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MAY 18 2017

BUREAU OF REAL ESTATE

By *[Signature]*

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BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Application of	)	No. H-04784 SD
	)	
STEVEN THOMAS BUGIEL,	)	OAH No. 2016060616
	)	
Respondent.	)	
	)	

STIPULATION AND WAIVER AND DECISION AFTER REJECTION

I, STEVEN THOMAS BUGIEL, Respondent herein, acknowledge that I have received and read the Statement of Issues filed by the Bureau of Real Estate on April 5, 2016, and the Statement to Respondent sent to me in connection with the Statement of Issues.

I hereby admit that the allegations contained in the Statement of Issues filed against me are true and correct and constitute a basis for the denial of my real estate salesperson license application.

I further acknowledge that the Real Estate Commissioner held a hearing on this Statement of Issues on January 19, 2017, before the Office of Administrative Hearings for the purpose of proving the allegations therein. I was present at the hearing and represented myself. Further, I have had an opportunity to read and review the Proposed Decision of the Administrative Law Judge.

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1 I understand that pursuant to Government Code Section 11517(c), the Real  
2 Estate Commissioner has rejected the Proposed Decision of the Administrative Law Judge.  
3 I further understand that pursuant to the same Section 11517(c), the Real Estate Commissioner  
4 may decide this case upon the record, including the transcript, without taking any additional  
5 evidence, after affording me the opportunity to present written argument to the Real Estate  
6 Commissioner.

7 I further understand that by signing this Stipulation and Waiver, I am waiving  
8 my right to obtain a dismissal of the Statement of Issues through proceedings under  
9 Government Code Section 11517(c) if this Stipulation and Waiver is accepted by the Real  
10 Estate Commissioner. However, I also understand that I am not waiving my rights to further  
11 proceedings to obtain a dismissal of the Statement of Issues if this Stipulation and Waiver is not  
12 accepted by the Real Estate Commissioner.

13 I hereby request that the Real Estate Commissioner in his discretion deny my  
14 application for a real estate salesperson license and issue to me a restricted real estate  
15 salesperson license under the authority of Section 10156.5 of the Business and Professions  
16 Code.

17 I agree that by signing this Stipulation and Waiver, the conditions, limitations,  
18 and restrictions imposed on my restricted license, identified below, may be removed only by  
19 filing a Petition for Removal of Restrictions ("petition") with the Real Estate Commissioner,  
20 and that my petition must follow the procedures set forth in Government Code Section 11522.

21 I further understand that the restricted license issued to me shall be subject to all  
22 of the provisions of Section 10156.7 of the Business and Professions Code and to the following  
23 limitations, conditions, and restrictions imposed under authority of Section 10156.6 of the  
24 Business and Professions Code.

25 By reason of the foregoing and solely for the purpose of settlement of the  
26 Statement of Issues without further administrative proceedings, it is stipulated and agreed that  
27 the Commissioner shall adopt the following Order:

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ORDER

Respondent's application for a real estate 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 conditions, limitations, and restrictions imposed on the restricted salesperson license issued to Respondent, identified below, may be removed only by filing a Petition for Removal of Restrictions ("petition") with the Real Estate Commissioner, and the petition must follow the procedures set forth in Government Code Section 11522.

The restricted salesperson 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 the Business and Professions Code:

1. The license shall not confer any property right in the privileges to be exercised including the right of renewal, 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 petition 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 (2) years have elapsed from the date of issuance of the restricted

1 license to Respondent. Respondent shall not be eligible to apply for any  
2 unrestricted licenses until all restrictions attaching to the license have  
3 been removed.


4 3. With the application for license, or with the application for transfer to a  
5 new employing broker, Respondent shall submit a statement signed by  
6 the prospective employing broker on a form approved by the Bureau of  
7 Real Estate wherein the employing broker shall certify as follows:

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

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

14 4. Respondent shall notify the Commissioner in writing within 72 hours of  
15 any arrest by sending a certified letter to the Commissioner at the Bureau  
16 of Real Estate, Post Office Box 137013, Sacramento, CA 95813-7013.  
17 The letter shall set forth the date of Respondent's arrest, the crime for  
18 which Respondent was arrested and the name and address of the arresting  
19 law enforcement agency. Respondent's failure to timely file written  
20 notice shall constitute an independent violation of the terms of the  
21 restricted license and shall be grounds for the suspension or revocation of  
22 that license.

