

1 Department of Real Estate
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FILED

DEC 22 2010

DEPARTMENT OF REAL ESTATE



BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation Against	)	DRE No. H-4026 SD
	)	
ROGER PAUL RAJCIC,	)	OAH No. 2009120675
	)	
Respondent.	)	
	)	

DECISION AFTER REJECTION

Agustin F. Lopez, II, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), heard this matter on June 3, 2010, in San Diego, California. Angela L. Cash, Staff Counsel for the Department of Real Estate (Department), appeared on behalf of Complainant Joseph Aiu (Complainant), Deputy Real Estate Commissioner of the State of California. C. Bradley Patton, Esq., represented Respondent ROGER PAUL RAJCIC (Respondent), who was present throughout the proceeding.

Pursuant to Section 11517(c) of the Government Code of the State of California, Respondent was served with notice of my determination not to adopt the Proposed Decision of the ALJ along with a copy of said Proposed Decision. Respondent was notified that I would decide the case upon the record, the transcript of proceedings held on June 3, 2010, and upon any written argument offered by Respondent and Complainant. Respondent and Complainant each submitted further argument.

1 I have given careful consideration to the record in this case, including the
2 transcript of proceedings of June 3, 2010. I have also considered the arguments submitted by
3 Respondent and by Complainant. The following shall constitute the Decision of the Real Estate
4 Commissioner (Commissioner) in this proceeding:

5 FINDINGS OF FACT

6 *Jurisdictional Matters*

7 1. This case involves an Accusation for discipline filed on May 4, 2009,
8 relating to Respondent's April 6, 2009 conviction for acting as a building contractor
9 without a license in an emergency zone in violation of California Business and Professions
10 Code Section 7028.16. Respondent is accused of acting as a contractor without a license
11 after the 2007 Witch Creek fires¹. This case is separate and apart from any action taken by
12 the California Contractors' State License Board (hereinafter CSLB).

13 2. The Accusation and corresponding documents informing Respondent
14 of his right to file a Notice of Defense were served upon Respondent on November 18,
15 2009, via certified mail. Complainant signed Accusation No. H-4026 SD in his official
16 capacity. Respondent filed a timely Notice of Defense.

17 3. On June 3, 2010, the administrative record was opened, jurisdictional
18 documents were presented, sworn testimony was given, documentary evidence was received,
19 closing arguments were made, the record was closed, and the matter was submitted.

20 *Preliminary Motions*

21 4. In accordance with Government Code Section 11507, the Department
22 brought a motion to amend the Accusation at the hearing. The Department made the motion
23 to reflect the fact Respondent's underlying conviction was reduced to a misdemeanor by the
24 superior court on June 29, 2009. No new charges resulted from the amendment and
25

26 ¹ The 2007 Witch Creek fires were wild fires that burned large portions of San Diego County; including both
27 residential and commercial structures in the area where Respondent lived and worked. As a result, San Diego
County was declared an emergency zone for purposes of Business and Professions Code section 7028.16.

1 Respondent did not object. The motion was granted; the word "felony" on page 1, line 27,
2 of the accusation was stricken and replaced by the word "misdemeanor." Likewise, any
3 reference to Respondent's underlying conviction is to reflect a misdemeanor conviction and
4 not a felony conviction.

5 5. The Department made one other motion objecting to the admission of
6 Respondent's exhibits. Respondent did not object to the Department's motion. The first
7 objection related to Respondent's Exhibit G on the following grounds; (1) as hearsay, and (2)
8 as an unsigned document that does not subject the declarant to the penalty of perjury. The
9 second objection was with respect to the use of all of Respondent's exhibits for the purpose
10 of impeaching his conviction.

11 Hearsay is admissible in administrative hearings when "supplementing or
12 explaining other evidence." (Gov. Code, § 11513, subd. (d); *Berg v Davi* (2005) 130
13 Cal.App.4th 223.) Here, Respondent provided other admissible evidence of rehabilitation that
14 is explained and supplemented by Exhibit G; specifically live testimony relating to the
15 degree of wrongdoing and corresponding rehabilitation. Exhibit G will be used solely to
16 explain and supplement other direct evidence, not to contradict Respondent's conviction or
17 undermine the fact that he engaged in wrongdoing. Consequently, the objection to Exhibit G
18 was overruled.

19 In administrative disciplinary proceedings, a licensee may not seek to impeach
20 a prior criminal conviction by means of an "an inquiry into the circumstances surrounding
21 the offense." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.) The Department's second
22 objection is granted on the grounds the documents attempt to impeach Respondent's
23 conviction; but the objection is overruled insofar as the documents seek to prove
24 Respondent's rehabilitation or explain the degree of his underlying wrongdoing.

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1 *License History*

2 6. Respondent was originally issued a Department salesperson license on
3 September 6, 2000. Three years later, on March 20, 2003, Respondent obtained a broker's
4 license from the Department.² Respondent's broker license expires March 19, 2011.

5 *Rajcic's Conviction*

6 7. On April 6, 2009, Respondent pled guilty to contracting without a
7 license in an emergency zone in violation of California Business and Professions Code
8 section-7028.16. Specifically, he stated, "I acted in the capacity of a contractor without
9 having a license in connection with repairs to a structure in a residential neighborhood
10 declared a disaster area."

