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BUREAU OF REAL ESTATE

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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
EDOUARD EDRISI AUSSENAC,
Respondent.

CalBRE No. H-39783 LA
OAH No. 2015040335

NOTICE

TO: EDOUARD EDRISI AUSSENAC, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated June 29, 2015, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated June 29, 2015, is attached hereto for your information.

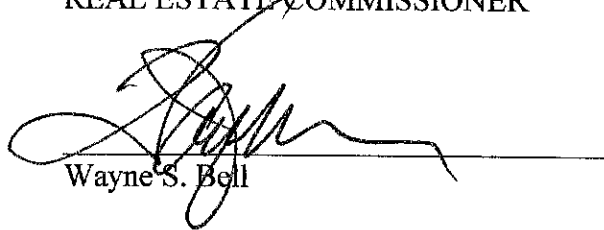
In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on June 24, 2015, and any written argument hereafter submitted on behalf of respondent and complainant.

Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of June 24, 2015, at the Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for good cause shown.

1 Written argument of complainant to be considered by me must be submitted within
2 15 days after receipt of the argument of respondent at the Los Angeles Office of the Bureau of Real
3 Estate unless an extension of the time is granted for good cause shown.

4 DATED: 7/16/2015

5 REAL ESTATE COMMISSIONER

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**BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Application of
EDOUARD EDRISI AUSSENAC,

Respondent.

Case No. H-39783 LA
OAH No. 2015040335

PROPOSED DECISION

Administrative Law Judge Angela Villegas, State of California, Office of Administrative Hearings, heard this matter on June 24, 2015, in Los Angeles, California.

Steve Chu, counsel for the Bureau of Real Estate, Department of Consumer Affairs (Bureau), represented complainant.

Respondent represented himself.

Evidence was received, and the matter was submitted for decision June 24, 2015.

REDACTION OF PRIVATE INFORMATION

Exhibits 4, 6, and 8 contained unredacted personal identifying numbers of respondent and others. These numbers were redacted to safeguard against their improper use.

FACTUAL FINDINGS

1. Complainant Maria Suarez, a Deputy Real Estate Commissioner of the State of California, filed the Statement of Issues in her official capacity. Respondent filed a Notice of Defense requesting a hearing.
2. On June 18, 2014, respondent applied (Application) to the Bureau for a real estate salesperson license; the Bureau received the Application on June 23, 2014. Upon being served with the Statement of Issues, respondent filed a Notice of Defense requesting a hearing.

3. On January 9, 2004, in the Superior Court of California, County of Riverside, respondent was convicted on his guilty plea of violating Vehicle Code section 10851, subdivision (a) (taking a vehicle without owner's consent), a felony. (Conviction 1.)

4. The court placed respondent on 36 months' formal probation, on condition that he obey all laws, serve 90 days in county jail, pay victim restitution (later determined to be \$630, plus a \$63 administrative fee), and pay fines and fees totaling \$310. Respondent finished paying the money on September 17, 2004. On February 8, 2013, the court reduced the felony to a misdemeanor pursuant to Penal Code section 17, subdivision (b), and dismissed Conviction 1 pursuant to Penal Code section 1203.4.

5. The incident leading to Conviction 1 occurred on November 21, 2002, when respondent was 19 years old. He and a group of friends gathered to watch street races. Respondent, who was intoxicated, encountered another attendee with whom he "locked eyes[.]" (Respondent's testimony.) Respondent became angry, entered the other person's car, and drove away with it while the other person hung on, chased him, and tried to jump in. After driving the car for a short time, respondent abandoned it. The vehicle was later found burned, but respondent, who candidly admitted the above conduct, credibly denied having burned it. Nevertheless, respondent acknowledged, "I understand my actions probably led to it." (Respondent's testimony.)

6. On June 14, 2004, in the Superior Court of California, County of San Bernardino, respondent was convicted on his nolo contendere plea of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of an intoxicant) (DUI), a misdemeanor. (Conviction 2.)

7. The court placed respondent on 36 months' conditional and revocable release, on condition that he obey all laws, and pay \$1,474 in fine and fees. At the time of Conviction 2, Respondent had already completed a first-offender alcohol education program. Respondent successfully completed his conditional and revocable release, and paid all fines and fees. He has not yet had Conviction 2 dismissed pursuant to Penal Code section 1203.4, but plans to do so.

