

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 APR 03 2023.

IT IS SO ORDERED 3.9.23

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

FILED

MAR 08 2023

DEPARTMENT OF REAL ESTATE

By J. Taggart

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Application of:

ALESSANDRA B. CASTANEDA, Respondent.

Agency Case No. H-3456 FR

OAH No. 2022090859

PROPOSED DECISION

Administrative Law Judge Sarah Sandford-Smith, State of California, Office of Administrative Hearings, heard this matter on December 6, 2022, by videoconference.

Real Estate Counsel Kyle T. Jones represented complainant Brenda Smith, Supervising Special Investigator.

Respondent Alessandra B. Castaneda represented herself and was present throughout the administrative hearing.

The record closed and the matter was submitted for decision on December 6, 2022.

FACTUAL FINDINGS

1. On June 22, 2021, the Department of Real Estate (Department) received the application of respondent Alessandra B. Castaneda for a real estate salesperson license.
2. The Department denied respondent's application. Respondent appealed.
3. On June 23, 2022, complainant Brenda Smith filed the statement of issues in her official capacity as Supervising Special Investigator. Complainant seeks to deny the application based on respondent's three convictions.
4. Respondent requested a hearing.

Criminal Convictions

5. On March 13, 2019, in the Superior Court of the State of California, County of Kern, respondent was convicted, upon her plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol concentration above 0.08 percent), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on court probation for a period of three years, ordered to serve two days in jail or to enroll in a work release program with credit for one day served, to enroll in a driving-under-the-influence (DUI) program, and to pay fines and fees.

The circumstances underlying the conviction occurred on November 24, 2018. Respondent was arrested for driving after drinking alcohol.

6. On February 9, 2021, in the Superior Court of the State of California, County of Kern, respondent was convicted, upon her plea of nolo contendere, of

violating Health and Safety Code section 11359, subdivision (b) (possession of cannabis for sale), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on court probation for a period of one year, ordered to serve one day in jail with credit for one day served, and to pay fines and fees.

The circumstances underlying the conviction occurred on July 7, 2020. Respondent used her personal vehicle to acquire cannabis for her cousin to sell through his dispensary. Prior to returning to the dispensary, respondent parked her car behind a vehicle she had rented earlier that day for her boyfriend. Police officers responded to a call regarding a possible drug sale transaction. When the officers arrived, they found respondent in the back seat of the rental vehicle, smoking marijuana. Officers searched respondent's personal vehicle and found four pounds of marijuana.

7. On February 11, 2021, in the Superior Court of the State of California, County of Kern, respondent was convicted, upon her plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on court probation for a period of three years. The court ordered her to serve 10 days in jail with credit for one day served; to refrain from using alcohol or visiting places where intoxicants are sold as a primary business; to enroll in DUI school, a multiple offender DUI program, and a victim-impact panel; to install an ignition interlock device; and to pay fines and fees.

The circumstances underlying the conviction occurred on October 19, 2020. Respondent was arrested for driving after drinking alcohol.

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Additional Evidence

8. Respondent testified regarding the conduct underlying her convictions in a sincere and credible manner.

9. On November 24, 2018, and October 19, 2020, respondent drove after she consumed alcohol. Respondent acknowledged she made mistakes on those occasions. Respondent indicated that she was with friends and was the least intoxicated person, and therefore made the decision to drive. Respondent was 20 years old at the time of the first incident.

10. Respondent is seeking to have her February 9, 2021, conviction expunged. Respondent remains on criminal probation through February 11, 2024.

11. Respondent has paid all fines and fees associated with her convictions.

12. Respondent last consumed alcohol approximately three months ago, on her mother's birthday. Since then, respondent has refrained from consuming alcohol and marijuana.

13. Respondent has sole custody of her two children, a seven-year-old and a 10-month old. Respondent aspires to be someone her children can look up to, and of whom they can be proud.