11 *Circumstances of the Offenses*

12 8. The investigation and complaint resulting in Respondent's conviction
13 related to his activities as a partner in a construction joint venture, One Stop Construction
14 and Engineering (One Stop). At the time of the formation of the joint venture and the
15 underlying offenses, Respondent did not have a contractor's license.³

16 The One Stop venture was formed between Respondent and two other
17 individuals for the purpose of rebuilding/repairing homes and structures damaged during the
18 Witch Creek fire in 2007. Respondent's partners in the venture were John Souza and Darien
19 Webster. The venture was formed after Respondent sent out an October 30, 2007, letter
20 directed at victims of the fire. In the letter Respondent states, "[w]e are third generation
21 home builders and have 18 years in fire restoration . . ." (October Letter). Souza received a
22 copy of the letter and approached Respondent in the hopes of forming the venture.

23 9. The parties entered into an agreement that created One Stop on
24 December 31, 2008. The agreement held, among other things, Respondent would "handle
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26 ² Respondent has two DBA's affiliated with his broker license, R&R Liquidators and Roger Rajcic Real Estate.

27 ³ At the time of this hearing Respondent held a contractor's license but was awaiting a disciplinary hearing. Respondent, with his Argument After Rejection, submitted additional documents showing CSLB withdrew their Accusation filed against Respondent's contractor's license on July 23, 2010.

1 sales and procure projects, prepare, negotiate, and execute contracts with owners, ... *and*
2 *manage projects and subcontractors.*" Also of note, the agreement held Souza, under his
3 contractor's license would, "be the general contractor on all JV [Joint Venture] projects and
4 shall oversee the projects and consult and advise the other principals."

5 10. One Stop began operating prior to the execution of the joint venture
6 agreement. Specifically, on November 8, 2007, Respondent sent out a second letter soliciting
7 business on One Stop letterhead that reached Lisa Russell (November letter). Mrs. Russell
8 had contacted Respondent to have part of her property rebuilt. She became dissatisfied with
9 One Stop due to what she considered unreasonable delays and poor performance after she
10 learned Respondent was not individually licensed as a contractor. It was Mrs. Russell's
11 complaint that led to the CSLB action against Respondent and ultimately his conviction.

12 Respondent testified the reason he went beyond the scope of a salesperson, and
13 acted as a contractor without a license, was because after Respondent's partner, Webster,
14 stopped returning Mrs. Russell's calls, he stepped in to respond to her inquiries.

15 11. At some point during the venture, Respondent testified he "was not
16 comfortable" with the situation relating to Souza's license. Respondent testified he relied
17 upon Souza to ensure all work done by One Stop was in compliance with CSLB contractor
18 license requirements. Specifically, Respondent was under the impression Souza had obtained
19 all necessary documentation and complied with all requirements. Respondent testified Souza
20 assured him they were in compliance.

21 12. Respondent admitted he did not check on the requirements himself.
22 Respondent also admitted he knew at the time Souza did not register Respondent with the
23 CSLB. Respondent admitted he should have known better than to simply rely upon Souza's
24 representations at the time. Particularly because, at that time, Respondent had purchased
25 materials and begun studying to become a licensed contractor.⁴ At this hearing, Respondent
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27 ⁴ Respondent subsequently completed the contractor's exam successfully about 3 months later on March 10, 2008.

1 admitted and acknowledged responsibility for failing to verify whether Souza complied with
2 CSLB requirements.

3 *Evaluation*

4 13. Respondent has not engaged in any misconduct related to the use of his
5 real estate license. Instead, the conduct was in relation to CSLB requirements. Nonetheless,
6 his actions give rise to this proceeding because they substantially relate to character traits
7 essential to the qualifications, functions, and duties of a real estate licensee.

8 14. While Respondent argues the underlying events which gave rise to his
9 conviction are "unusual" and ultimately suggests Respondent is the victim of circumstances
10 that leave no good deed unpunished; the evidence presented at this proceeding shows a lapse
11 in judgment directly related to the character traits necessary for real estate licensees.
12 Respondent should have known better than to rely upon Souza's representations.
13 Consequently, discipline is justified in this case.

14 LEGAL CONCLUSIONS

15 *Purpose of Disciplinary Action*

16 1. The objective of an administrative proceeding aimed at revoking a real
17 estate license is to protect the public, that is, to determine whether a licensee has exercised
18 his privilege in derogation of the public interest, and to keep the regulated business clean and
19 wholesome. Such proceedings are not conducted for the primary purpose of punishing an
20 individual. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

21 *Burden and Standard of Proof*

22 2. In an administrative license disciplinary proceeding, the burden of
23 proof is upon the party asserting the affirmative. Guilt must be established to a reasonable
24 certainty. Guilt cannot be based on surmise or conjecture, suspicion or theoretical
25 conclusions, or upon uncorroborated hearsay. (*Small v. Smith* (1971) 16 Cal.App.3d 450,
26 457.) The standard of proof on a licensing agency in a disciplinary proceeding is clear and
27 convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135

1 Cal.App.3d 853, 856.) The key element of clear and convincing evidence is that it must
2 establish a high probability of the existence of the disputed fact, greater than proof by a
3 preponderance of the evidence. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.)