8. Conviction 2 arose from a vehicle accident in which respondent was involved on September 12, 2003, when he was 20 years old. Respondent had been drinking at a nightclub. On the way home, he fell asleep at the wheel, and the vehicle went off the road and crashed. Respondent admitted to the investigating officer that he had consumed alcohol. He failed field sobriety tests, and had a blood alcohol concentration of .09 or .10 percent. When respondent initially reported the incident, in an attempt to evade responsibility for his conduct, he claimed he had been the victim of a carjacking. When questioned by a law enforcement officer, however, he admitted no carjacking had occurred.

9. On January 15, 2010, in the Superior Court of California, County of San Bernardino, respondent was convicted on his nolo contendere plea of violating Penal Code

section 245, subdivision (a)(1) (assault with a deadly weapon, other than a firearm, with force likely to cause great bodily injury), a felony.¹ (Conviction 3.)

10. On April 16, 2010, the court placed respondent on 36 months' supervised probation, on condition that he obey all laws, serve 365 days in county jail (less credit for one day) or complete a work release program by May 21, 2012, pay victim restitution in an amount to be determined,² and pay fines and fees totaling \$220. Respondent complied with the terms of his probation. On October 21, 2011, the court reduced the felony to a misdemeanor pursuant to Penal Code section 17, subdivision (b), and on December 7, 2012, the court terminated respondent's probation early and dismissed Conviction 3 pursuant to Penal Code section 1203.4.

11. (a) The incident leading to Conviction 3 occurred on October 11, 2008, when respondent was 25 years old. He and two friends became involved in a physical altercation with two other individuals, with the result that one of the others sustained an injury requiring medical attention.

(b) The incident had begun earlier at a bar/restaurant, where respondent consumed three vodka cocktails. A confrontation arose in which one of the victims tried to, or did, strike respondent with a beer glass, after which security personnel ejected the entire group from the restaurant. Respondent and his friends encountered the others in the parking garage, where the physical altercation occurred.

12. At the administrative hearing, respondent maintained the others had started the fight, and contended that he had wanted to press charges, but was rebuffed by the investigating law enforcement officers. He denied having wanted to fight, but explained that once his friend became involved in the confrontation, he felt it necessary to become involved, too. He emphasized that the entire fight lasted 15 seconds, but in a letter to the Bureau accompanying his Application, he acknowledged, "that fight was 15 seconds too long because it should not have happened at all." (Ex. 2.)

13. Respondent is now 32 years old, and since September 2014 has been married to the mother of his three children, ages six, four, and two. He feels becoming a father, and now husband, has changed him. He no longer engages in the kinds of activities that led to his convictions. Instead, he and his wife are focused on family activities, especially sports, with their children. Respondent coaches his eldest son's baseball team, and will also coach

¹ Although respondent was not sentenced until April 16, 2010, he entered his plea and was found guilty on January 15, 2010. The court's guilty verdict constitutes a conviction under Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b).

² Court records (exs. 5 and B) do not reflect that any amount of victim restitution was ever set, and respondent did not recall being ordered to pay any.

soccer when the season begins. Respondent also volunteers to help at his church, and at a Veteran's Administration hospital.

14. Respondent works full time as an assistant/transaction coordinator for Century 21 All Stars. He provided letters from his supervisors (one of whom is also his brother-in-law), attesting to his personal growth, honesty, and integrity. Respondent also provided letters from personal acquaintances describing the same. Before working at Century 21, respondent held other jobs; he has been working since he was 16. He would like to become licensed as a real estate salesperson to help people find homes, and dreams of one day working together in the real estate business with his wife, who is a loan officer.

15. Respondent is also currently working toward his bachelor of science degree in finance, with a minor in marketing, at University of Phoenix. He expects to graduate in March 2016. When respondent was younger, he attended the fire academy at Mount San Antonio College.

16. Respondent recognizes that all of his convictions involved alcohol intoxication, and has changed the way he drinks. Instead of consuming alcohol to the point of inebriation, respondent now confines himself to a beer or two, and only on social occasions such as weddings and birthdays. If driving is necessary, either respondent or his wife will refrain entirely from drinking alcohol so that the sober one can drive.

