

FILED

JUN 12 2018

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of)	CalBRE No. H-40948 LA
BRYAN STEVEN ALMEIDA,)	OAH No. 2018031051
)	
<u>Respondent.</u>)	

DECISION

The Proposed Decision dated May 11, 2018, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision.

Factual Findings, Page 1, Paragraph No. 2(a), Line 1, "On February 2, 2018," is amended to read "On February 22, 2018,)"

Character References, Page 5, Paragraph No. 20, Line 3, "November 1015," is amended to read "November 2015,"

Order, Page 10, Paragraph No. 4, Line 3, "Office Box 137000, Sacramento, CA 95813-7000." is amended to read "Office Box 137013, Sacramento, CA 95813-7013."

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent.

Pursuant to Government Code Section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain

why it was not previously presented. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

If and when a petition for removal of restrictions is filed, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

This Decision shall become effective at 12 o'clock noon on JUL -2 2018.

IT IS SO ORDERED June 8, 2018

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: DANIEL J. SANDRI
Chief Deputy Commissioner

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

In the Matter of the Application of
BRYAN STEVEN ALMEIDA,
Respondent.

Case No. H-40948 LA
OAH No. 2018031051

PROPOSED DECISION

Administrative Law Judge Laurie R. Pearlman of the Office of Administrative Hearings heard this matter on May 8, 2018, at Los Angeles, California.

Judith Vasan, Real Estate Counsel, represented Veronica Kilpatrick (complainant). Complainant is a Supervising Special Investigator for the Bureau of Real Estate (Bureau).

Bryan Steven Almeida (respondent) was present and represented himself.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

FACTUAL FINDINGS

1. On April 4, 2017, respondent submitted an application to the Bureau for a real estate salesperson license. The application is pending, and the Bureau has not issued a license to respondent at this time.
2. On February 2, 2018, complainant, in her official capacity, filed a Statement of Issues seeking to deny respondent's application based on his two criminal convictions. In response, respondent timely filed a Notice of Defense on Application, and this hearing ensued.

Respondent's Criminal Convictions

- 3(a). On February 29, 2012, in the Superior Court of California, County of Los Angeles, case number PA072158, respondent was convicted, on a plea of nolo contendere, to violating Penal Code section 245, subdivision (a)(1) (assault with a deadly weapon, to wit: a

cast), a felony. A sentencing enhancement was applied pursuant to Penal Code section 186.22, subdivision (b)(1)(B) (offense committed for the benefit of, at the direction of, and in association with a criminal street gang.) Probation was denied and Respondent was ordered to serve seven years in state prison, with credit for time in custody, and to pay restitution to the victim in the amount of \$2,203. Respondent was released from prison in July 2015 for good behavior, after serving only half of his seven-year sentence. On September 28, 2017, respondent was granted early discharge from parole.

3(b). The facts and circumstances underlying the 2012 conviction are that on November 10, 2011, Respondent was wearing a cast on his right arm. He struck an intoxicated man in the face with the cast, causing the man to suffer a large contusion to the head and multiple dental fractures. Respondent was 19 years old at the time.

4(a). On May 9, 2016, in the Superior Court of California, County of Los Angeles, case number 6SV03182, respondent was convicted on his plea of nolo contendere to a violation of Vehicle Code section 23109, subdivision (c) (exhibition of speed on a highway), a misdemeanor. Respondent was placed on 24 months of summary probation and was ordered to serve five days in jail with credit for time served, and to pay fines and fees totaling \$657. Respondent was also ordered to complete a 12-hour Alcohol and Drug Education Program. Respondent paid all of his court-ordered fines and fees and completed the court-ordered alcohol program in a timely manner. Respondent was placed on summary probation from May 9, 2016, through May 8, 2018.