4 *Applicable Statutes*

5 3. Business and Professions Code section 490 provides in part:

6 "A board may suspend or revoke a license on the ground that the licensee has
7 been convicted of a crime, if the crime is substantially related to the qualifications,
8 functions, or duties of the business or profession for which the license was issued. A
conviction within the meaning of this section means a plea ... of guilty. . . ."

9 4. Business and Professions Code section 10177 provides in part:

10 "The commissioner may suspend or revoke the license of a real estate licensee
11 ... who has done any of the following . . .

12 (b) Entered a plea of guilty or nolo contendere to, or been found guilty of,
13 or been convicted of, a felony; or a crime substantially related to the qualifications,
14 functions, or duties of a real estate licensee, and the time for appeal has elapsed or the
15 judgment of conviction has been affirmed on appeal, irrespective of an order granting
16 probation following that conviction, suspending the imposition of sentence, or of a
subsequent order under Section 1203.4 of the Penal Code allowing that licensee to
withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the
accusation or information. . . ."

17 *Respondent's Effort to Impeach his Convictions*

18 5. It is well-established that collateral estoppel principles apply in an
19 administrative proceeding to prevent the impeachment of a prior final judgment. Criticism of
20 the conduct of the trial may be appropriate in a motion for a new trial or on appeal, but it has
21 no place in a subsequent licensing disciplinary proceeding. (*Berg v. Davi* (2005) 130
22 Cal.App.4th 223, 231; *Arneson v. Fox* (1980) 28 Cal.3d 440, 448-449.)

23 *Substantial Relationship*

24 6. Business and Professions Code section 481 provides:

25 "Each board under the provisions of this code shall develop criteria to aid it,
26 when considering the denial, suspension or revocation of a license, to determine
27 whether a crime or act is substantially related to the qualifications, functions, or duties
of the business or profession it regulates."

1 7. Licensing authorities do not enjoy unfettered discretion to determine on a
2 case-by-case basis whether a given conviction is substantially related to the relevant
3 professional qualifications. Business and Professions Code section 481 requires each licensing
4 agency to develop criteria to aid it to determine whether a crime or act is substantially related
5 to the qualifications, functions, or duties of the business or profession it regulates. In response
6 to this directive the Department adopted section 2910 of Title 10 of the California Code of
7 Regulations. (*Donaldson v. Department of Real Estate* (2005) 134 Cal.App.4th 948, 955-956.)

8 8. Title 10, California Code of Regulations, section 2910 currently provides
9 in part:

10 "(a) When considering whether a license should be denied, suspended or revoked on
11 the basis of the conviction of a crime, or on the basis of an act described in Section
12 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially
13 related to the qualifications, functions or duties of a licensee of the Department within
the meaning of Sections 480 and 490 of the Code if it involves: ...

14 (7) Willfully violating or failing to comply with a statutory requirement that
15 a license, permit or other entitlement be obtained from a duly constituted public
authority before engaging in a business or course of conduct. . . .

16 (b) The conviction of a crime constituting an attempt, solicitation or conspiracy to
17 commit any of the above enumerated acts or omissions is also deemed to be
substantially related to the qualifications, functions or duties of a licensee of the
18 department.

19 (c) If the crime or act is substantially related to the qualifications, functions or
20 duties of a licensee of the department, the context in which the crime or acts were
committed shall go only to the question of the weight to be accorded to the crime or
acts in considering the action to be taken with respect to the applicant or licensee."

21 9. Courts defer to an agency's interpretation of a regulation involving its
22 area of expertise unless the interpretation flies in the face of the clear language and purpose
23 of the interpretive provision. General rules of construction require a court to give meaning to
24 each word and phrase and to avoid a construction that makes any part of a regulation
25 superfluous. The Commissioner's principal responsibility is to enforce the licensing laws to
26 achieve the maximum protection for the purchasers of real property and those persons

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1 dealing with real estate licensees. An overly restrictive construction of section 2910 would
2 not provide maximum protection. (*Donley v. Davi* (2009) 180 Cal.App.4th 447, 464-465.)

3 *Rehabilitation*

4 10. Business and Professions Code section 482 provides:

5 "Each board under the provisions of this code shall develop criteria to evaluate
6 the rehabilitation of a person when:

7 (a) Considering the denial of a license by the board under Section 480; or

8 (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee."

9 11. Title 10, California Code of Regulations, section 2912 sets forth the
10 Department's criteria of rehabilitation as required by Business and Professions Code section
11 482 as follows:

12 "The following criteria have been developed by the department pursuant to
13 Section 482(b) of the Business and Professions Code for the purpose of evaluating the
14 rehabilitation of a licensee against whom an administrative-disciplinary proceeding for
revocation or suspension of the license has been initiated on account of a crime
committed by the licensee.