17. Respondent also recognizes that Convictions 1 and 3 involved aggression on his part. He attended anger management classes as part his probation, and learned to think things through rather than acting on impulse. He has also learned to avoid confrontational situations. He is motivated to maintain self-control, because he wants to provide a good example for his children.

18. (a) Respondent expressed regret for his criminal past because it has impeded his ability to fulfill his ambitions and desires. He did not express sympathy for his victims. He believes his crimes stemmed from youth, inexperience, and the bad influence of people with whom he was friends at the time.

(b) With two exceptions, respondent has distanced himself from those people. The exceptions are respondent's accomplices in the fight that led to Conviction 3. One of them has gone on to become a successful businessman, and provided a letter of reference for respondent (ex. C, Cuevas letter), praising him as being "of the highest moral fabric" (*id.*) and "highly competent[.]" (*Id.*) The letter does not mention the pair's criminal past or detail respondent's changes since then. The other former accomplice became a dental hygienist in Florida.

19. Respondent feels his attitude has changed dramatically since the time of his crimes. He now views life with a positive attitude, and feels optimistic that he can "bounce back" from his earlier mistakes. (Respondent's testimony.)

LEGAL CONCLUSIONS

1. Cause exists to deny respondent's Application, based on his criminal convictions, and based on his dishonesty in falsely claiming he had been the victim of a carjacking. (Factual Findings 3-11.) (Bus. & Prof. Code, §§ 480, subs. (a)(1) and (a)(2); 10177, subd. (b); Cal. Code Regs., tit. 10 (Regulation), § 2910.)³

2. The convictions and conduct constituting grounds to deny respondent's application are substantially related to the qualifications, functions, and duties of a real estate licensee.

(a) Conviction 1 is substantially related to licensed activity because it arose from an "unlawful act with the intent of conferring a financial or economic benefit upon [respondent] or with the intent or threat of doing substantial injury to the person or property of [the victim]." (Regulation § 2910, subd. (a)(8).)⁴ (Factual Findings 3-5.)

(b) Conviction 3 is substantially related to a real estate licensee's licensed activity for the same reason. (Factual Findings 9-11.) (Regulation § 2910, subd. (a)(8).)

(c) Convictions 1 through 3, taken together, are substantially related to licensed activity because they "demonstrate[] a pattern of repeated and willful disregard of law" (Regulation § 2910, subd. (a)(10)), and because they all involved the use of alcohol, with one of them (Conviction 2) involving "driving and the use or consumption of alcohol." (Regulation § 2910, subd. (a)(11).) (Factual Findings 3-11.)

(d) Respondent's false claim that he had been a carjacking victim is substantially related to licensed activity, because it involved "the uttering of a false statement" (Regulation § 2910, subd. (a)(2)) and "[t]he employment of . . . misrepresentation to achieve an end." (Regulation § 2910, subd. (a)(4).) (Factual Finding 8.)

³ In addition to the cited provisions, the Statement of Issues relies on Business and Professions Code section 475. But that statute does not furnish grounds for denial of a license. Rather, it delineates the scope of "the provisions of this division" of the Business and Professions Code.

⁴ At the administrative hearing, complainant argued that Conviction 1 was also substantially related to a real estate licensee's licensed activity because it involved "[t]he fraudulent taking . . . of property belonging to another person." (Regulation § 2910, subd. (a)(1).) Although Conviction 1 did involve respondent's taking of the victim's property, the evidence did not indicate he did so in a "fraudulent" manner: that is, through the employment of deception, artifice, or concealment, nor is any manner of fraud a necessary element of the crime itself. (Factual Findings 3-5.) Rather, the evidence showed respondent acted in an open, forceful, and brazen manner. (*Id.*) Hence, Conviction 1's substantial relationship to licensed activity is better described by Regulation section 2910, subdivision (a)(8).

3. Respondent demonstrated progress toward rehabilitation, but his showing was insufficient under Regulation section 2911 to warrant unfettered licensure at this time. Rather, a period of restricted licensure is needed to ensure public protection. (Bus. & Prof. Code, § 10156.5, subd. (b).)

