

FILED

AUG 30 2023

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
By Ry dew

* * *

In the Matter of the Application of:)	DRE No. H-3475 FR
)	
ANGEL MANUEL JIMENEZ,)	OAH No. 2023030511
)	
)	
<u>Respondent.</u>)	

DECISION

The Proposed Decision dated June 26, 2023, 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:

1. Page 2, Factual Findings, Lines 2-3, is corrected to read as follows:
"January 25, 2023" to "February 9, 2023".

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 Department 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 Department'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 SEP 20 2023.

IT IS SO ORDERED 8.22.23

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

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FILED

AUG 22 2023

DEPARTMENT OF REAL ESTATE

By

[Signature]

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

In the Matter of the Application of:

ANGEL MANUEL JIMENEZ, Respondent

Agency Case No. H-3475 FR

OAH No. 2023030511

PROPOSED DECISION

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 31, 2023, from Sacramento, California.

Megan Lee Olsen, Counsel, represented Brenda Smith (complainant), Supervising Special Investigator, Department of Real Estate (Department).

Angel Manuel Jimenez (respondent) appeared without the assistance of counsel.

Evidence was received, the record closed, and the parties submitted the matter for decision on May 31, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 4, 2021, respondent applied to the Department for an individual salesperson license. The Department did not issue the license. On January 25, 2023, complainant, acting in her official capacity, filed the Statement of Issues seeking to deny respondent's application based on his felony conviction for importing methamphetamine into the United States. Respondent filed a Notice of Defense and requested a hearing. This hearing followed.

Respondent's Conviction

2. On August 4, 2016, in the United States District Court for the Southern District of California, case number 3:16-CR-01358, respondent was convicted, on his guilty plea, of violating United States Code, title 21, sections 952 and 960 (importing methamphetamine, a schedule II-controlled substance, into the United States), a felony. The court sentenced respondent to 68 months in prison, followed by three years of supervised release.

3. The circumstances underlying the conviction occurred on May 15, 2016, when respondent drove from Mexico into California in a car carrying 36 pounds of methamphetamine. According to respondent's plea agreement, he acknowledged knowing the car contained methamphetamine or "some other prohibited drug."

Respondent's Evidence

4. Respondent was 19 years old when he committed his crime. He lacked guidance and did not "know who [he] was." When he was recruited to carry drugs

across the border, he agreed to do so for the money involved. The people in charge of the operation offered him approximately \$2,000 and the car used for the transport. He made multiple trips over approximately three months. He knew he was transporting "something illegal," but did not know exactly what drugs. He did not inquire because "they're not the kind of people who like to answer questions."

5. When respondent was caught, he felt a form of relief that he did not have to be involved in criminal activity anymore. He regrets his crime and he used his time during incarceration to improve his life. Though he did not use drugs, he completed a one-year drug rehabilitation program. He also completed a one-year automotive repair class and took plumbing classes. Incarceration "taught [him] discipline" and he learned how his choices affect others and how he is viewed by the world. While in prison, he sought mentorship and connected with a former stockbroker and a real estate investor. He met with them weekly to learn about finances and investing and he read the books they recommended. Now that he is released, he wants to find a new mentorship group because he knows he should not have contact with former felons even after their release.

6. Respondent's original 68-month sentence began in November 2016. He was released early to a half-way house in June 2020. He stayed there for two months. In September 2020, he moved into his own place and began working at a distribution center for a large retail store. He still works there and is being considered for a promotion to manager. His supervised release is scheduled to end in approximately September 2023. During the first three months of his supervised release, he had weekly meetings with his probation officer and periodic drug tests. His level of supervision gradually reduced, and he is now on the lowest level of monitoring. His

only ongoing requirement is to submit monthly reports about his living and employment arrangements.

7. One of respondent's mentors in prison introduced him to the field of real estate. He believes a career in real estate will give him meaning and purpose. He wants to help others achieve their dreams of homeownership as well as rehabilitate and rent houses. He has identified a broker, Ryan Dobbs, who is willing to employ him if licensed. Mr. Dobbs is aware of respondent's background and encouraged him to apply for his license anyway.