15 (a) The passage of not less than two years from the most recent criminal
16 conviction that is "substantially related" to the qualifications, functions or duties of a
17 licensee of the department. (A longer period will be required if there is a history of
criminal convictions or acts substantially related to the qualifications, functions or
duties of a licensee of the department.)

18 (b) Restitution to any person who has suffered monetary losses through
'substantially related' acts or omissions of the licensee.

19 (c) Expungement of the conviction or convictions which culminated in the
administrative proceeding to take disciplinary action.

20 (d) Expungement or discontinuance of a requirement of registration
pursuant to the provisions of Section 290 of the Penal Code.

21 (e) Successful completion or early discharge from probation or parole.

22 (f) Abstinence from the use of controlled substances or alcohol for not less
than two years if the criminal conviction was attributable in part to the use of a
controlled substance or alcohol.

23 (g) Payment of any fine imposed in connection with the criminal
24 conviction that is the basis for revocation or suspension of the license.

25 (h) Correction of business practices responsible in some degree for the
crime or crimes of which the licensee was convicted.

26 (i) New and different social and business relationships from those which
27 existed at the time of the commission of the acts that led to the criminal conviction or
convictions in question.

1 (j) Stability of family life and fulfillment of parental and familial
responsibilities subsequent to the criminal conviction.

2 (k) Completion of, or sustained enrollment in, formal educational or
vocational training courses for economic self-improvement.

3 (l) Significant and conscientious involvement in community, church or
privately-sponsored programs designed to provide social benefits or to ameliorate
4 social problems.

5 (m) Change in attitude from that which existed at the time of the
commission of the criminal acts in question as evidenced by any or all of the following:

6 (1) Testimony of applicant.

7 (2) Evidence from family members, friends or other persons familiar
with the licensee's previous conduct and with subsequent attitudes and
behavioral patterns.

8 (3) Evidence from probation or parole officers or law enforcement
officials competent to testify as to applicant's social adjustments.

9 (4) Evidence from psychiatrists, clinical psychologists, sociologists
10 or other persons competent to testify with regard to neuropsychiatric or
emotional disturbances

11 (5) Absence of subsequent felony or misdemeanor convictions that
12 are reflective of an inability to conform to societal rules when considered in
light of the conduct in question."

13 12. The amount of evidence required to establish rehabilitation varies
14 according to the seriousness of the misconduct at issue. The mere expression of remorse does
15 not demonstrate rehabilitation. A truer indication of rehabilitation is presented if by sustained
16 conduct over an extended period of time showing rehabilitation and fitness to practice. (*In re*
17 *Menna* (1995) 11 Cal.4th 975, 987, 991.) Rehabilitation is a state of mind and the law looks
18 with favor upon rewarding with the opportunity to serve, one who has achieved "reformation
19 and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The evidentiary
20 significance of an applicant's misconduct is greatly diminished by the passage of time and by
21 the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d
22 1061, 1070.) Since persons under the direct supervision of correctional authorities are
23 required to behave in exemplary fashion, little weight is generally placed on the fact that an
24 applicant for a professional license did not commit additional crimes while in prison or while
25 on parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

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1 *Application of Legal Standards*

2 13. Respondent's conviction for contracting without a license in an
3 emergency zone is substantially related to the qualifications, functions, or duties of a real
4 estate broker. This is because it involves willfully violating or failing to comply with a
5 statutory requirement that a license, permit or other entitlement be obtained from a duly
6 constituted public authority before engaging in a business or course of conduct. Specifically,
7 Respondent was required to be licensed or registered with the CSLB before he engaged in
8 either sales or construction work.

9 As mentioned above, collateral estoppel prevents Respondent from impeaching
10 the fact he was convicted. Therefore, the only remaining issue is whether he is sufficiently
11 rehabilitated.

12 14. Here, Respondent has failed to prove he is sufficiently rehabilitated for
13 purposes of avoiding discipline. First, it has been less than two years since his conviction.
14 Second, at the time of submission of the evidence, Respondent had been sentenced to
15 probation until 2012⁵. There has not been a sustained period of conduct, when Respondent
16 was not on probation, to establish Respondent has been rehabilitated. Ultimately,
17 Respondent's conviction demonstrates a failure to respect licensing requirements.

18 15. Respondent demonstrated he used poor judgment when he should have
19 known better and a failed to take appropriate administrative measures. Respondent should
20 have confirmed his registration with the CSLB, insisted Souza's license cover his activities
21 appropriately, or he should have resigned if Souza persisted in not conforming. Respondent
22 did not do this. However, Respondent demonstrated this was his main shortcoming rather
23 than a motivation to take advantage of members of the public or profit fraudulently from his
24 activities.

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26 ⁵ At hearing Respondent indicated he will be applying for early termination of probation. After the record was
27 closed in this matter, Respondent submitted a non-certified copy of a docket from Superior Court of California,
County of San Diego case number SCD217187 showing Respondent's motion to terminate probation and
expungement was granted on September 24, 2010.

