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FILED

SEP 08 2017

BUREAU OF REAL ESTATE

By R. Posada

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of

ROBERT ELMER LIVINGSTON,

No. H-36949 LA

Respondent.

ORDER DENYING REINSTATEMENT OF LICENSE

On July 12, 2011 a Decision was rendered revoking Respondent's real estate salesperson license. On January 22, 2014, Respondent petitioned for reinstatement of his real estate license. An Order Denying Reinstatement of License and Granting Right to a Restricted License was rendered on June 16, 2014. Respondent was issued a restricted real estate salesperson license on September 29, 2014, and has held a restricted license since that time.

On August 22, 2016, Respondent again petitioned for reinstatement of his real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and integrity than an applicant for first time licensure. The proof must be sufficient to overcome the prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

1 I have considered the petition of Respondent and the evidence submitted in
2 support thereof.

3 The Bureau has developed criteria in Section 2911 of Title 10, California Code of
4 Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for
5 reinstatement of a license. Among the criteria relevant in this proceeding are:

6 Regulation 2911(b) Restitution to any person who has suffered monetary losses
7 through "substantially related" acts or omissions of the applicant.

8 On November 9, 2009, before the United States District Court for the District of
9 Nevada, Case No. 2:09-CR-46-JDK-LRL, Respondent was made jointly and severally liable for
10 payment of \$774,542.70 in restitution. Respondent has only submitted evidence of paying
11 approximately \$36,000 in restitution.

12 Regulation 2911(c) Expungement of criminal convictions resulting from immoral
13 or antisocial acts.

14 There is no evidence that Respondent's criminal conviction has been expunged.

15 Regulation 2911(n) Change in attitude from that which existed at the time of the
16 conduct in question as evidenced by any or all of the following:

17 (1) Testimony of applicant.

18 Question 9 of Respondent's petition contains various boxes regarding family
19 status, including "divorced", "separated" and "married more than once". In response to Question
20 9, Respondent left these boxes blank and marked "domestic partner". During an interview,
21 Respondent's fiancé claimed that Respondent was previously married for 12 years and was also
22 married for approximately one year "when he was very young." This reflects poorly on
23 Respondent's integrity and willingness to provide full disclosure.

24 In response to Question 4A, of his petition application, to wit: "Do you have any
25 past debts, outstanding judgment, or have you filed bankruptcy?" Respondent answered "no",
26 thereby failing to disclose that over \$700,000 is still owed in his criminal judgment, as discussed
27 above. In *Harrington vs. Dept. of Real Estate (1989)*, 214 Cal. App. 3d, 394, the court stated

1 that lack of candor in completing a license application is itself sufficient to sustain a finding that
2 the applicant does not yet appreciate the need to speak honestly about and to accept
3 responsibility for one's actions.

4 (2) Evidence from family members, friends or other persons familiar with
5 applicant's previous conduct and with his subsequent attitudes and behavioral
6 patterns.

7 One of the individuals who submitted a letter of recommendation on
8 Respondent's behalf withdrew his recommendation during an interview, stating that
9 Respondent's "ethics are questionable" and claiming that Respondent is a "habitual liar".


10 Given the violations found and the fact that Respondent has not established that
11 Respondent has satisfied Regulations 2911(b), (c), (n)(1) and (n)(2), I am not satisfied that
12 Respondent is sufficiently rehabilitated to receive an unrestricted real estate salesperson license.

13 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
14 reinstatement of Respondent's real estate salesperson license is denied.

15 This Order shall become effective at 12 o'clock noon on **SEP 28 2017**

16 IT IS SO ORDERED 9/1/17

17 WAYNE S. BELL
18 REAL ESTATE COMMISSIONER

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21 By: DANIEL J. SANDRI
22 Chief Deputy Commissioner
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