4(b). The facts and circumstances underlying the 2016 conviction are that on April 17, 2016, respondent consumed three beers at a friend's house. At 9 p.m., respondent was driving home with his wife in the vehicle. California Highway Patrol Officer J. Miconi observed respondent driving in excess of 85 miles per hour on the freeway and initiated an enforcement stop. Respondent told the officer "he was trying to make it home to watch a television show, and he didn't realize how fast he was going." (Exhibit 6, p. 6.) Officer Miconi detected the odor of an alcoholic beverage on respondent's breath, and respondent admitted that he had consumed three beers. The officer administered a field sobriety test, which respondent failed. A preliminary alcohol screening test showed a 0.096 percent and 0.088 percent blood alcohol content (BAC). Respondent was arrested for driving while under the influence of alcohol (DUI). Breath tests administered at the Van Nuys Jail at 10:09 p.m. and 10:12 p.m. showed a 0.07 percent and 0.07 percent BAC, respectively. The DUI charges were later dismissed in the criminal case.

5. The crimes described in Factual Findings 3 and 4 are substantially related to the qualifications, functions, and duties of a real estate salesperson. The two convictions for inflicting physical harm and for driving in an unsafe manner reflect a lack of sound professional and personal judgment that is relevant to a real estate salesperson's fitness and competence. Inflicting injury on another and placing others at risk of harm by drinking and driving also reflects a lack of self-control. Respondent's carelessness in following the law and absence of self-control creates doubt as to his ability to perform the duties of a real estate salesperson in a professional manner.

Respondent's Evidence of Mitigation and Rehabilitation

6. Respondent is nearly 26 years old and married, with a newborn son. He did not dispute any of the facts or circumstances surrounding his criminal convictions, and he assumed full responsibility for his past conduct. Respondent expressed sincere remorse for his actions. His goal is to learn from his mistakes and put his efforts into becoming a better person.

7. Respondent was 19 years old in 2011 when he caused injury to a man by striking him with his cast. At the hearing, respondent asserted that he acted in self-defense when he was provoked and attacked by the victim, who was intoxicated and had kicked respondent's car. However, respondent admitted that he used "a lot of poor judgment" and made "a huge mistake" by engaging in "unacceptable behavior" which was "totally uncharacteristic." (Exhibit A, p. 1.) As for the gang enhancement applied at sentencing, respondent grew up in a "gang-infested neighborhood" and as a teenager he struggled with "self-identity issues" and found himself associating with "unsavory" individuals, though he was never a gang member. Since respondent's release from prison, he has changed his associations and now has "good people around" him. He believes that "you are the company you keep." Respondent is surrounded by individuals who provide him with a strong support system.

8. Following his felony conviction, respondent began serving a prison term. While incarcerated, respondent became "a model inmate." "Going to prison changed [respondent's] life and "awakened" him. He started "to better" himself in prison and has continued since then. Respondent was released from prison in July 2015 for good behavior, after serving only half of his seven-year sentence. He was supposed to remain on parole for three years, but on September 28, 2017, respondent was granted early discharge from parole.

9. Since 2011, respondent has "learned and grown as an individual and as a human being." While incarcerated, respondent participated in all of the self-help programs that were available to him. In 2012 and 2013, respondent completed nine correspondence courses through the ECS Prison Ministry of Northern California.

10. While incarcerated, respondent completed programs in anger management, self-esteem, preparation for employment, developing support networks (family and organization) and preparation for release (developing a game plan.) Respondent learned leadership skills and played a leadership role among his peers while in prison. He has worked hard to "better myself, and to learn from my mistakes."

11. Respondent participated in Alcoholics Anonymous (AA) for over three years while in prison, even though he was not required to do so. Respondent was "a motivated and active participant" and "a valuable asset" for the AA group meetings. (Exhibit D.) He was elected and served as Chairman of his AA group and received weekly AA Leadership training to improve his knowledge and skills for leading groups.

12. Respondent asserts that he has never had a problem with substance abuse or alcohol, but found that AA is “a great way of life.” Respondent did not continue to participate in AA after his release from prison in July 2015, but has not consumed any alcoholic beverages since his April 17, 2016 DUI arrest. Respondent admits that this arrest while still on parole shows a “lack of judgment.” He has “completely cut off alcohol” since then because alcohol “isn’t positive for me at all.”

13. After his release from prison, respondent continued with self-help classes. Through Chrysalis, he completed courses in professional conduct, computer training, goal planning, and money management in July 2015. Respondent obtained a job two weeks after his release from prison and is proud that he did not have to seek welfare or food stamps. He has earned an excellent credit score, which he sees as confirmation that he is a responsible person who is not in debt and pays his bills. Respondent currently is enrolled in courses at Los Angeles Mission College in Sylmar, California.