1 16. In addition, Respondent was able to provide sufficient evidence of
2 rehabilitation to show revocation of his broker license is not appropriate. Specifically,
3 Respondent has (1) paid all associated fines and fees, (2) has a significant and conscientious
4 involvement in his community by volunteering as treasurer for the Ramona Parks and
5 Recreation Board, and (3) has demonstrated a change in attitude from that which existed at
6 the time of the commission of the criminal acts in that he demonstrated genuine remorse,
7 contrition, and an acknowledgment that he failed to follow licensing requirements.

8 Instead, discipline in the form of a restricted license for a period of four years
9 is justified.

10 *Cause Exists to Impose Discipline*

11 17. Cause exists to impose discipline against Respondent's real estate
12 broker license under Business and Professions Code sections 490 and 10177, subdivision (b).
13 Respondent's 2009 conviction is substantially related to the qualifications, functions and
14 duties of a real estate licensee under the Department's criteria of substantial relationship.
15 Respondent failed to establish sufficient rehabilitation to avoid discipline.

16 ORDER

17 All licenses and licensing rights of Respondent ROGER PAUL RAJCIC under
18 the Real Estate Law are revoked; provided, however, a restricted real estate broker license
19 shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions
20 Code if Respondent makes application therefore and pays to the Department of Real Estate
21 the appropriate fee for the restricted license within 90 days from the effective date of this
22 Decision. The restricted license issued to Respondent shall be subject to all of the provisions
23 of Section 10156.7 of the Business and Professions Code and to the following limitations,
24 conditions and restrictions imposed under authority of Section 10156.6 of that Code:

25 1. The restricted license issued to Respondent may be suspended prior to
26 hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or

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1 plea of nolo contendere to a crime which is substantially related to Respondent's fitness or
2 capacity as a real estate licensee.

3 2. The restricted license issued to Respondent may be suspended prior to
4 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the
5 Commissioner that Respondent has violated provisions of the California Real Estate Law, the
6 Subdivided Lands law, Regulations of the Real Estate Commissioner or conditions attaching to
7 the restricted license.

8 3. Respondent shall not be eligible to apply for the issuance of an
9 unrestricted real estate license nor for the removal of any of the conditions, limitations or
10 restrictions of a restricted license until four (4) years have elapsed from the effective date of
11 this Decision.

12 4. Respondent shall, within nine (9) months from the effective date of this
13 Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has,
14 since the most recent issuance of an original or renewal real estate license, taken and
15 successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of
16 the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this
17 condition, the Commissioner may order the suspension of the restricted license until the
18 Respondent presents such evidence. The Commissioner shall afford Respondent the
19 opportunity for a hearing pursuant to the Administrative Procedure Act to present such
20 evidence.

21 5. Respondent shall, within six (6) months from the effective date of this
22 Decision, take and pass the Professional Responsibility Examination administered by the
23 Department including the payment of the appropriate examination fee. If Respondent fails to
24 satisfy this condition, the Commissioner may order suspension of Respondent's license until
25 Respondent passes the examination.

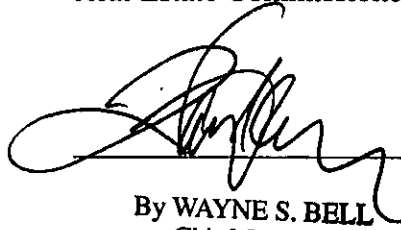
26 6. Respondent shall notify the Commissioner in writing within 72 hours of
27 any arrest by sending a certified letter to the Commissioner at the Department of Real Estate,

1 Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of
2 Respondent's arrest, the crime for which Respondent was arrested and the name and address of
3 the arresting law enforcement agency. Respondent's failure to timely file written notice shall
4 constitute an independent violation of the terms of the restricted license and shall be grounds for
5 the suspension or revocation of that license.

6 This Decision shall become effective at 12 o'clock noon on JAN 12 2011

7 IT IS SO ORDERED 12/22/2010.

8 JEFF DAVY
9 Real Estate Commissioner

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12 By WAYNE S. BELL
13 Chief Counsel
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FILED

AUG 10 2010

DEPARTMENT OF REAL ESTATE

[Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

ROGER PAUL RAJCIC,

Respondent.

No. H-4026 SD

OAH No. 2009120675

NOTICE

TO: ROGER PAUL RAJCIC, Respondent, and C. BRADLEY PATTON, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated July 8, 2010, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated July 8, 2010, is attached 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 3, 2010, 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 3, 2010, 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
4 within 15 days after receipt of the argument of Respondent at the Sacramento office of the
5 Department of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 8-6-2011

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8 JEFF DAVIS
Real Estate Commissioner
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In the Matter of the Accusation Against:

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Respondent.

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OAH No. 2009120675

PROPOSED DECISION

Agustin F. Lopez, II, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 3, 2010, in San Diego, California.

Angela L. Cash, Counsel, represented complainant Joseph Aiu (Complainant), a Deputy Real Estate Commissioner, Department of Real Estate, State of California (hereinafter the Department).

Roger Rajcic (hereinafter respondent) was present throughout the administrative hearing.

C. Bradley Patton, Esq., represented Respondent. Mr. Patton was present throughout the proceeding.

The matter was submitted on June 3, 2010.