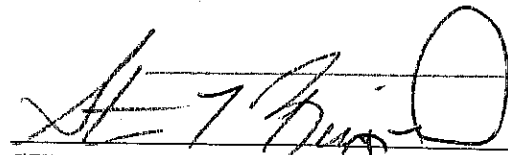
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24 DATED: 4-20-2017

  
\_\_\_\_\_  
Steve Chu, Counsel  
Bureau of Real Estate

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1 I have read the Stipulation and Waiver and its terms are agreeable and  
2 acceptable to me. I understand that I am waiving my rights given to me by the California  
3 Administrative Procedure Act (including but not limited to Section 11506, 11508, 11509, and  
4 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those  
5 rights, including the right to seek reconsideration and the right to seek judicial review of the  
6 Commissioner's Decision and Order by way of a writ of mandate. I can signify acceptance and  
7 approval of the terms and conditions of this Stipulation and Waiver by mailing the original  
8 signed Stipulation and Waiver to: Steve Chu, Bureau of Real Estate, 320 West 4th Street,  
9 Suite 350, Los Angeles, California 90013-1105.

10  
11 DATED: 4/10/17

  
12 STEVEN THOMAS BUGIEL  
13 Respondent

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1 I have read the Statement of Issues filed herein, the Proposed Decision of the  
2 Administrative Law Judge dated March 1, 2017, and the foregoing Stipulation and Waiver  
3 signed by Respondent. I am satisfied that it will not be inimical to the public interest to issue a  
4 restricted salesperson license to Respondent.

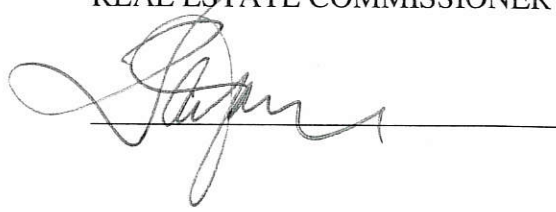
5 Therefore, IT IS HEREBY ORDERED that the application for real estate  
6 salesperson license of Respondent be denied and a restricted real estate salesperson license be  
7 issued to Respondent if Respondent has otherwise fulfilled all of the statutory requirements for  
8 licensure. The restricted license shall be limited, conditioned and restricted as specified in the  
9 foregoing Stipulation and Waiver.

10 This Order shall become effective at 12 o'clock noon on JUN - 7 2017

11 IT IS SO ORDERED

5/12/2017

12 WAYNE S. BELL  
13 REAL ESTATE COMMISSIONER

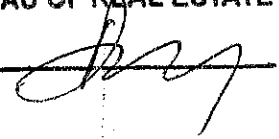
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BUREAU OF REAL ESTATE

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Application of	)	CalBRE No. H-4784 SD
	)	
STEVEN THOMAS BUGIEL,	)	OAH No. 2016060616
	)	
Respondent.	)	

NOTICE

TO: STEVEN THOMAS BUGIEL, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated March 1, 2017, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated March 1, 2017, 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 Thursday, January 19, 2017, 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 Thursday, January 19, 2017, at the Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for good





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

In the Matter of the Application of:

STEVEN THOMAS BUGIEL,

Respondent.

Case No. H-04784 SD

OAH No. 2016060616

**PROPOSED DECISION**

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 19, 2017, in San Diego, California.

Real Estate Counsel Steve Chu represented complainant, Veronica Kilpatrick, Supervising Special Investigator, Bureau of Real Estate, Department of Consumer Affairs, State of California (bureau).

Respondent Steven Thomas Bugiel represented himself.

The record remained open until February 9, 2017, to allow respondent to submit additional documents and complainant to submit legal briefing on an evidentiary issue. No additional documents were received from respondent. Complainant's brief was received and marked as Exhibit 9.

The matter was submitted on February 9, 2017.

**FACTUAL FINDINGS**

*Application for a Real Estate Salesperson License*

1. On November 2, 2014, respondent signed and submitted to the bureau an application to become a real estate salesperson.

2. In his application, respondent checked the box "Yes" in answer to Part D, Question No. 1, which asked "HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF THE LAW? ALL STATE AND FEDERAL MISDEMEANOR AND FELONY CONVICTIONS . . . MUST BE DISCLOSED. **CONVICTIONS EXPUNGED**

**UNDER PENAL CODE SECTION 1203.4 OR A SIMILAR STATUTE MUST STILL BE DISCLOSED. . . .”** (Capitalization in original.) (Emphasis Added.)

Respondent also checked the box “Yes” in response to Part D, Question No. 7, which asked “HAVE YOU EVER PLED GUILTY TO OR ENTERED A PLEA OF NOLO CONTENDERE OR A NO CONTEST PLEA TO ANY VIOLATION OF LAW IN A STATE, MILITARY OR FEDERAL COURT? . . .” (Capitalization in original.)