14. Respondent left a harmful relationship to focus on her family and career.

15. Respondent is currently in her junior year at California State University, Bakersfield (CSUB), where she is working towards a major in business, with a focus in accounting. Respondent graduated from Bakersfield College with associate degrees in Business and Administration and Social Science. Respondent would like to become a

real estate salesperson to help her towards her ultimate goal of working as an accountant.

16. Respondent emphatically acknowledged that her actions and subsequent convictions have created, and continue to create, difficulties for her family and career path. She takes responsibility for her actions.

LEGAL CONCLUSIONS

1. Respondent bears the burden of proof to establish, by a preponderance of the evidence, that she is qualified for the license she seeks to obtain, including rehabilitation from her criminal offenses. (*Martin v. Alcoholic Beverage Control Appeals Bd.* (1959) 52 Cal.2d 259, 265; Evid. Code, §§ 115, 500.)

2. The Real Estate Commissioner (Commissioner) may deny an application for a real estate license if the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 480, subd. (a)(1), 10177, subd. (b).) Respondent's convictions set forth in Factual Findings 5 and 7 are substantially related because they constitute two driving convictions involving the consumption or use of alcohol or drugs. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(11).) The convictions set forth in Findings 5 through 7 are substantially related because they constitute conduct demonstrating a pattern of repeated and willful disregard for the law. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10).) Accordingly, separate cause exists under each of these sections to deny respondent's license application.

3. The purpose of administrative proceedings regarding professional licenses is not to punish the applicant or licensee, but to protect the public. (*Hughes v.*

Board of Architectural Examiners (1998) 17 Cal.4th 763, 785-786; *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 768.) The legislature intends that real estate licensees will be honest, truthful, and worthy of the fiduciary obligations they will bear. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) The question is whether respondent has demonstrated that she can be trusted to discharge her duties as a real estate licensee in a manner consistent with public safety.

4. Even though cause exists for denial of respondent's application, the Commissioner may issue respondent a license if she establishes sufficient rehabilitation. In California Code of Regulations, title 10, section 2911, the Commissioner has established criteria to be used in evaluating the rehabilitation of an applicant with a criminal record. The relevant criteria to be considered in this case include: the passage of more than two years since the most recent conviction or act; expungement of criminal convictions; successful completion of probation; payment of fines and monetary penalties; stability of family life and fulfillment of parental responsibilities; completion of educational and vocational training courses; significant or conscientious involvement in community programs designed to provide social benefits or ameliorate social problems; new and different social relationships from those which existed at the time of the criminal offenses; and a change in attitude from that which existed at the time of the offenses.

Respondent has met most, but not all of the rehabilitation criteria. Two years have not passed since respondent's most recent conviction, although the acts underlying the conviction occurred approximately two to four years ago, and respondent remains on criminal probation until February 2024. Additionally, as of the date of the hearing, none of respondent's criminal convictions were expunged. However, respondent has paid all fines and fees associated with her convictions.

Respondent obtained associate degrees from Bakersfield College and is now enrolled in CSUB. Respondent is the sole caretaker for her two children, which occupies all of her time outside her schooling. Respondent acknowledged the effect her actions had on her life and her family.

Respondent has demonstrated a change in attitude since the time of her offenses, which, of the many rehabilitation criteria, is "arguably the most important in predicting future conduct." (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.)

Respondent has demonstrated sufficient rehabilitation from her criminal offenses, and that she can be trusted to discharge the duties of a real estate salesperson in a manner consistent with public safety. The public will be adequately protected by allowing respondent to obtain a real estate license on a restricted basis for a period of two years.

ORDER

The application of respondent Alessandra B. Castaneda 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 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 that 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 Department of Real Estate which shall certify as follows:

(a) That the employing broker has read the Decision that 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 Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. 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: **12/07/2022**

Sarah Sandford-Smith

SARAH SANDFORD-SMITH

Administrative Law Judge

Office of Administrative Hearings