FACTUAL FINDINGS

Jurisdictional Matters

1. This case involves a Department accusation for discipline filed on May 4, 2009, relating to respondent's April 6, 2009, felony conviction for acting as a building contractor without a license in an emergency zone in violation of California Business and Professions Code section 7028.16. Respondent is accused of acting as a contractor without a

license after the 2007 Witch Creek fires². This case is separate and apart from any action taken by the California Contractors' State License Board (hereinafter CSLB).

2. The accusation and corresponding documents informing respondent of his right to file a Notice of Defense were served upon respondent on November 18, 2009, via certified mail. Complainant signed Accusation No. H-4026 SD in his official capacity. Respondent filed a timely Notice of Defense.

3. On June 3, 2010, the administrative record was opened. Jurisdictional documents were presented, sworn testimony was given, documentary evidence was received, closing arguments were made, the record was closed, and the matter was submitted.

Preliminary Motions

4. In accordance with Government Code section 11507, the Department brought a motion to amend the Accusation at the hearing. The Department made the motion to reflect the fact that Respondent's underlying conviction was reduced to a misdemeanor by the superior court on June 29, 2009. No new charges resulted from the amendment and respondent did not object. The motion is granted; the word "felony" on page 1, line 27, of the accusation is stricken and replaced by the word "misdemeanor." Likewise, any reference herein to respondent's underlying conviction is to reflect a misdemeanor conviction and not a felony conviction.

5. The Department made one other motion objecting to the admission of respondent's exhibits. Respondent did not object to the Department's motion. The first objection related to respondent's Exhibit G on the following grounds; (1) as hearsay, and (2) as an unsigned document that does not subject the declarant to the penalty of perjury. The second objection was with respect to the use of all of respondent's exhibits for the purpose of impeaching his conviction.

Hearsay is admissible in administrative hearings when "supplementing or explaining other evidence." (Gov. Code, § 11513, subd. (d); *Berg v Davi* (2005) 130 Cal.App.4th 223.) Here, respondent provided other admissible evidence of rehabilitation that is explained and supplemented by Exhibit G — specifically live testimony relating to the degree of wrongdoing and corresponding rehabilitation. Exhibit G will be used solely to explain and supplement this — not to contradict his conviction or undermine the fact that he engaged in wrongdoing. Consequently, the objection to Exhibit G is overruled.

In administrative disciplinary proceedings, a licensee may not seek to impeach a prior criminal conviction by means of an "an inquiry into the circumstances surrounding the offense."

² The 2007 Witch Creek fires were wild fires that burned large portions of San Diego County; including both residential and commercial structures in the area where respondent lived and worked. As a result, San Diego County was declared an emergency zone for purposes of Business and Professions Code section 7028.16.

⁵ Respondent has some DBA's affiliated with his licenses, these are R & R Liquidators and Roger Rajcic Real Estate.

(*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.) The Department's second objection is granted on the grounds that the documents attempt to impeach respondent's conviction; but the objection is overruled insofar as the documents seek to prove respondent's rehabilitation or explain the degree of his underlying wrongdoing.

License History

6. Respondent has both a salesperson's license and a broker's license issued by the Department. Respondent was originally issued a Department sales person license on September 6, 2006. Three years later, on March 20, 2003, he obtained a broker's license from the Department.⁵ Respondent's broker license expires March 19, 2011.

Rajcic's Conviction

7. On April 6, 2009, Respondent pled guilty to contracting without a license in an emergency zone in violation of California Business and Professions Code section 7028.16. Specifically, he stated, "I acted in the capacity of a contractor without having a license in connection with repairs to a structure in a residential neighborhood declared a disaster area."

Circumstances of the Offenses

8. The investigation and complaint that resulted in respondent's conviction related to his activities as a partner in a construction joint venture (One Stop Construction and Engineering). At the time of the formation of the joint venture and the underlying offenses, respondent did not have a contractor's license.⁶

The One Stop venture was formed between respondent and two other individuals for the purpose of rebuilding/repairing homes and structures that were damaged after the Witch Creek fire in 2007. Respondent's partners in the venture were John Souza and Darien Webster. The venture was formed after respondent sent out an October 30, 2007, letter directed at victims of the fire. In the letter respondent states, "[w]e are third generation home builders and have 18 years in fire restoration . . ." (hereinafter the "October Letter"). Souza received a copy of the letter and approached respondent in the hopes of forming the venture.

9. The parties entered into the agreement that created One Stop on December 31, 2008. The agreement held, among other things, that respondent would "handle sales and procure projects, prepare, negotiate, and execute contracts with owners,...and manage projects and subcontractors." Also of note, the agreement held that Souza, under his contractor's license would, "be the general contractor on all JV [Joint Venture] projects and shall oversee the projects and consult and advise the other principals."

10. One Stop began operating prior to the execution of the joint venture agreement. Specifically, on November 8, 2007, respondent sent out a second letter soliciting business on One Stop letterhead that reached Lisa Russell (hereinafter the "November

⁶ Respondent currently holds a contractor's license but is awaiting discipline scheduled for October 2010.

letter"). Mrs. Russell had contacted respondent to have part of her property rebuilt. She became dissatisfied with One Stop due to what she considered unreasonable delays and poor performance after she learned that respondent was not individually licensed as a contractor. It was Mrs. Russell's complaint that led to the CSLB action against respondent and ultimately his conviction.

Respondent testified that the reason he went beyond the scope of a salesperson, and acted as a contractor without a license, was because after respondent's partner, Webster, stopped returning Mrs. Russell's calls, he stepped in to respond to her inquiries.

11. At some point during the venture, respondent testified that he "was not comfortable" with the situation relating to Souza's license. Respondent testified, that he relied upon Souza to ensure that all work done by One Stop was in compliance with CSLB contractor license requirements. Specifically, respondent was under the impression that Souza had obtained all necessary documentation and complied with all requirements. Respondent testified that Souza assured him that they were in compliance.

12. Respondent admitted that he did not check on the requirements himself. Respondent also admitted that he knew at the time that Souza did not register respondent with the CSLB. Respondent admitted he should have known better than to simply rely upon Souza's representations at the time. Particularly because, at that time, respondent had purchased materials and begun studying to become a licensed contractor.⁷ At this hearing, Respondent admitted and acknowledged responsibility for failing to verify whether Souza complied with CSLB requirements.

Evaluation

13. Respondent has not engaged in any misconduct related to the use of his real estate salesperson's or broker's licenses. Instead, the conduct was in relation to CSLB requirements. Nonetheless, his actions give rise to this proceeding because they substantially relate to character traits essential to the qualifications, functions, and duties of a real estate licensee.

14. While Respondent argues that the underlying events which gave rise to his conviction are "unusual" and ultimately suggests that respondent is the victim of circumstances that leave no good deed unpunished — the evidence presented at this proceeding shows a lapse in judgment directly related to the character traits necessary for Department licensees. Respondent should have known better than to rely upon Souza's representations. Consequently, discipline is justified in this case.

⁷ Respondent subsequently completed the contractor's exam successfully about 3 months later on March 10, 2008.

LEGAL CONCLUSIONS

Purpose of Disciplinary Action

1. The object of an administrative proceeding aimed at revoking a real estate license is to protect the public, that is, to determine whether a licensee has exercised his privilege in derogation of the public interest, and to keep the regulated business clean and wholesome. Such proceedings are not conducted for the primary purpose of punishing an individual. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

Burden and Standard of Proof

2. In an administrative license disciplinary proceeding, the burden of proof is upon the party asserting the affirmative. Guilt must be established to a reasonable certainty. Guilt cannot be based on surmise or conjecture, suspicion or theoretical conclusions, or upon uncorroborated hearsay. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) The standard of proof on a licensing agency in a disciplinary proceeding is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The key element of clear and convincing evidence is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.)

Applicable Statutes

3. Business and Professions Code section 490 provides in part:

“A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea . . . of guilty. . . .”

4. Business and Professions Code section 10177 provides in part:

“The commissioner may suspend or revoke the license of a real estate licensee . . . who has done any of the following . . .

...
(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information. . . .”

Respondent's Effort to Impeach his Convictions

5. It is well-established that collateral estoppel principles apply in an administrative proceeding to prevent the impeachment of a prior final judgment. Criticism of the conduct of the trial may be appropriate in a motion for a new trial or on appeal, but it has no place in a subsequent licensing disciplinary proceeding. (*Berg v. Davi* (2005) 130 Cal.App.4th 223, 231; *Arneson v. Fox* (1980) 28 Cal.3d 440, 448-449.)

Substantial Relationship

6. Business and Professions Code section 481 provides:

"Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates."

7. Licensing authorities do not enjoy unfettered discretion to determine on a case-by-case basis whether a given conviction is substantially related to the relevant professional qualifications. Business and Professions Code section 481 requires each licensing agency to develop criteria to aid it to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates. In response to this directive the Department adopted section 2910 of Title 10 of the California Code of Regulations. (*Donaldson v. Department of Real Estate of State of Cal.* (2005) 134 Cal.App.4th 948, 955-956.)

8. Title 10, California Code of Regulations, section 2910 currently provides in part:

"(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves: . . .

...

(7) Willfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct

...

(b) The conviction of a crime constituting an attempt, solicitation or conspiracy to commit any of the above enumerated acts or omissions is also deemed to be substantially related to the qualifications, functions or duties of a licensee of the department.

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee." (Emphasis added.)

9. Courts defer to an agency's interpretation of a regulation involving its area of expertise unless the interpretation flies in the face of the clear language and purpose of the interpretive provision. General rules of construction require a court to give meaning to each word and phrase and to avoid a construction that makes any part of a regulation superfluous. The Commissioner's principal responsibility is to enforce the licensing laws to achieve the maximum protection for the purchasers of real property and those persons dealing with real estate licensees. An overly restrictive construction of section 2910 would not provide maximum protection. (*Donley v. Davi* (2009) 180 Cal.App.4th 447, 464-465.)

Rehabilitation

10. Business and Professions Code section 482 provides:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

11. Title 10, California Code of Regulations, section 2912 sets forth the Department's criteria of rehabilitation as required by Business and Professions Code section 482 as follows:

"The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of

criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through 'substantially related' acts or omissions of the licensee.