The application contained a definition of “convicted” and provided that, “All convictions must be disclosed, no matter how long ago they occurred, even if the plea or verdict was set aside, the conviction dismissed or expunged, or you have been pardoned.”

3. In the section of the application where respondent was to describe the conviction he sustained, respondent disclosed he was convicted of a misdemeanor offense in violation of former Business and Profession Code section 4140.<sup>1</sup> Business and Professions Code section 4140 prohibited the possession of a hypodermic needle or syringe except when acquired by prescription from a medical doctor. In his application, respondent represented there was no disposition of this offense. He did not list any other criminal convictions. He stated he “maintain[ed] a sobriety date since 5/5/01.”

4. In the application, respondent also answered “Yes” to a question that asked if he had ever had a business or professional license denied, suspended or revoked. Respondent explained he had been “denied a Home Improvement Sales License due to info on my background check that has since that time been removed.”

**RESPONSES TO THE BOARD’S INQUIRIES**

5. On April 24, 2015, apparently in response to a request from the bureau, respondent completed a “Confidential – Interview Information Statement” (“Interview Statement”) and a “Conviction Detail Report” (“Conviction Report”). In the Conviction Report, respondent stated he pled guilty to, and was convicted of, misdemeanor Grand Theft in violation of Penal Code section 487, subdivision (a). The date of conviction was May 15, 2001.

Respondent attached a two-page letter to the Conviction Report and Interview Statement in which he explained his history of drug use, convictions and rehabilitation. He stated that in or around 2000, his wife took his ten year-old daughter and all the money in their bank account and left him. Respondent was “devastated.” He had nowhere to go and rented a room from “an elderly lady in the neighborhood.” Shortly thereafter, respondent broke his arm and required surgery. He was provided “significant amounts” of pain killers

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<sup>1</sup> Section 4140 was repealed in 2011 and its substance was added to the Health and Safety Code.

which he took while drinking alcohol. He became addicted and sold drugs to help support his addiction.

Respondent wrote police "showed up" with a search warrant, arrested him, and charged him with selling narcotics and possession of drugs. He said, while he was in custody on the drug charges, the police found items in his room that had been reported stolen by his landlady, and he was charged with grand theft.

While in custody, respondent participated in a recovery program called "First Choice," that changed his outlook and motivated him to change his life. Respondent said he had been clean and sober since May 5, 2001. After serving four months and twenty days in custody, respondent moved away from the area where he lived, and he moved into "Crossroads," a men's sober living home in San Clemente. After six months in Crossroads, respondent became the house manager, and he worked there for an additional year helping other addicts and alcoholics in their recovery programs.

Respondent then moved to Oceanside where he "became a founding member on the Board of Directors of the Fuller Center for Housing in San Diego – a way [he] could continue to help others while working [his] recovery program and staying clean." He stated he attended AA regularly, and he helped cook and clean a soup kitchen in Carlsbad twice a month.

Respondent had a second daughter in 2005. He stated he had full custody of his daughter while her mother remained in rehabilitation. His daughter's step-father assisted with finances as respondent stated he is "for all intents and purposes destitute." Respondent stated it was difficult for him to obtain and retain employment because he drove 20 minutes each way to bring his younger daughter to private school and pick her up. He sought to obtain a real estate salesperson license because real estate sales would provide a way to support his daughter and a more flexible schedule. He stated he had a "wonderful" relationship with his older daughter.

Respondent asserted he did not intentionally fail to disclose his conviction for burglary, but he was "detoxing" when he signed the plea agreement, his memory was "hazy," and "it was, of course, 14 years ago." Respondent stated this conviction was expunged, and he was advised he was not required to disclose that conviction on "job applications." He said 2001 convictions for driving with a suspended license and failure to appear had not yet been expunged, but his memory about them was hazy. He asserted he now understood he was required to disclose all of his convictions on his application.

In the Interview Sheet, respondent wrote that from 2008 to 2013/2014, he worked as a "self-employed . . . construction consultant." He said he had not worked since then as he had full custody of his younger daughter.

## STATEMENT OF ISSUES

6. On March 18, 2016, complainant signed the Statement of Issues in Case No. H-04784 SD in her official capacity. The Statement of Issues sought an order denying the issuance of a real estate salesperson license to respondent because he was convicted of the crime of grand theft and he failed to disclose that conviction on his application.

### *2001 Conviction for Grand Theft*

7. On October 19, 2000, officers from the Santa Ana Police Department went to the home in which respondent was renting a room to take a report of stolen property from the homeowner.<sup>2</sup> Respondent's landlady, Darcie Burjan, reported she had been on vacation in Hungry from May through October 2000, and when she returned, she discovered several items were missing from her home. Ms. Burjan, who knew respondent before he rented a room in her home, began to suspect respondent or one of his friends had taken the items.

The police interviewed respondent who stated he had no idea how or when the reported items were taken. He did not suspect any of his guests who visited him at the home. He stated he forgot to close the garage door on occasion and suggested perhaps that is how the thefts occurred.

8. In a supplemental report dated January 30, 2001, police officer Joe Rivas reported that on January 12, 2001, he received a telephone call from a Buena Park police detective who said she had served a search warrant at Ms. Burjan's home and arrested respondent on drug charges. She became aware that Ms. Burjan had reported that respondent might be involved in the theft of property from Ms. Burjan's home. In a subsequent interview, Ms. Burjan told Officer Rivas she found a camcorder she had reported as stolen in respondent's room.

9. On February 21, 2001, a complaint alleging grand theft in violation of Penal Code section 487, subdivision (a), was filed against respondent.

10. On May 15, 2001, in the Superior Court of California, County of Orange, respondent pled guilty to, and was convicted of, grand theft, a misdemeanor, in violation of Penal Code section 487, subdivision (a). On his guilty plea form, respondent admitted that, "On November 10, 2000, in O.C., [he] willfully & unlawfully stole property from another of a value exceeding \$400." As a result of his conviction, the court placed respondent on three years of informal probation with certain terms and conditions, including that he pay a \$100 fine, pay restitution in an amount to be determined, and serve 30 days in custody. The time in custody was to run consecutively with the time he was serving on drug charges. According to respondent, he was in custody and charged with possession of drugs and drug

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<sup>2</sup> The law enforcement reports were received under *Lake v. Reed* (1997) 16 Cal.4th 448.

paraphernalia when he pled guilty to the grand theft charges. He said he was “still coming out of the haze of drug addiction” when he signed the guilty plea.

11. On June 24, 2013, respondent filed a “Petition for Relief Under Penal Code § 1204.4, §1203.4a.” On July 29, 2013, the Court granted respondent’s request, ordered respondent’s plea set aside and vacated, entered a plea of not guilty, and dismissed the grand theft case in its entirety. The Court’s order specifically advised that, “Dismissal of the conviction does *not* relieve [respondent] of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for . . . licensure by any state or local agency . . . .”<sup>3</sup> (Emphasis in original.)

#### *Contractor State Licensing Board Actions<sup>4</sup>*

##### 2010 VIOLATION WARNING LETTER

12. In 2009, respondent worked for a home remodeling company called “Measure of Excellence.” In or around August 2010, a homeowner filed a complaint with the California Contractors State Licensing Board (CSLB) against Thomas Bacon, owner of Measure of Excellence, in which he alleged Measure of Excellence abandoned a kitchen remodel project.<sup>5</sup> A companion case was filed against respondent for acting as a Home Improvement Salesperson without having the required license. Respondent told the CSLB he had completed an application for the license and given Mr. Bacon \$50 to file the application; he did not know why the application had not been filed. Respondent stated he no longer worked for Mr. Bacon. CSLB records showed only a pending application for a license in respondent’s name, which respondent indicated was for a license to work with Nucote, a different company.

On August 11, 2010, the CSLB issued a Violation Warning to respondent for failing to have the required “Home Improvement Registration to sell for Measure of Excellence” in violation of Business and Professions Code section 7153.

##### 2013 CITATION

13. In 2012, respondent worked for a home improvement company called “Hayes Construction.” In or around July 2012, a homeowner, NBB, filed a complaint with CSLB

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<sup>3</sup> Also on July 29, 2013, respondent was granted relief under Penal Code section 1203.4 for his drug convictions. Although his petition to reduce Count 1 to a misdemeanor was denied, his motion to dismiss was granted as to Counts 1, 2, 3, and 4.

<sup>4</sup> Respondent’s involvement with the CSLB was not charged as a cause to deny respondent’s license.

<sup>5</sup> The investigation reports were received as public employee reports under Evidence Code section 1280.

against Hayes Construction in which she alleged work she contracted and paid for was not performed or completed. A companion case was filed against respondent for acting as a Home Improvement Salesperson without having the required license.

The agreement to perform work for NBB was contained in three contracts executed in January 2012. In two of the contracts, respondent's name was handwritten in print on the contract as the "representative." In one of the contracts respondent's name was handwritten in script. In each of the three contracts, a line was drawn across the blank next to "registration #." None of the contracts contained a signature in the blank for "approved (Contractor)." The contracts were signed only by NBB. Four checks for deposits and partial payments were made payable to "Hayes Construction."

In a telephone interview, respondent told a CSLB investigator that he met the NBB at an event at Direct Buy where he was manning a booth for Hayes Construction. He stated he was setting up appointments for the company. Several months after the event, NBB contacted Hayes Construction to obtain a bid on a project and requested respondent.

Respondent stated he had completed the application for a Home Improvement Registration, and he saw Hayes Construction's accountant put the application and a check in an envelope to send to the CSLB. When NBB requested that respondent give her a bid on behalf of Hayes Construction, respondent was waiting for his registration number from the CSLB; he had no explanation for why the CSLB did not get his application.

Respondent told the investigator he went to NBB's home, and he "did sign a contract with [NBB] because [he] was broke and it was enticing to [him]." Respondent said that written addendums for the project were written by Mr. Hayes, and respondent gave them to NBB.

On April 15, 2013, an Enforcement Representative with the CSLB issued a citation to Respondent alleging that respondent was "[e]ngaged as a salesman [without] being registered" and assessing a fine of \$750.

#### *Respondent's Testimony*

14. Respondent's testimony was substantially consistent with his letter response to the board. He stated that, in 2001, he was guilty of "all and more than what [he] was convicted for." He changed his life when he became a father, and he is dedicated to maintaining his sobriety for them. He has been open and honest with his children about his past even though it is difficult. Respondent's youngest daughter's mother, with whom he is no longer in a relationship, has been unable to maintain her sobriety and has been in and out of rehabilitation over the past four years. Respondent has full custody of his youngest child. His older daughter is an adult and has children.

15. Respondent denied intentionally stealing items from Ms. Burjan. He rented a room from her and some of her items may have been in his room, but they were still in her

house. Respondent admitted to being under a drug haze around this time, and he accepted responsibility for the conviction, now expunged, on his record. He said if Ms. Burjan said he stole things from her, he "has to believe her."

16. After his convictions were expunged, respondent's counsel told him he was not required to list the expunged convictions when applying for jobs. Respondent assumed the application for a license was the same as applying for a job. He disclosed his conviction for unlawful possession of a syringe on his application for a license because he believed it had not been expunged and, therefore, he was required to disclose it.

17. Respondent does not believe he performed work for which a CSLB license was required. When he worked for Measure of Excellence, he was an independent contractor construction consultant and helped contractors' customers pick out materials, such as granite and cabinets, and helped with the design of their projects. He engaged in this type of work, through different contractors, from 2008 to 2013.

Respondent interpreted the CSLB's 2010 letter as advising him that individuals were required to have a license before they engaged in home improvement sales and that the CSLB had not received his registration application. He did not understand from the letter that he was prohibited from performing the services he was engaged in. He understood he was not authorized to go to a customer's home and sign a contract without a Home Improvement license, and he asserted he did not do that after he received the August 2010 letter.

18. As relates to NBB's project, respondent testified he was a member of Direct Buy, a membership buying service, for two years. He got to know Direct Buy's owner, and he helped contractors on the showroom floor during home improvement fairs at Direct Buy. He would use his expertise to advise homeowners about materials for various projects, such as roofing, cabinetry and similar.

Respondent acknowledged he put his name on the bottom of three documents related to the NBB project. He denied the documents were contracts to perform work and asserted they were only estimates. He advised NBB that she would be required to place a deposit with Hayes Construction, but he denied he received any of the checks from NBB.

19. Respondent testified he was denied a license from the CSLB in or around 2005 or 2006.

20. Respondent is active in his church and in the Knights of Columbus. He believes he is free from his former life as a drug abuser and he will never return to it. Fellow Knights of Columbus members told him he would be good at selling real estate. Respondent believes real estate sales would be a good career for him to explore, particularly since it would allow a more flexible schedule while caring for his daughter.

In addition to volunteering in the soup kitchen, respondent volunteers at his church as a sober coach and works with the youth groups. Respondent attends Alcoholics Anonymous meetings once a month.

*Character Evidence on Behalf of Respondent*

21. M.P. McCarthy, M.D., F.A.C.S authored a letter dated October 16, 2016. Dr. McCarthy stated he was a retired navy surgeon and professor emeritus of surgery at the University of California, San Diego, Medical School. Dr. McCarthy has worked with respondent at St. Patrick's Soup Kitchen. He stated respondent "is one of [his] most dependable managers. [Respondent] is in charge of the entire production of one of our Tuesday night soup suppers." Dr. McCarthy said he was aware of respondent's history of drug abuse and nonetheless has "absolutely no reservations whatsoever with regards to his personality or integrity . . . ."

22. By letter dated January 17, 2017, attorney Aaron C. Smith wrote that he has represented respondent in his child custody action since 2013. Mr. Smith stated that in the very emotional and contentious arena of child custody cases, respondent "handled himself with distinction." Mr. Smith said respondent was candid with him about financial and personal matters even when the information was not advantageous to him. Mr. Smith stated respondent was truthful in all of his representations to Mr. Smith such that Mr. Smith was confident in presenting information supplied by respondent to the court as true.

*Hearsay as Impeachment Evidence*

23. Complainant offered in evidence certified copies of documents maintained by the CSLB relating to NBB's project. The packet of documents was received under the public employee exception in Evidence Code section 1280, and as administrative hearsay under Government Code section 11513. Included in the packet of documents was a summary of an in-person interview of NBB by a CSLB investigator. Complainant sought to have statements reported to have been made by NBB to the investigator received as non-hearsay impeachment evidence. The statements were offered to contradict respondent's testimony that he did not receive checks from NBB. Neither the CSLB investigator nor NBB testified at the hearing. The record in this matter remained open to allow complainant to brief this issue.

HEARSAY EVIDENCE

24. "Hearsay evidence" is evidence of a statement that was made other than by a witness while testifying at the hearing that is offered to prove the truth of the matter stated. Unless as provided by law, hearsay evidence is inadmissible. (Evid. Code, § 1200.) Although California courts may create evidentiary exceptions to the hearsay rule, they may not do so if the created exception conflicts with statutes. "[A]n exception to the hearsay rule is not valid unless the class of hearsay evidence proposed for admission is inherently reliable." (*In re Cindy L.* (1997) 17 Cal.4th 15, 28.)



The objection to hearsay evidence is that the witness usually has not testified under oath, the fact finder is unable to see and hear the manner in which the out-of-court declarant provides the hearsay statement, the context in which hearsay statements were provided cannot be ascertained, the fact finder is unable to assess the credibility of the hearsay declarant, and the hearsay declarant cannot be confronted and cross-examined by the accused.

#### HEARSAY EVIDENCE IN ADMINISTRATIVE HEARINGS

25. Government Code section 11513 controls the manner in which evidence, including hearsay evidence, is to be received and considered in administrative proceedings. Government Code section 11513, subdivision (d) provides:

(d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration. . . .

A police officer's report, even if unsworn, constitutes the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Where a police officer's report contains the admission of a party, the party's admission is sufficient to support a finding of fact because a party admission is excepted from the hearsay rule under Evidence Code section 1220. And, where a police officer's report sets forth the percipient observations of the officer preparing the report, that portion of the report is admissible to support a factual finding because that portion of the report is excepted from the hearsay rule under the public employee records exception set forth in Evidence Code section 1280. But, the statements of others who are under no legal duty to report any fact, including the victim of a crime, are not excepted from the hearsay rule and those hearsay statements may only supplement or explain another fact that is properly established. (*Lake v. Reed* (1997) 16 Cal.4th 448, 461.)

#### PUBLIC EMPLOYEE EXCEPTION TO THE HEARSAY RULE

26. Evidence Code section 1280 provides that evidence of a writing made by a public employee is not made inadmissible by the hearsay rule when (a) the writing was made by a public employee in within the scope of his or her duty; (b) the writing was made at or near the time of the act or event; and (c) the sources of information and method of time of preparation were such as to indicate trustworthiness. The public record exception was not devised to allow unreliable hearsay to be introduced merely because it was reduced to writing in a book of records. The exception "merely provides a method of proof of an *admissible* 'act, condition or event.' It does not make the record admissible when oral testimony of the same facts would be inadmissible." (*McGowan v. Los Angeles* (1950) 100 Cal.App.2d 386, 392 [Emphasis in original].)

Under the public employee exception to the hearsay rule, only a writing that records "an act, condition or event" is admissible. A hearsay statement made to the public employee or a conclusion that has been drawn by the person making a report is neither an act, condition or event. Where neither the writer of the report or the person who uttered the recorded statement testifies at the hearing, the circumstances, source of information and method and time of preparation cannot be determined.

#### COMPLAINANT'S POSITION

27. Respondent testified he did not receive payment for work to be performed by Hayes Construction from NBB. The CSLB investigator wrote in her report that NBB said she gave checks for the work to respondent. Neither the investigator nor NBB testified at the hearing.

Complainant cited *People v. Archer* (2000) 82 Cal.App.4th 1380 (*Archer*), a criminal case, and *San Francisco v. City Inv. Corp.* (1971) 15 Cal.App.3d 1031, 1038 (*City Inv. Corp.*), a civil case, as support for the position that hearsay evidence introduced to impeach a witness constitutes direct evidence, even if that evidence would not otherwise be admissible as direct evidence. Complainant asserted this principle applies because the "impeachment evidence is not introduced to prove the truth of the statement but to impeach the credibility of the witness."

In *Archer*, a witness testified at trial that the defendant admitted in a telephone conversation that he murdered the victim. A third party, who was with the defendant while he was on the telephone with the witness and heard the defendant's side of the conversation, was not permitted at trial to testify that she heard the defendant deny he murdered the victim. The court of appeal determined that excluding the third party's testimony was error. The court found that the third party's testimony regarding the defendant's side of the telephone conversation "was not being offered for the truth of the matter-that appellant was not involved with the murder. It was being offered for the limited purpose of impeaching [the witness's] testimony as to what [defendant] said in the conversation. It was not hearsay (Evid. Code, § 1200), and its exclusion was improper." (*Archer, supra*. 82 Cal.App.4th at p. 1391.)

In *City Inv. Corp.*, a building owner's agent testified that the owner believed he had an agreement with the city to maintain a building in a vacant and barricaded state for an indefinite period of time. Letters from the city to the building owner confirming that the agreement was "a temporary stopgap measure" and that the city expected the owner to begin rehabilitating the property were introduced in evidence to impeach the agent's testimony. The court found that, because the letter was not offered to prove the truth of its contents – the terms of the agreement – it was not hearsay and was properly received in evidence.

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## NBB'S STATEMENTS ARE NOT ADMISSIBLE

28. *Archer and City Inv. Corp.* are not controlling in the present case. Here, neither the investigator nor NBB testified at the hearing. Further, the statements sought to be introduced have no evidentiary relevance or value if they were not intended to prove the truth of the matter asserted – that NBB gave payments to respondent. Unless NBB's statements are accepted as the truth, they have no evidentiary purpose. Here, the alleged statements, contained in an investigator's report; are double hearsay and barred from admission unless they fall into an exception to the hearsay rule.

NBB's statements, as reported by the investigator, did not call respondent's credibility into question and did not constitute impeachment evidence. Rather than for impeachment purposes, NBB's statements were offered to contradict or disprove respondent's testimony. NBB's statements do not supplement or explain admissible evidence and may not be admitted as administrative hearsay. NBB was not present to cross-examine, clarify or explain her statements. It was not possible to evaluate NBB's credibility or determine whether the circumstances under which she made the comments attributed to her indicated trustworthiness or reliability. NBB's statements were not admissible as direct evidence.

## 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:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(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 that a license may be denied when an applicant has "[d]one 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 480, subdivision (d), provides:

A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

5. Business and Professions Code section 482 requires the Board to “develop criteria to evaluate the rehabilitation of a person” when considering the denial of a license under section 480. Section 482 also requires the Board to “take into account all competent evidence of rehabilitation furnished by the applicant or licensee.”

6. Business and Professions Code section 10177, subdivision (a), provides that the bureau may deny the issuance of a license to an applicant who has attempted to obtain a real estate license “by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.”

7. 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 . . . .”

8. Business and Professions Code section 10177, subdivision (j), that the bureau can deny the issuance of a license to an applicant who has “[e]ngaged in any other conduct, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealing.”

9. Business and Professions Code section 10156.5 provides:

The commissioner may issue a restricted license to a person:

(a) Who is or has been licensed under this chapter and who has been found by the commissioner after a hearing to have violated provisions of Division 4 of this code where such violation would justify the suspension or revocation of the license.

(b) Who is applying for a license under this chapter, who has met the examination and experience requirements, but who has been found by the commissioner after a hearing to have failed to have made a satisfactory showing that he meets all of the other requirements for the license applied for, where such failure would justify the denial of the license applied for.

10. California Code of Regulations, title 10, section 2910, subdivision (a)(8), provides:

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 Bureau within the meaning of Sections 480 and 490 of the Code if it involves:

[¶] . . . [¶]

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

11. 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.

(e) Expungement of criminal convictions resulting from immoral or antisocial acts.

[¶] . . . [¶]

(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 conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.

(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*

12. Cause exists to deny respondent's application for a real estate salesperson license pursuant to Business & Professions Code sections 475, subdivision (a)(3), 480, subdivision (a)(2), and 10177, subdivision (j), because he was convicted of a grand theft, 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 law-abiding and trustworthy, have integrity, and use good judgment in completing real estate transactions. Respondent, while his judgment was clouded by illegal drugs, took advantage of an "elderly lady" who was good enough to rent him a room in her home when he had nowhere to go, by stealing her property. Respondent's conviction is substantially related to the qualifications, functions, and duties of a real estate licensee.

13. Cause exists to deny respondent's application for a real estate salesperson license pursuant to Business & Professions Code sections 475, subdivision (a)(1), 480 subdivision (d), and 10177, subdivision (a), because he made a material misstatement of fact in his application for a license. Respondent failed to disclose his conviction for grand theft, a material fact required to be disclosed in the application.

### *Rehabilitation and Level of Discipline*

14. The purpose of an administrative proceeding seeking to deny 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.

15. 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.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) The mere expression of remorse does not

demonstrate rehabilitation. A truer indication of rehabilitation will be presented if an applicant can demonstrate by sustained conduct over an extended period of time that he or she is rehabilitated and fit to hold a license. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.) The evidentiary significance of 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.)

16. It has been over 15 years since respondent's most recent criminal conviction. He accepted full responsibility for his misconduct, including misconduct that was not a basis for the bureau's determination to deny his application for a license. Although respondent admitted to a history of drug abuse, the bureau did not seek to deny him a license on that basis. The bureau sought to deny his application for a license based only upon his conviction of grand theft in 2001 and his failure to disclose that conviction on his application. By his own admission, the theft occurred while he was under the influence of illegal drugs. In fact, respondent disclosed his conviction for unlawful possession of a syringe on his application. That conviction occurred only a few weeks before his conviction for grand theft, also over 15 years ago.

The evidence proved by a preponderance of the evidence that respondent has been clean and sober since May 2001. No evidence was presented that respondent had any contact with law enforcement or suffered any relapses after May 2001. Respondent successfully completed probation for his theft conviction, made restitution to his victim, and the conviction has been expunged.

Respondent has two daughters. He has a good relationship with his older adult daughter and his grandchildren, and he has sole custody of his younger daughter. He provides transportation to and from his younger daughter's private school that is approximately 20 minutes from their home. Respondent provides a stable home life for his daughter. He is active in her school activities and volunteers with his church. Respondent is motivated to make a better life for himself and his daughter. He has a support system in his community, including continuing to attend AA meetings, should he need assistance and/or guidance.

17. Respondent erred when he failed to disclose his conviction for grand theft on his application for a real estate salespersons license. The clear language of the court's order expunging his conviction and that of the application mandated disclosure. His explanation, one that is frequently heard as an excuse for non-disclosure, was that he was advised he was not required to disclose expunged convictions. This explanation raises questions about respondent's ability to read, comprehend, and comply with written directions. In mitigation, however, the evidence was persuasive that respondent honestly, although incorrectly, believed the expungement operated to relieve him of the obligation to disclose those convictions, and the criminal court records relating to respondent could be confusing to a lay person. The superior court denied respondent's request to have his conviction for possession of a syringe reduced to a misdemeanor; however, the court, nonetheless granted respondent's



request to expunge all of his convictions, including the one involving possession of a syringe. Because respondent misread the court records, he believed his syringe possession conviction had not been expunged and disclosed it on his application. This evidence supports a finding that respondent was not attempting to use expungement as a way to hide his criminal history; rather, he had an honestly held, although erroneous, belief he was justified not to disclose his other convictions.

18. Evidence that respondent received a warning and a citation from the CSLB was not pled in the Statement of Issues as a basis to deny respondent a real estate salesperson license. Other than the fact that a warning and a citation issued, no evidence upon which to make a finding was produced, except that offered by respondent. The warning and citation respondent received was from a different agency and is not relevant to a finding of whether respondent understands and can comply with the rules, regulations and obligations governing real estate sales persons. Respondent has taken and passed all the necessary prerequisite courses in preparation of applying for a real estate license.

19. In consideration of the totality of the evidence, it is determined that issuing respondent a restricted real estate salesperson license would not be in contravention of the public interest.

#### ORDER

Respondent Steven Thomas Bugiel'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 if respondent has paid all required fees and has complied with all other requirements to obtain a restricted real estate salesperson license. 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:

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) 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.

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. 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: March 1, 2017

DocuSigned by:  
*Susan J. Boyle*  
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SUSAN J. BOYLE  
Administrative Law Judge  
Office of Administrative Hearings