14. Since January 2016, respondent has been an active volunteer at M.E.N.D (Meet Every Need with Dignity) in Pacoima, California, an organization that helped respondent’s family when he was a child. Respondent volunteers four hours each week packaging and distributing food and other products to needy families and the homeless. Twice a year, he organizes food drives to collect food and clothes for M.E.N.D. For the past two years, respondent has organized Christmas toy drives for special needs students at Telfair Elementary School in Pacoima, California and has volunteered for Heal the Bay.

15. Respondent sought work immediately upon his release from prison. Since then, he has been continually employed; he has never been asked to resign from or been fired from any position. Respondent is proud that his credit rating is excellent. Currently, respondent works 40 hours per week as an assistant to Jose Prado, a real estate salesperson with HomeSmart Realty who has been a licensed realtor for more than 30 years. Respondent also worked as an assistant to Marlene Moretti, a Senior Lender for Camino Real Mortgage Bankers, who has been in the business for more than 25 years. Respondent was also Assistant District Manager for Greenspire, a solar company that is no longer in business.

16. Respondent testified that he believes it is essential to have a positive outlook. He states that he has learned from his mistakes and does not let past errors hold him back in life. In his opinion, learning from mistakes is his motivation to work hard to achieve the goals he has set for himself.

17. Obtaining a real estate salesperson license is extremely important to respondent. He wants to help others and provide a service to the public. Respondent has completed the educational prerequisites to obtain a real estate salesperson license. In 2016, respondent completed three courses in real estate through the California Brokers Institute in Canoga Park, California, with grades of 85, 89, and 90. Respondent passed the real estate licensing examination on his first attempt. HomeSmart, a real estate brokerage located in Northridge, California, has offered to employ respondent once he is licensed. The brokerage is fully aware of his convictions.

18. Respondent fully disclosed his convictions on his licensing application, demonstrating he is ready and able to have a cooperative relationship with the Bureau. At the administrative hearing, respondent testified candidly. He was not defensive and readily acknowledged the severity of his misconduct. Respondent understood fully the Bureau's concerns about his application and demonstrated insight as to the issues that led to his convictions. He understands the importance of honesty and thoroughness in the real estate profession. Respondent demonstrated that he has matured and changed significantly over the past several years and his more recent behavior indicates the likelihood that he would be an honorable member of the real estate profession if his license were granted.

Character References

19. Respondent submitted 13 character reference letters, which were admitted as administrative hearsay.¹ Many friends, family members and professional colleagues attended the hearing and offered to testify on respondent's behalf. Respondent's mother, stepfather, wife and newborn son were present, as were other family members who had traveled from out-of-state. In the interest of judicial economy, four character witnesses were permitted to testify.

20. Jose Prado submitted a letter and testified on respondent's behalf at hearing. Mr. Prado has been a licensed real estate salesperson in California for over 30 years. In November 1015, Mr. Prado hired respondent as his assistant after respondent applied for the position in response to a flyer Mr. Prado had posted at Los Angeles Mission College. He described respondent as honest, polite, professional, trustworthy, and self-motivated with an excellent work ethic. Mr. Prado has "never met a young man with such determination to be successful and be of service to our community." (Exhibit F, p. 5.) Mr. Prado was moved to tears during his testimony, stating that when he retires, he wants his clients to be served by a man of integrity like respondent, who loves and serves his community and is a leader. He is fully aware of the allegations contained in the Statement of Issues and respondent's convictions. Mr. Prado attended respondent's parole hearing.

21. Lourdes Prado, a retired elementary school teacher, testified on respondent's behalf. She is Mr. Prado's wife and shares her husband's high regard for respondent. Ms. Prado trusts respondent fully, even giving him the keys to her home. She describes respondent as hard-working and responsible.