4. Convictions 1 and 2 were entered, and the conduct leading to them occurred, more than 10 years ago. (Factual Findings 3-8.) (Regulation § 2911, subd. (a).) Conviction 3 was more recent, having been entered approximately five and a half years ago, but both Conviction 3 and Conviction 1 have been expunged for more than two years. (Factual Findings 4 and 9-11.) (Regulation § 2911, subds. (a) and (c).) The most recent criminal conduct revealed by the evidence occurred in October 2008, almost seven years ago. (Factual Finding 11.) (Regulation § 2911, subd. (a).) The time that has passed since respondent last engaged in criminal behavior or sustained a conviction substantiates his rehabilitative progress.

5. Respondent paid restitution as ordered, and complied in exemplary fashion with the terms of his probation; indeed, his compliance was good enough in connection with Conviction 3 that the court terminated his probation early. (Factual Findings 4, 7, and 10.) (Regulation § 2911, subds. (b), (e), and (g).)

6. Respondent enjoys a stable family and work life, is pursuing his education, and provides volunteer services to the community. (Factual Findings 13-15.) These activities indicate personal growth on respondent's part and an investment in his community. (Regulation § 2911, subds. (h), (i), and (l).) Respondent has largely distanced himself from people who were a bad influence, retaining only those friends who have changed and grown personally and professionally. (Factual Finding 18.) (Regulation § 2911, subd. (m).) His personal growth has impressed coworkers and friends. (Factual Findings 14 and 18.)

7. On the other hand, despite the role alcohol played in respondent's criminal past, he has not forsworn it entirely. (Factual Finding 3-11 and 16.) (Regulation § 2911, subd. (f).) Nevertheless, he no longer uses alcohol in the same way he did when he engaged in the conduct leading to his convictions; instead he drinks in a more restrained and appropriate way. (Factual Finding 16.) While this does not remove all worry that respondent will misuse alcohol again someday, the changes in respondent's overall lifestyle—his marriage and fatherhood, and his ambitions and hopes for the future—strongly suggest respondent will remain motivated to refrain from misusing alcohol. (Factual Findings 13-19.)

8. Similarly, it was troubling that respondent's remorse for his criminal conduct did not include sympathy for those he had harmed, and respondent was ambivalent in his acceptance of responsibility for the incident leading to Conviction 3. (Factual Findings 12 and 18.) (Regulation § 2911, subd. (n).) (See *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940; *Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058 [acknowledgment of, and acceptance of responsibility for, previous wrongdoing are cornerstones of rehabilitation].) Still, respondent is not required to make a "lachrymose display of

penitence[.]” (*Calaway v. State Bar* (1986) 41 Cal.3d 743, 748.) He demonstrated an understanding that his criminal conduct was wrong, displayed insight into his aggression, including the role of alcohol in unleashing it, and articulated reasonable motivations and strategies for maintaining control over his behavior. (Factual Findings 16-19.)

9. In sum, respondent demonstrated that he has undergone a change in attitude fundamental enough to let him see his life in a positive light, and seek opportunities to reverse the undesirable course his crimes set him on when he was younger. (Factual Findings 16-19.) (Regulation § 2911, subd. (n).) Consequently, although respondent’s showing did not establish that he has achieved full rehabilitation, or remove all concerns about his fitness for licensure, it was sufficient to support a period of restricted licensure, lasting for three years, to allow enhanced scrutiny of respondent’s conduct, and thereby ensure public protection.

ORDER

Respondent Edouard Edrisi Aussenac’s application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 for a period of three years. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions, and restrictions imposed under authority of Section 10156.6 of said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to his fitness or capacity as a real estate licensee; or

(b) The receipt of evidence that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to his restricted license.

2. At the successful conclusion of the three-year period of restricted licensure, respondent shall be issued an unrestricted license. Notwithstanding the three-year period of license restriction, respondent shall be eligible to apply for the issuance of an unrestricted real estate license, and/or for the removal of any of the conditions, limitations, or restrictions attaching to the restricted license, after two years have elapsed from the date of issuance of the restricted license to him.


3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing

real estate broker on a form RE 552 (Rev. 4/88) approved by the Bureau of Real Estate which shall certify as follows:

(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

Dated: June 29, 2015


ANGELA VILLEGAS
Administrative Law Judge
Office of Administrative Hearings