8. Respondent believes he has learned from his past mistakes and is ready to lead a life of honesty and integrity. He would find it "hard to forgive [him]self" if he broke the law again and does not intend to do so. Although he believes the struggle of incarceration ultimately helped him, he "paid almost four years" of his life for his mistake and understands now that his actions have consequences. He sees himself as older and more mature than when he committed his crime as a teenager.

Analysis

9. The Department has adopted criteria for evaluating rehabilitation of license applicants. The criteria relevant to this matter include: the time that has elapsed since commission of the crime; the nature and severity of the crime; successful completion or early discharge from probation or parole; completion of formal education or vocational training courses for economic self-improvement; new and different social and business relationships from those which existed at the time of the crime; and a change in attitude from that which existed at the time of the conduct in question. (Cal. Code Regs., tit. 10, § 2911.)

10. Respondent's crime was serious and demonstrated an extreme lack of good judgment. Although he testified credibly that he was unaware of the exact drugs concealed in the car, he knew he was transporting illegal drugs into the country. His participation in the crime, and his willful ignorance of the details of the crime, pose questions about his fitness for licensure, especially in a field like real estate in which collecting and disclosing information is critical.

11. However, respondent's criminal conduct occurred more than seven years ago, between March and May 2016, which is "relatively remote in time." (*Brandt v. Fox* (1979) 90 Cal.App.3d 737, 747.) After his conviction, respondent took significant steps to rehabilitate himself. He complied with his criminal sentence and achieved an early release from incarceration. Once released, he was reduced to low monitoring, and his supervision is scheduled to end this year. He has held the same job for almost three years and is being considered for promotion.

12. More importantly, respondent acknowledged his wrongdoing and demonstrated maturity when he used his time during incarceration to improve himself. Specifically, even though his crime involved transporting drugs rather than using them, he completed a one-year drug rehabilitation program. He also completed a one-year automotive repair class and plumbing classes. He sought out mentors, met with them regularly to learn about finances and investing, and read books they recommended. Instead of resenting his sentence, he acknowledged that "the struggle helped [him]," taught him discipline, and helped him realize that his choices reflect his morals, integrity, and honesty. In a display of that integrity, he no longer communicates with his former mentors because he recognized he should not associate with felons. Instead, he is seeking to establish new mentors and has found a licensed real estate broker who would employ and supervise him if licensed.

13. Respondent's conduct following his conviction demonstrates his attitude has changed from the time he committed his crime. This change in attitude is "arguably the most important in predicting future conduct." (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.) He readily admitted responsibility for his criminal conduct. "Fully acknowledging the wrongfulness of [one's] actions is an essential step towards rehabilitation." (*Seide v. Com. of Bar Examiners of the State Bar of Cal.* (1989) 49 Cal.3d 933, 940.) He also demonstrated insight into how his actions fell short of the conduct expected of real estate licensees.

14. The statutes relating to licensing of professions are designed to protect the public (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451), not punish the individual (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165). When all the evidence is considered, respondent has demonstrated sufficient rehabilitation such that it would not be against the public interest to issue him a real estate license. To protect the public, however, and to ensure respondent is capable of practicing as a real estate salesperson consistent with public health, safety, and welfare, it is appropriate to issue him a restricted real estate salesperson license.

LEGAL CONCLUSIONS

1. An applicant for a license bears the burden to prove he should be granted a license. (*Martin v. Alcohol Beverage Control Appeals Bd.* (1959) 52 Cal.2d 238.) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.) The term preponderance of the evidence means "more likely than not." (*Sandoval v. Bank of America* (2002) 94 Cal.App.4th 1378, 1388.)

2. The Real Estate Commissioner may deny a license to an applicant who 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).) Pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8), crimes are substantially related to the qualifications, functions, or duties of a real estate licensee if they involve "doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator."

3. Respondent was convicted of importing methamphetamine into the United States. He acknowledged that he did so for payment. His crime is therefore substantially related to the qualifications, functions, or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(8). For that reason, cause exists to deny his license pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b).

4. Respondent provided evidence of rehabilitation. Based on his showing of rehabilitation, it is appropriate to grant him a restricted real estate salesperson license.

ORDER

Respondent Angel Manuel Jimenez'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 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 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

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(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.

DATE: June 26, 2023


Sean Gavin (Jun 26, 2023 09:43 PDT)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings