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BUREAU OF REAL ESTATE

By [signature]

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of COLEMAN JAMES ALGUIRE, Respondent.	CalBRE No. H-4738 SD OAH No. 2015080632

NOTICE

TO: COLEMAN JAMES ALGUIRE, Respondent, and JOHN D. BISHOP, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated December 22, 2015, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated December 22, 2015, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on November 23, 2015, 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 November 23, 2015, at the Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for good cause shown.

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

DATED: 1/12/2016.

REAL ESTATE COMMISSIONER

WAYNE S. BELL

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

In the Matter of the Application of: COLEMAN JAMES ALGUIRE, Respondent.	Case No. H-04738 SD OAH No. 2015080632

PROPOSED DECISION

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 23, 2015, in San Diego, California.

Real Estate Counsel Steve Chu represented complainant, Veronica Kilpatrick, Deputy Real Estate Commissioner, Bureau of Real Estate, Department of Consumer Affairs.

John D. Bishop, Attorney at Law, represented respondent Coleman James Alguire, who was present during the hearing.

The matter was submitted on November 23, 2015.

FACTUAL FINDINGS

Application for Licensure

1. On September 5, 2014, respondent signed and submitted to the bureau an application to obtain a real estate salesperson license. He passed the real estate salesperson examination in November 2014. Respondent requested that the bureau issue his license in a working status and listed Leslie Carroll Sheppard, a licensed real estate broker, as his prospective employing broker. Mr. Sheppard signed the application confirming his status as respondent's employing broker.

2. Question No. 1 of the application asked if respondent had ever been convicted of any violation of law. He responded "Yes" and disclosed that in 2011, he had been

convicted of theft, a misdemeanor, in Anchorage, Alaska, when he was 21 years old.[1] Respondent provided the information about the conviction required in the application and wrote a four page letter of explanation. Respondent and Mr. Sheppard initialed each page of the explanation letter. Respondent signed the application under penalty of perjury.

3. In the letter of explanation, respondent stated he worked as a salesperson, interior designer, and merchandiser for a high-end furniture store in Anchorage, Alaska, while he was attending college. With the store owner's permission, respondent stored some of his furniture and accessories in the basement of the furniture store until he could move into a new apartment. His furniture was in boxes similar to those that belonged to the store. When he moved to a new apartment, some of the store's boxes were inadvertently loaded into the U-Haul truck he rented for his move. When he unpacked the boxes, he realized his mistake, but he did not return the items that did not belong to him. Instead, he decided, "[H]ey, the items are here, why not use them." He reasoned that "[t]he chance for a person who works for nine dollars an hour to accessorize their college apartment with hundred dollar pillows and overpriced decorations doesn't come along very often." He kept the items; decorated his new apartment with them; took pictures of his decorated apartment; and posted the photographs on Facebook "to brag about my new apartment and show off my interior design skills."

In his letter, respondent stated that, after posting the photographs, he packed up the items that did not belong to him with the intention of returning them to the store. But because he did not have the money to rent another U-Haul, "their return to the dank basement would have to wait." He stated that he kept the items but intended to return them after Christmas when he would receive his next paycheck. Respondent stated that he told his employer and a female co-worker that he had the items from the store in his apartment.

Respondent traveled to Ketchikan, Alaska, during his college's winter break. He asked the female co-worker to care for his dog during the break in exchange for using his car and apartment. The co-worker saw the items that belonged to the store in respondent's apartment; accused him of stealing them; and informed the store owner of the alleged theft. The store owner fired respondent based on his theft of the items. Respondent stated he tried to communicate with the co-worker and owner by several texts to apologize and confirm his intent to return the items, but he did not receive any responses to his texts. Respondent did not have any communication with his employer or the co-worker for "almost a month" after he tried to contact them. He returned the items that were not his, found new employment and believed the matter was resolved.

Respondent learned the matter was not resolved when he found out there was a warrant for his arrest on a theft charge. He ultimately accepted a plea bargain because a conviction for theft was a "jail-able offense," and he could face a year in jail. He was

[1] The underlying incident occurred when he was still 20 years old although he was almost 21.

concerned that if he was convicted without a plea bargain, he would have "destabilized [his] living arrangement, incurred the payment of student loans, lost credit for [his] current classes and derailed [his] future educational prospects." Respondent voiced his criticism of the criminal justice system as "a system that is becoming considerably more oriented toward plea bargaining and treating people as dates and numbers."

4. On January 5, 2015, respondent completed a Confidential Interview Information Statement (CIIS) and Conviction Detail Report.[2] The CIIS shows that, out of his last five jobs, respondent was terminated from four – two due to "manager conflicts," one for "tardiness," and the other for the theft for which he sustained the criminal conviction. Respondent noted that since his conviction, he graduated with a bachelor degree and was enrolled in law school in San Diego. On the Conviction Detail Report, respondent stated that he inadvertently took boxes from the furniture store when he moved his boxes and "foolishly kept them in my apt while I was on vacation." He acknowledged that he "made a mistake in keeping the items and promptly returned the items when [he] returned to Anchorage."

2011 Conviction for Theft

On January 5, 2011, a police officer with the Anchorage Police Department was dispatched to the furniture store where respondent had worked.[3] The officer viewed a surveillance video that showed respondent taking boxes that did not belong to him. The sequence of events differed from those contained in respondent's application. The furniture store owner indicated that respondent posted photographs of the items he took on Facebook before he left for Christmas break and that he worked in the store for at least one day after he had posted them. The owner told the officer that after he terminated respondent, respondent said he planned on returning the items. The items were valued in excess of $2,000.

On June 3, 2011, in the District Court for the State of Alaska at Anchorage, respondent plead guilty to, and was convicted of, one misdemeanor count of theft, in violation of AS 11.46.140, subdivision (a)(1). The court ordered respondent to serve 360 days in jail, with 360 days suspended. The court placed respondent on three years informal probation with terms and conditions that included that he pay fines and fees in the amount of $250. Respondent's former employer confirmed that respondent paid $1,250 as full restitution for the employer's loss. Respondent has satisfied all terms of his probation, and probation has terminated.

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[2] The Statement of Issues and evidence produced at the hearing failed to provide any information regarding the Bureau's actions after it received respondent's application for licensure. It does not state that respondent was requested to provide additional information or that his application was denied. However, because respondent completed additional documents, it is assumed the bureau requested them.

[3] The arresting officer's report was received under *Lake v. Reed* (1997) 16 Cal.4th 448. These facts were also contained in certified court records, portions of which were received under *Lake v. Reed.*

Mitigation and Rehabilitation Evidence

5. Respondent testified that it has been four years since his conviction; he is now 25 years old. He has been married to Mr. Sheppard for two years. He obtained his undergraduate degree in justice from the University of Alaska. He is in his third year at Thomas Jefferson School of Law and expects to take the California Bar Examination in July. Respondent's husband is a licensed broker. Respondent hopes to help him in his business by obtaining a real estate salesperson license. Respondent understands that it is the responsibility and duty of the state to question his character and that the crime he was convicted of involves moral turpitude.

6. Respondent testified that he slept on a couch in the basement of the furniture store for a short while because he had been "kicked out" of his apartment. When he moved from the basement of the store to his new apartment, he inadvertently took boxes belonging to the furniture store. When he discovered that he had taken items that were not his, respondent decorated his apartment with them. He considered the items to be "cool stuff" and, using poor judgment, decided that he would enjoy those items that he was "around every day but not able to enjoy." He stated that he was the second of nine brothers and not the one who typically needed help from his family. Nonetheless, it was important for him to impress his parents. He took pictures of his apartment decorated with the furniture store's items and posted them to impress them.

Respondent stated that it was the store manager who was caring for his dog. When she went to his apartment, she saw the items taken from the store and called the police. Respondent said he returned the store's items when he returned from vacation; contacted a bail bondsman; and turned himself in. Respondent's testimony contradicted his written statement to the bureau in that, at the hearing, he admitted that he intended to keep the items from the store until he learned he had been caught. It was fortunate that respondent was more candid in his oral testimony as his written explanation was illogical, not credible, and did not demonstrate respondent's acceptance of full responsibility.[4]

7. Respondent testified that keeping the items from the furniture store was the biggest mistake he had ever made. He is embarrassed by it and continues to feel bad about his actions. He is not the person he was four years ago. He has matured, is married, and is prepared to graduate from law school and take the bar examination. He is involved in a civic activist organization (OUTlaw) on campus whose focus is to protect the rights of lesbian, gay, bi-sexual, transsexual and queer (LGBTQ) individuals and perform community service. The organization provides networking opportunities for the LGBTQ community and engages in outreach programs such as gathering toys for children and toiletries for the homeless. Due to his schedule, he is able to attend meetings only sporadically.

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[4] Respondent's written explanation was not credible in that he claimed that he had informed the store manager and his employer that he had mistakenly taken the items and intended to return them before they telephoned the police. At the hearing respondent admitted that, until he learned the police had been contacted, he intended to retain the items.

8. Respondent submitted ten reference letters in support of his application for licensure. The author of each letter was aware of respondent's 2011 conviction. Five of the letters are from respondent's fellow law students; two are from individuals respondent knows from Alaska; two are from social acquaintances; and one is from Mr. Sheppard, respondent's husband.

9. The letters attest to respondent's excellent character. The letters describe him as "dependable and reliable," dedicated and hard working, an active participant in his law school classes and in OUTlaw, a person who has "taken control of his destiny and has made it his mission to strive for a better life and to improve his station regardless of his past," "honest and caring," a person who provided support and guidance to underclassmen, someone who has matured since his conviction for theft and has a positive attitude, helpful and selfless, and professional. Lester Machado, M.D., DDS, FRCS (ed) of Machado Maxillofacial Surgery wrote that he has known respondent for two years. He stated that the incident underlying respondent's criminal conviction was "out of character" for the person Dr. Machado knows. He found respondent to be responsible, honest, reliable and kind. All of the authors of letters support respondent's application for a real estate salesperson license.

Mr. Sheppard wrote that respondent "has been a wonderful and loyal husband. I feel very fortunate to have met him, and he treats our relationship with great respect." He stated that respondent "has also been very supportive of my real estate career." He noted that respondent helps in the office as an assistant and would be a "great asset" to Mr. Sheppard's business if he was granted a real estate salesperson's license. Respondent is a signatory on the couple's bank account and credit cards. Mr. Sheppard stated that respondent "has always been thoughtful about spending money, and [Mr. Sheppard] trust[s] him to manage our financial matters."

Testimony of Leslie Sheppard

10. Mr. Sheppard also testified at the hearing. He is a self-employed, licensed real estate broker. He obtained a real estate salesperson's license in 1980 and a broker's license two years later. His licenses have never been disciplined.

Mr. Sheppard is aware of respondent's criminal conviction. He understands and supports that the bureau owes a duty of care to the public to ensure that real estate salespersons are trustworthy, have proper qualifications, and are properly trained. Respondent never gave Mr. Sheppard any reason to doubt his honesty and trustworthiness. Because he has such trust in respondent, Mr. Sheppard added respondent to all of his bank accounts.

Mr. Sheppard remodels homes and has rentals. He values respondent's opinion and discusses his work with respondent. Respondent sometimes assists Mr. Sheppard in his business matters, but he does not perform tasks for which a license is required. Mr. Sheppard works alone and appreciates having another person to discuss business with. He will employ respondent if respondent is granted a real estate salesperson license.

When Mr. Sheppard was 12 years old, he took a briefcase that was not his. His father found out and made Mr. Sheppard return it. Mr. Sheppard never forgot that long-ago incident and how it made him feel. He believes that respondent is as deeply affected as Mr. Sheppard was by his wrongdoing. He is confident respondent will not engage in unlawful activities and that he does not want ever again to feel the shame he felt when he stole the items from the furniture store.

LEGAL CONCLUSIONS

Applicable Statutory and Regulatory Provisions

1. Business and Professions Code section 475 provides, in part:

> (a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:
>
> [¶] . . . [¶]
>
> (2) Conviction of a crime.
>
> (3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

2. Business and Professions Code section 480, subdivision (a)(1), provides that a license may be denied when an applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate salesperson. Subdivision (a)(2) provides a license may be denied when an applicant has committed "any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another."

3. Business and Professions Code section 480, subdivision (b), provides:

> Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she . . . has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

4. Business and Professions Code section 482 requires the bureau to "develop criteria to evaluate the rehabilitation of a person when (a) considering the denial of a license"

under section 480. Section 482 also requires the bureau to "take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

5. Business and Professions Code section 10177, subdivision (b), provides in relevant part that the bureau can deny the issuance of a license to an applicant who has entered a plea of guilty to a felony or a crime that is "substantially related to the qualifications, functions, or duties of a real estate licensee . . . ."

6. California Code of Regulations, title 10, section 2911, provides criteria to be considered in evaluating the rehabilitation of an applicant who has been convicted of a crime as follows:

> (a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct 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 applicant.
>
> (c) Expungement of criminal convictions resulting from immoral or antisocial acts.
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> [¶] . . . [¶]
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> (e) Successful completion or early discharge from probation or parole.
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> [¶] . . . [¶]
>
> (g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.
>
> (h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.
>
> (i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

(j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

[¶] . . . [¶]

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

(m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

(n) Change in attitude from that which existed at the time of the conduct 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 applicant's previous conduct and with his subsequent attitudes and behavioral patterns.

[¶] . . . [¶]

(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.

[¶] . . . [¶]

Evaluation

7. Cause exists to deny respondent's application for a real estate salesperson license pursuant to Business & Professions Code sections 475, 480 and 10177, because he was convicted of a crime that is substantially related to the qualifications, functions, and duties of a real estate salesperson. Real estate salespersons deal in complicated business and financial transactions and are required to comply with complex legal requirements. Real estate salespersons must be clear-headed and law-abiding, have integrity, and use good judgment in completing real estate transactions. Respondent sustained a criminal conviction involving theft of items from his employer. Respondent's conviction is substantially related to the qualifications, functions, and duties of a real estate licensee.

8. The purpose of an administrative proceeding concerning the denial of an application for a professional license is not to punish the individual; the purpose is to protect

the public from dishonest, immoral, disreputable, or incompetent practitioners. (*Ettinger v. Board* of *Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The determination as to whether respondent's application for a real estate salesperson's license should be granted includes evaluation of the circumstances surrounding his conviction, evidence of rehabilitation, and application of the rehabilitation criteria set forth in the bureau's regulation.

Respondent engaged in a serious act of misconduct that involved dishonesty and constituted moral turpitude. His conviction occurred in 2011, four years ago. No evidence was presented that respondent engaged in criminal conduct before or after the incident underlying his conviction. He has satisfied all of the obligations and conditions of probation; made restitution to his former employer; and is no longer on probation. Respondent obtained a bachelors degree and is in his last year of law school. He is in a stable, supportive, and loving relationship with his husband. He has a strong network of friends who also support him. At the hearing, respondent was candid about his past misconduct, and his testimony that he is a changed person was credible. It is concerning that respondent was not as forthcoming in his letter of explanation to the board as he was at the hearing. His suggestion in the letter of explanation that the store manager reported him and the store owner began criminal proceedings after he told them he had the items and intended to return them was not credible.

9. Upon consideration of the entirety of the facts, it would not be contrary to the public interest to permit respondent to hold a restricted real estate salesperson license with oversight and appropriate terms and conditions.

ORDER

Not Adopted

Respondent Coleman Jams Alguire's application for a real estate salesperson license is denied; 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 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:

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) Respondent's conviction (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) 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.

Not Adopted

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. 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 form RE 552 (Rev. 4/88) approved by the Commissioner, which shall certify as follows:

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

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

DATED: December 22, 2015

Susan J. Boyle

SUSAN J. BOYLE
Administrative Law Judge
Office of Administrative Hearings