22. Marlene Moretti is a senior loan officer and principle at Camino Real Mortgage Bankers in San Fernando, California. Ms. Moretti submitted a letter and also

¹ The term "administrative hearsay" is a shorthand reference to the provisions of Government Code section 11513, subdivision (d), to the effect that hearsay evidence that is objected to, and is not otherwise admissible, may be used to supplement or explain other evidence but may not, by itself, support a finding. It may be combined with other evidence to provide substantial evidence sufficient to support a finding. (*Komizu v. Gourley* (2002) 103 Cal.App.4th 1001.)

testified at the hearing. She met respondent professionally in October 2015. In January 2016, respondent began working for her as a junior loan processor and Ms. Moretti found him to be a “very honest person” with “very good morals” who is “very professional and respectful with everyone involved in the loan process including clients and people working around him.” (Exhibit F, p. 1.) Respondent “is exceptionally motivated to succeed in life.” Ms. Moretti had hoped to retain respondent as an employee, but Mr. Prado offered him a full-time position. However, Ms. Moretti continues to see respondent’s professional growth since she acts as the loan officer for Mr. Prado’s clients. Ms. Moretti has encouraged her teenage son to talk to respondent about problems and challenges and views respondent as an excellent role model for her son. Ms. Moretti attended respondent’s parole hearing. The fact that respondent has been incarcerated does not alter her very favorable opinion of him.

23. Jose Lomeli, respondent’s stepfather, also testified on his behalf and prepared a letter. Mr. Lomeli is an electrical engineer and a licensed real estate broker in California. He describes respondent as very bright, “tireless, and searching always for better opportunities that represent a challenge for him and a better future.” Respondent has been working hard to put his past behind him, move forward and succeed in life, and Mr. Lomeli will support respondent in his effort to do so. (Exhibit F, p. 2.) He is fully aware of the allegations contained in the Statement of Issues and respondent’s convictions. Mr. Lomeli attended respondent’s parole hearing.

24. Art Salter submitted a character reference letter on respondent’s behalf. Mr. Salter serves as the volunteer supervisor at M.E.N.D. where respondent makes “family boxes and homeless bags.” He states that respondent “is one of the most dedicated volunteers that I have had the pleasure of supervising . . .” (Exhibit F, p. 7.) Mr. Salter attended respondent’s parole hearing.

25. Michael R. Gonzales, an attorney, praises respondent for his strong moral character and values. He states that respondent “took to the task of rebuilding his life with vigor and has absolutely blown away any expectations I may have had. . . . he is charming, hard-working, and most of all hungry to learn and grow.” (Exhibit F, p. 8.)

26. The other character reference letters, written by individuals in the real estate industry who have interacted with respondent in his capacity as Mr. Prado’s assistant, emphasize that respondent is honest, trustworthy, courteous, professional and responsible.

LEGAL CONCLUSIONS

1. Respondent bears the burden of proving he meets all prerequisites for the requested license. (See *Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1221.) This burden requires proof by a preponderance of the evidence (Evid. Code, § 115), which means “‘evidence that has more convincing force than that opposed to it.’ [Citation.]” (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

2. Business and Professions Code (Code) sections 475, subdivision (a)(2), and 480, subdivision (a)(1), provide that a license application may be denied for conviction of a crime.

3. Code section 10177, subdivision (b), provides that the Real Estate Commissioner may deny the issuance of a license to an applicant who has been convicted of a felony or a crime substantially related to the qualifications, functions, or duties of a real estate licensee.

4. Pursuant to the California Code of Regulations (CCR), title 10, section 2910, Respondent's crimes or acts are substantially related to the qualifications, functions or duties of a licensee of the Bureau in that they involved: (8) doing an unlawful act with the intent or threat of doing substantial injury to the person of another, and (10) conduct which demonstrates a pattern of repeated and willful disregard of the law, as set forth in Factual Findings 3-5.

5. Cause exists to deny Respondent's application pursuant to Code sections 475, subdivision (a)(2), 480, subdivision (a)(1), and 10177, subdivision (b), in that respondent has been convicted of a felony and of crimes that are substantially related to the qualifications, functions or duties of a licensed real estate salesperson. His two convictions demonstrate a pattern of repeated and willful disregard of the law. (Factual Findings 3-5.)

6. A determination that legal cause exists to deny respondent's application for a real estate salesperson license does not end the inquiry. The Bureau has established certain criteria to determine an applicant's rehabilitation. (CCR, tit. 10, § 2911.) In this case, they apply as follows:

(a) *The time that has elapsed since commission of the acts or offenses.* The passage of two years after the most recent criminal conviction is sufficient to demonstrate rehabilitation. A longer passage of time is required when there is a history of criminal convictions substantially related to the qualifications, functions, and duties of a real estate salesperson. (CCR, tit. 10, § 2911, subd. (a).) Respondent's most recent conviction occurred two years ago. His felony conviction occurred over six years ago. Sufficient time has elapsed since respondent's commission of his offenses to demonstrate rehabilitation.

(b) *Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.* Respondent paid full restitution to the person he injured in the altercation which led to respondent's 2012 conviction.

(c) *Expungement of criminal convictions.* Respondent has not had his criminal convictions expunged.

(d) *Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.* No evidence of this was provided.

(e) *Successful completion or early discharge from probation or parole.* Respondent successfully completed parole for his 2012 conviction and parole was terminated early. He also successfully completed summary probation for his 2016 conviction.

(f) *Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the Bureau action sought is attributable in part to the use of controlled substances or alcohol.* Respondent has abstained from alcohol for more than two years and he does not intend to consume alcoholic beverages in the future.

(g) *Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.* Respondent has paid all fines and penalties imposed in connection with his criminal convictions.

(h) *Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the Bureau action sought.* Respondent is now married and the father of a newborn son. He has a stable family life and fulfills his parental and familial responsibilities. Respondent has a strong network of family support and many family members were present at the hearing to provide support and testimony on his behalf.

(i) *Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.* Respondent has completed the required coursework to obtain his license. He also completed many training courses for economic self-improvement. Respondent is currently enrolled in college.

(j) *Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.* Respondent has fully paid all fines, fees and restitution. His credit rating is excellent, indicating that he meets all of his financial obligations.

(k) *Correction of business practices resulting in injury to others or with the potential to cause such injury.* This criterion is not applicable.

(l) *Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.* Respondent performs significant volunteer work at M.E.N.D., for special needs students, and at Heal the Bay. While incarcerated, he served as the Chairman of his AA group.

(m) *New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.* Respondent's social relationships were a negative influence in his life at the time of the altercation that resulted in his 2012 felony conviction. Since that time, respondent has developed new social and professional relationships, and no longer associates with his former friends. Respondent now is surrounded by an entirely different set of friends, professional colleagues and family members who provide a strong support system for him.

(n) *Change in attitude from that which existed at the time of the conduct in question.* Respondent's attitude has changed since the time of the actions that led to his two convictions. He has matured, gained new insights into his conduct and learned new skills. He is capably dealing with his responsibilities and obligations. The change in respondent's attitude was confirmed by testimony and character reference letters from individuals who attested to the reliable, responsible man of integrity that respondent has become.

7. On balance, respondent has satisfied the rehabilitation criteria. (Factual Findings 6-26.) The evidence, which included respondent's candid testimony and that of character references, demonstrated that he has accepted full responsibility for his wrongdoing and has totally changed his way of life. He has matured, married and become a father, developed new life skills, and surrounded himself with a different circle of friends and professional colleagues. The likelihood of recurrence is remote.

8. The purpose of license discipline is not to impose additional punishment on the licensee, but to protect the public. (See e.g. *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.). In her closing, complainant's counsel requested either denial of the license application or issuance of a restricted license for not less than two years. The issuance of a properly conditioned restricted real estate salesperson license for two years should adequately protect the public safety, welfare, and interest. The restricted license requires respondent to be supervised in his performance of license-related activities, respondent's supervisor must be notified of the decision in this matter, and the respondent's supervisor must exercise close supervision over respondent.

ORDER

Respondent'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 Section 10156.5 of the Business and Professions Code. The restricted license issued to respondent shall be subject to all of the provisions of Code section 10156.7 and to the following limitations, conditions, and restrictions imposed under authority of Code section 10156.6:

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 respondent's 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 this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to respondent.

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.

4. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

Dated: May 11, 2018

DocuSigned by:
Laurie Pearlman
LAURIE R. PEARLMAN
Administrative Law Judge
Office of Administrative Hearings