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

- (1) Testimony of applicant.
- (2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.
- (3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.
- (4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances
- (5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question."

12. The amount of evidence required to establish rehabilitation varies according to the seriousness of the misconduct at issue. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented if by sustained conduct over an extended period of time showing rehabilitation and fitness to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.) Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that an applicant for a professional license did not commit additional crimes while in prison or while on parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

Application of Legal Standards

13. Respondent's conviction for contracting without a license in an emergency zone is substantially related to the qualifications, functions, or duties of a real estate sales person and broker. This is because it involves willfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct. Specifically, respondent was required to be licensed or registered with the CSLB before he engaged in either sales or construction work.

As mentioned above, collateral estoppel prevents Respondent from impeaching the fact that he was convicted. Therefore, the only remaining issue is whether he is sufficiently rehabilitated.

14. Here, respondent has failed to prove he is sufficiently rehabilitated for purposes of avoiding discipline — too few of the criteria to establish rehabilitation exist. First, it has been less than two years since his conviction. Second, since respondent has been sentenced to probation until 2012 he cannot apply for expungement until he completes probation⁸. Ultimately, respondent's conviction demonstrates a failure to respect licensing requirements.

15. Respondent demonstrated that he used poor judgment when he should have known better and failed to take appropriate administrative measures. Respondent should have confirmed his registration with the CSLB, insisted that Souza's license cover his activities appropriately, or he should have resigned if Souza persisted in not conforming. Respondent did not do this. However, respondent demonstrated that this was his main shortcoming rather than a motivation to take advantage of members of the public or profit fraudulently from his activities.

16. In addition, respondent was able to provide sufficient evidence of rehabilitation to show that revocation of either of his Department issued licenses is not appropriate. Specifically, respondent has (1) paid all associated fines and fees, (2) has a significant and conscientious involvement in his community by volunteering as treasurer for the Ramona Parks and Recreation Board, and (3) has demonstrated a change in attitude from that which existed at the time of the commission of the criminal acts in that he demonstrated genuine remorse, contrition, and an acknowledgment that he failed to follow licensing requirements.

Instead, discipline, in the form of a restricted license for a period of four years, as requested by the Department is justified.

Cause Exists to Impose Discipline

17. Cause exists to impose discipline against respondent's real estate salesperson and broker's licenses under Business and Professions Code sections 490 and 10177, subdivision (b). Respondent's 2009 conviction is substantially related to the qualifications, functions and duties of a real estate licensee under the Department's criteria of substantial relationship. Respondent failed to establish sufficient rehabilitation to avoid discipline.

ORDER

ACCORDINGLY, with respect to respondent's broker's license;

All licenses and licensing rights of respondent under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if

⁸ While respondent indicated he will be applying for early termination of probation, such relief has not yet been granted.

not adopted

Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. 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 that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until **four** years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

ACCORDINGLY, with respect to Respondent's salesperson's license:

All licenses and licensing rights of respondent under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. 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 that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's

conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until **four** years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate that shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

*not
adopted*

*not
adjudged*

ADDITIONALLY, respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until respondent passes the examination.

DATED: 7/8/2010


AGUSTIN F. LOPEZ, II
Administrative Law Judge
Office of Administrative Hearings

FILED

NOV 18 2009

DEPARTMENT OF REAL ESTATE

By Rd Henry

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2 Department of Real Estate

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4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789

6 -or- (916) 227-0805 (Direct)

7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of

11 ROGER PAUL RAJCIC,

12 Respondent.

No. H- 4026 SD

ACCUSATION

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15 The Complainant, Joseph Aiu, a Deputy Real Estate Commissioner of the State of
16 California (hereinafter "Complainant"), for cause of Accusation against ROGER PAUL RAJCIC
17 (hereinafter "Respondent"), is informed and alleges as follows:

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19 Complainant makes this Accusation in his official capacity.

20 2

21 Respondent is presently licensed and/or has license rights under the Real Estate
22 Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter "Code") as a real
23 estate broker.

24 3

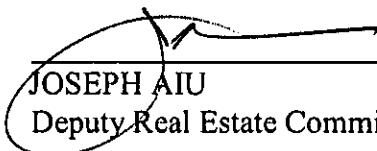
25 On approximately April 6, 2009, in the Superior Court, County of San Diego,
26 Respondent was convicted of a violation of Section 7028.16 of the California Business &
27 Professions Code (Contracting without a License in an Emergency Zone), a felony which bears a

1 substantial relationship under Section 2910, Title 10, California Code of Regulations, to the
2 qualifications, functions, or duties of a real estate licensee.

3 4

4 The facts alleged above constitute cause under Sections 490 and 10177(b) of the
5 Code for suspension or revocation of all licenses and license rights of Respondent under the Real
6 Estate Law.

7 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
8 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
9 action against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of
10 Division 4 of the Business and Professions Code), and for such other and further relief as may be
11 proper under the provisions of law.

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14 
JOSEPH AIU
Deputy Real Estate Commissioner

15 Dated at San Diego, California,
16 this 5 day of November 2009
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