

JUN 22 2022

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DEPT. OF REAL ESTATE
By R. P. Sade

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

JACK EVAN PROBER,

No. H-04815 SD

Respondent.

ORDER DENYING REINSTATEMENT OF LICENSE
BUT GRANTING RIGHT TO A RESTRICTED LICENSE

On March 27, 2017, in Case No. H-04815 SD, a Decision was rendered revoking the real estate broker license of Respondent effective April 19, 2017.

On February 12, 2021, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and integrity than an applicant for first time licensure. The proof must be sufficient to overcome the prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

I have considered Respondent's petition and the evidence submitted in support thereof.

1 The Department has developed criteria in Section 2911 of Title 10, California
2 Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for
3 reinstatement of a license. Among the criteria relevant in this proceeding are:

4
5 **2911. Criteria for Rehabilitation**

6 *(a) (1) The time that has elapsed since commission of the acts(s) or offense(s):*

7 *(A) The passage of less than two years after the most recent criminal conviction*
8 *or act of the applicant that is a cause of action in the Bureau's Statement of Issues*
9 *against the applicant is inadequate to demonstrate rehabilitation.*

10 *(B) Notwithstanding subdivision (a)(1)(A), above, the two year period may be*
11 *increased based upon consideration of the following:*

12 *(i) The nature and severity of the crime(s) and/or act(s) committed by the*
13 *Applicant.*

14 On January 25, 2016, Respondent was convicted for a felony violation of 18
15 U.S.C. 371 (conspiracy to commit bank bribery). The sentencing for this crime
16 included 18 months in prison, a \$60,000 fine and \$396,530 in restitution. The
17 bribery scheme lasted from 2009 from 2013 and involved real estate mortgages.
18 Therefore, the crime was severe and directly related to the practice of real estate.

19 *(ii) The applicant's history of criminal convictions and/or license discipline*
20 *that are "substantially related" to the qualifications, functions, or duties of a real*
21 *estate licensee.*

22 On February 16, 2012, in Case No. H-4082 SD, Respondent's real estate broker
23 license was disciplined for violation of Business and Professions Code sections
24 10177(h), 10159.2 and 10177(d). Therefore, Respondent had a history of license
25 discipline prior to his revocation in Case No. H-04815 SD.

26 *(3) Expungement of criminal convictions.*

27 There is no evidence that Respondent's criminal conviction has been expunged.

Respondent has failed to demonstrate to my satisfaction that Respondent has
undergone sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted real
estate broker license.

I am satisfied, however, that it will not be against the public interest to issue a
restricted real estate broker license to Respondent.

1 A restricted real estate broker license shall be issued to Respondent pursuant to
2 Section 10156.5 of the Business and Professions Code, if Respondent satisfies the following
3 conditions prior to and as a condition of obtaining a restricted real estate broker license within
4 twelve (12) months from the effective date of this Order:

5 1. Respondent shall qualify for, take and pass the real estate broker license
6 examination.

7 2. Submittal of a completed application and payment of the fee for a real
8 estate broker license.

9 The restricted license issued to Respondent shall be subject to all of the provisions
10 of Section 10156.7 of the Business and Professions Code and to the following limitations,
11 conditions and restrictions imposed under authority of Section 10156.6 of that Code:

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

16 B. The restricted license issued to Respondent may be suspended prior to
17 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the
18 Commissioner that Respondent has violated provisions of the California Real Estate Law, the
19 Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to
20 the restricted license.

21 C. Respondent shall not be eligible to apply for the issuance of an
22 unrestricted real estate license nor the removal of any of the limitations, conditions or
23 restrictions of a restricted license until two (2) years have elapsed from the date of the issuance
24 of the restricted license to Respondent.

25 D. Respondent shall notify the Commissioner in writing within 72 hours of
26 any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post
27 Office Box 137007, Sacramento, CA 95813-7007. The letter shall set forth the date of

Respondent's arrest, the crime for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

If Respondent fails to meet the above requirements, and those of sections 10150.6, 10153 and 10153.2 of the California Business & Professions Code, to qualify for the issuance of a real estate broker license, Respondent may be issued a real estate salesperson license if Respondent qualifies for, takes and passes the examination for a real estate salesperson license, submits a completed application and pays the required fee for a salesperson license within the 12 month period following the date of this order, and meets all of the other requirements for issuance of a real estate salesperson license, including but not limited to section 10151 of the California Business & Professions Code.

This Order shall become effective at 12 o'clock noon on JUL 12 2022.

IT IS SO ORDERED 5.27.22

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley