

FILED

JUL 13 2022

DEPARTMENT OF REAL ESTATE

By Ry den

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)
EDUARDO GARCIA,) No. H-3414 FR
Respondent.) OAH No. 2022020491

STIPULATION AND AGREEMENT
AND
DECISION AFTER REJECTION

The California Department of Real Estate filed a Statement of Issues against EDUARDO GARCIA, on February 2, 2022. On May 4, 2022, a hearing was held and evidence was received, the record was closed, and the matter was submitted.

On May 16, 2022, the Proposed Decision of the Administrative Law Judge (Proposed Decision) was issued. The Order of the Proposed Decision indicated Respondent's salesperson exam/license application is denied; provided, however, a restricted salesperson license shall be issued pursuant to Section 10156.5 of the Business and Professions Code (Code).

On June 13, 2022, the Commissioner rejected the Proposed Decision of May 16, 2022.

The parties wish to settle this matter without further proceedings.

1 IT IS HEREBY STIPULATED by and between EDUARDO GARCIA
2 (Respondent), and the Complainant, acting by and through Megan Lee Olsen, Counsel for the
3 Department of Real Estate (Department), as follows for the purpose of settling and disposing of
4 the Statement of Issues filed by Complainant.

5 1. It is understood by the parties that the Real Estate Commissioner
6 (Commissioner) may adopt the Stipulation and Agreement (Stipulation) as his Decision in this
7 matter, thereby imposing the penalty and sanctions on Respondent's application for a real estate
8 license as set forth in the "Decision and Order". In the event the Commissioner in his discretion
9 does not adopt the Stipulation, it shall be void and of no effect; the Commissioner will review the
10 transcript and the evidence in the case, and will then issue his Decision after Rejection as his
11 Decision in this matter.

12 2. By reason of the foregoing and solely for the purpose of settlement of the
13 Statement of Issues without further administrative proceedings, it is stipulated and agreed that
14 the following shall be adopted as the Commissioner's Decision and Order:

15 DETERMINATION OF ISSUES

16 By reason of the foregoing stipulations, admissions, and waivers, and solely for
17 the purpose of settlement of the Statement of Issues without further proceedings, it is stipulated
18 and agreed that Respondent's criminal convictions, as described in the Statement of Issues,
19 constitute cause for denial of Respondent's application for a real estate salesperson license
20 pursuant to Sections 480 (a) and 10177 (b) of the Code.

21 ORDER

22 Respondent EDUARDO GARCIA's application for a real estate salesperson is
23 denied; provided, however, a restricted real estate salesperson license shall be issued to
24 Respondent pursuant to Section 10156.5 of the Code. The restricted license issued to the
25 Respondent shall be subject to all of the provisions of Section 10156.7 of the Code and to the
26 following limitations, conditions and restrictions imposed under Section 10156.6 of said Code:

27 ///

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

4 (a) The conviction of Respondent (including a plea of nolo
5 contendere) of a crime which is substantially
6 related to Respondent's fitness or capacity as a real
7 estate licensee; or

8 (b) The receipt of evidence that Respondent has violated
9 provisions of the California Real Estate Law, the
10 Subdivided Lands Law, Regulations of the
11 Commissioner, or conditions attaching to this
12 restricted license.

13 2. Respondent shall not be eligible to apply for the issuance of an unrestricted
14 real estate license nor the removal of any of the conditions, limitations or restrictions attaching to
15 the restricted license until five (5) years have elapsed from the date of issuance of the restricted
16 license to Respondent.

17 3. With the application for license, or with the application for transfer to a new
18 employing real estate broker, Respondent shall submit a statement signed by the prospective
19 employing broker on a form RE 552 (Rev. 4/88) approved by the Department which shall certify
20 as follows:

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

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

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

8
9 6/20/2022

10 DATED



MEGAN LEE OLSEN, Counsel
DEPARTMENT OF REAL ESTATE

11 * * *

12 I have read the Stipulation and Agreement and Decision After Rejection, and its
13 terms are understood by me and are agreeable and acceptable to me. I willingly and voluntarily
14 agree to enter into this Stipulation.

15
16 6/16/2022

17 DATED



EDUARDO GARCIA
Respondent

18
19 DECISION AND ORDER

20 The foregoing Stipulation and Agreement and Decision After Rejection is hereby
21 adopted by the Real Estate Commissioner as his Decision and Order.

22 This Decision and Order shall become effective at 12 o'clock noon on
23 AUG 03 2022.

24 IT IS SO ORDERED

7.8.22

25 DOUGLAS R. McCAULEY
26 REAL ESTATE COMMISSIONER

27


FILED

JUN 13 2022

DEPARTMENT OF REAL ESTATE

By R. dew

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of) DRE No. **H-3414 FR**
EDUARDO GARCIA,) OAH No. **2022020491**
Respondent.)

NOTICE

TO: EDUARDO GARCIA, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated May 16, 2022, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated May 16, 2022, 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 Wednesday, May 04, 2022, 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 Wednesday, May 04, 2022, at the

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1 Sacramento office of the Department of Real Estate unless an extension of the time is granted for
2 good cause shown.

3 Written argument of complainant to be considered by me must be submitted within
4 15 days after receipt of the argument of respondent at the Sacramento Office of the Department of
5 Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 6/13/22.

7 DOUGLAS R. McCAULEY
8 REAL ESTATE COMMISSIONER

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11 for Douglas McCauley
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**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

EDUARDO GARCIA, Respondent

Agency Case No. H-3414 FR

OAH No. 2022020491

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, heard this matter by videoconference on May 4, 2022, from Sacramento, California.

Megan Lee Olsen, Counsel, represented complainant Brenda Smith, Supervising Special Investigator of the State of California.

Respondent Eduardo Garcia represented himself.

Evidence was received, the record closed, and the matter submitted for decision on May 4, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondent signed and submitted a Salesperson Exam/License Application to the Department of Real Estate (Department). On January 25, 2022, complainant signed the Statement of Issues solely in her official capacity. Complainant seeks denial of respondent's application based on his three convictions of crimes substantially related to the qualifications, functions, or duties of a real estate licensee.

Criminal Convictions

2. On August 18, 2017, in the Fresno County Superior Court, Case Number M17921775, respondent pled no contest to, and was convicted of, a misdemeanor violation of Penal Code section 166, subdivision (c)(1), criminal contempt of court. Imposition of judgment and sentence was suspended, and respondent was placed on formal probation for three years. He was ordered to complete the 52-week Batterer's Treatment Program and pay fines, fees, and assessments. The court issued a criminal protective order prohibiting him from contacting his wife, and he was served with the order in open court.

3. The factual basis for respondent's conviction arose out of the Fresno County Sheriff's Department's response to a complaint of domestic violence on July 16, 2017. A sheriff's deputy responded to the location of the incident and contacted the victim, who was respondent's wife. She explained that the Fresno County Superior Court issued a criminal protective order three weeks prior prohibiting respondent from contacting her and coming within 100 yards of her. Nonetheless, she allowed him to

stay with her in her home because he had nowhere else to live. She called the Sheriff's Department that day after they argued about the possibility of him having an affair.

4. On November 6, 2018, in the Fresno County Superior Court, Case Number F18905941, respondent pled no contest to, and was convicted of, misdemeanor violations of Penal Code sections 166, subdivision (c)(1), criminal contempt of court, and 273.5, subdivision (a), inflicting corporal injury on a spouse. Imposition of judgment and sentence was suspended, and respondent was placed on formal probation for three years. He was ordered to complete the 52-week Batterer's Treatment Program, but was given credit for completing the program for Case Number M17921775 and not required to complete the program a second time. He was further ordered to serve two days in the Fresno County Jail, complete 20 hours of community service, and pay fines, fees, and assessments.

5. The factual basis for respondent's convictions arose out of the Fresno County Sheriff's Department's response to a report of domestic violence on May 31, 2018. Upon their arrival, sheriff's deputies contacted the victim, who was respondent's wife. She explained she and respondent began arguing while he was driving her car to pick up his car. Respondent's wife tried to force him to stop the car and let her out by grabbing the steering wheel, but he reached over and punched her on her left bicep with a closed fist. She developed dark, purple bruising approximately four inches in diameter on her bicep. Respondent's wife remained quiet the remainder of the ride and then drove her car home after respondent reached the location of his car and got out.

6. Later that afternoon, respondent returned home, and he and his wife continued to argue. He began cursing at her and calling her names, and she responded by insulting him. Respondent got upset, stood up, grabbed his wife by her

chin and squeezed her face, and shoved her back into the chair in which she was sitting. Respondent let go after hearing their 10-year-old son scream, and respondent fled the home.

7. Responding deputies saw the bruising on respondent's wife's left bicep. She was offered, but declined, medical attention. The deputies confirmed that respondent was the subject of a criminal protective order prohibiting him from contacting his wife.

Substantial Relationship

8. Respondent's conviction for inflicting corporal injury on a spouse is substantially related to the qualifications, functions, or duties of a real estate licensee because the underlying conduct constitutes the "doing of [an] unlawful act . . . with the intent or threat of doing substantial injury to the person . . . of another." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Each of his convictions for criminal contempt of court is substantially related as a matter of law. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(9) [a conviction for "contempt of court" is substantially related].) All three convictions considered together are substantially related because the underlying conduct "demonstrates a pattern of repeated and willful disregard of law." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10).)

Factors in Aggravation, Mitigation, and Rehabilitation

9. Complainant alleged, and proved, as a factor in aggravation, respondent's August 19, 2009 conviction for a misdemeanor violation of Vehicle Code section 23152, subdivision (b), driving with a blood alcohol content of 0.08 percent or greater. The factual basis for the conviction was that respondent drove a car with a blood alcohol content of 0.13 percent on January 1, 2009.

10. Respondent testified at hearing and admitted his convictions and the underlying criminal conduct. He was aware of the terms of the criminal protective orders when he violated them. He described himself as "ashamed," "embarrassed," and very remorseful for his misconduct. He regrets harming his wife.

11. Respondent has no criminal history other than that discussed above. He paid all fines, fees, and assessments imposed by the criminal courts and completed his community service requirement. He enrolled in a 52-week Batterer's Treatment Program on September 6, 2017, and completed the program on September 26, 2018. Criminal probation ended for his last two convictions on November 5, 2021.¹ None of his convictions has been expunged.

12. Respondent believes he benefited and learned a lot from the Batterer's Treatment Program. The program consisted of weekly group meetings at which the members shared their struggles, successes, and insights regarding anger management and interpersonal conflict. He credits the program with teaching him how to communicate more effectively with his wife. Respondent produced three character references written by people who have seen positive changes in his relationship with his wife.

¹ Respondent testified probation ended on August 18, 2020. However, he presented no documentary evidence that probation was terminated early, and he wrote on his Interview Information Statement that his probation was "extended till 11/5/2021" as a result of his 2018 convictions. The persuasive evidence established he was on probation until November 5, 2021.

13. Respondent still lives with his wife and their four children in Fresno. He has tried to make up for his past by changing his ways. He wants to be a good role model for his four children and wants to have a good career in the real estate industry so he can support his family. He supported his family financially as a car salesman at Hertz Car Sales for nearly seven years until he was laid off in March 2020 due to COVID's impact on the car sales industry. Since then, respondent's wife has asked him to stay at home to care for their children and focus on obtaining his real estate license while she works full-time.

14. Respondent wants to obtain his mortgage lender license and eventually his real estate broker license. He has spoken with London Properties, a real estate company in Fresno, about the possibility of it serving as his sponsoring broker. He was told the company has experience sponsoring salespeople with restricted licenses and would be willing to sponsor him once licensed. Respondent did not produce any supporting documentation from London Properties.

15. Respondent's wife testified in favor of him being issued a real estate license. She first met respondent in 2000, they married three years later, and they have four children. She described respondent as "an amazing, amazing person" and an "amazing father."

16. Respondent's wife admitted respondent has a history of violating a criminal protective order and domestic violence. However, she described their relationship as being in a much better place now and said his attitude and actions have changed. She believes he has made "tremendous strides" as a husband and father. He has been "remorseful, very remorseful" and has benefited greatly from the Batterer's Treatment Program. They briefly attended marriage counseling together, but had to stop because of COVID.

17. The Department has adopted criteria for evaluating an applicant's rehabilitation since engaging in the conduct underlying the convictions which constitute grounds for denying an application. Two criteria relevant here are the amount of time that has elapsed since engaging in the criminal conduct and any change in respondent's attitude that existed when engaging in that conduct. (Cal. Code Regs., tit. 10, § 2911, subd. (a)(1) & (14).)

18. More than three years have elapsed since respondent last engaged in criminal conduct. The Department's rehabilitation criteria suggest that the passage of two years with no criminal infractions could be enough to establish rehabilitation. (Cal. Code Regs., tit. 10, § 2911, subd. (a)(1)(A).) But the criteria also provide that the two-year period may be extended based on the nature of the conduct and the applicant's entire criminal history. (Cal. Code Regs., tit. 10, § 2911, subd. (a)(1)(B).)

19. Here, requiring more than two years with no criminal activities is warranted to establish complete rehabilitation. Respondent's second conviction for criminal contempt of court occurred less than 15 months after his first, and it was based on his violation of the criminal protective order issued as a result of his first conviction. He was still on formal probation for his first conviction when he violated the order. He has been off criminal probation for his most recent convictions for less than seven months, and his criminal history requires a longer period of evaluation during which he is not under the criminal court's jurisdiction. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099-1100.) At the earliest, the two-year period should not commence until respondent completed probation on November 5, 2021.

20. Although more time is needed to accurately evaluate respondent's behavior before concluding he is fully rehabilitated, he produced compelling evidence that he has made great strides towards reaching that goal. He and his wife believe he

learned a lot from the Batterer's Treatment Program, and his character references have seen positive changes in his behavior. Perhaps more compelling is the fact that respondent and his wife have continued living together with their four children during the COVID pandemic.

LEGAL CONCLUSIONS

Applicable Standard/Burden of Proof

1. Respondent has the burden of proving he qualifies for a real estate salesperson license by a preponderance of the evidence. (*Coffin v. Alcoholic Beverage Control Appeals Board* (2006) 139 Cal.App.4th 471, 476 [the party against whom a statement of issues is filed bears the burden of proof regarding the issues raised in the pleading]; see Evid. Code, § 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence"].) This evidentiary standard requires respondent to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, he needs to prove it is more likely than not that he qualifies for licensure. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

Grounds for Denial

2. An application for a real estate salesperson license may be denied if the applicant has been convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 480, subd. (a), & 10177, subd. (b)(1).) Respondent's three convictions are substantially related and, individually and collectively, constitute cause to deny his application pursuant to

Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b)(1).

Conclusion

3. Cause exists pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b)(1), individually and collectively, to deny respondent's Salesperson Exam/License Application based on each of his criminal convictions. His criminal history is concerning. However, rehabilitation is open to all who have erred. (*In re Andreani* (1939) 14 Cal.2d. 736, 749.) The law favors rehabilitation. (*Resner v. State Bar* (1967) 67 Cal.2d 799, 811.) Though respondent did not establish sufficient rehabilitation to justify issuing him an unrestricted license, he demonstrated his ability to perform the duties of a real estate salesperson in a manner consistent with public health, safety, and welfare, subject to restrictions, for the reasons discussed in Factual Findings 9 through 20. Therefore, his application for an unrestricted salesperson license should be denied; provided, however, that he is issued a restricted license as set forth in the Order below.

ORDER

Respondent Eduardo Garcia's Salesperson Exam/License Application 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 the provisions of Section 10156.7 of the Business and Professions Code 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 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 five years have elapsed from the date of issuance of the restricted license to respondent.

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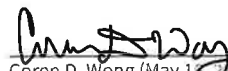
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3. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the 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.

DATE: May 16, 2022


Coren D. Wong (May 16, 2022 15:26 PDT)

COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings