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and 'agency'.

6. Section 480 states, in relevant part:

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

"(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. 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 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 Section 1203.4 of the Penal Code."

CAUSE FOR DENIAL OF APPLICATION

(Conviction of a Substantially-Related Crime)

7. Respondent's application is subject to denial under section 480, subdivision (a)(1), in that Respondent was convicted of a crime that is substantially related to the qualifications, functions or duties of a licensed Cemetery Salesperson. On or about June 9, 1999, after pleading nolo contendere, Respondent was convicted of one felony count of violating Penal Code section

1 243.4(a) [sexual battery], in the criminal proceeding entitled *The People of The State of*
2 *California v. Nicolas Ernest Crespín* (Super. Ct. Los Angeles County, No. SA035473).¹

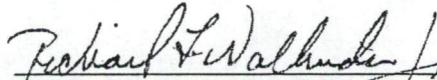
3 Respondent was sentenced to 96 days in jail and placed on formal probation for five years with
4 terms that included staying away from the victim, random drug and alcohol testing, registration as
5 a sex offender, and the completion of domestic violence and sex offender therapy classes. The
6 underlying factual circumstances occurred in or about the fall of 1998, when Respondent returned
7 home one evening extremely intoxicated and sexually molested his fourteen year old daughter.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Director issue a decision:

- 11 1. Denying Respondent's application for a Cemetery Salesperson License; and
12 2. Taking such other and further action as deemed necessary and proper.

13
14 DATED: 6/8/10



15 RICHARD L. WALLINDER, JR.
16 Bureau Chief
17 Cemetery and Funeral Bureau
18 Department of Consumer Affairs
19 State of California
20 Complainant

21
22
23
24
25
26 _____
27 ¹ On or about May 24, 2004, this charge was reduced to a misdemeanor pursuant to
28 Penal Code section 17(B)(3).