

FILED

FEB 13 2019

DEPT. OF REAL ESTATE

By

Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105
Telephone: (213) 576-6982

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of) DRE No. H-05016 SD
EDGAR GILBERT,) OAH No. 2018090733
Respondent.) STIPULATION AND WAIVER:
) DECISION AFTER REJECTION

It is hereby stipulated by and between Respondent EDGAR GILBERT
("Respondent") and the Complainant, acting by and through Diane Lee, Counsel for the
Department of Real Estate, as follows for the purpose of settling and disposing of the Statement
of Issues filed on August 13, 2018, in this matter:

1. Respondent hereby affirms that he applied to the Department of Real Estate
("Department") for a real estate salesperson license, and that to the best of his knowledge
Respondent GILBERT has satisfied all of the statutory requirements for the issuance of the
license, including, but not limited to, the payment of the fee therefor.

2. Respondent acknowledges that Respondent received and read the Statement
of Issues and Statement to Respondent filed by the Department of Real Estate on or about
August 13, 2018, in connection with Respondent's application for a real estate salesperson

1 license. Respondent understands that by filing the Statement of Issues in this matter the
2 Commissioner is shifting the burden to Respondent to make a satisfactory showing that
3 Respondent meets all the requirements for issuance of a real estate salesperson license.
4 Respondent further understands that by entering into this Stipulation and Waiver, Respondent
5 will be stipulating that the Commissioner has found that Respondent has failed to make such a
6 showing, thereby justifying the denial of the issuance to Respondent of an unrestricted real
7 estate salesperson license.

8 3. Respondent hereby admits that the allegations in the Statement of Issues filed against
9 Respondent are true and correct, and request that the Commissioner in his discretion issue a
10 restricted real estate salesperson license to me under the authority of California Business and
11 Professions Code section 10156.5.

12 4. Respondent agrees that by signing this Stipulation and Waiver, the conditions,
13 limitations, and restrictions imposed on my restricted license, identified below, may be removed
14 only by filing a Petition for Removal of Restrictions ("Petition") with the Commissioner, and
15 that the Petition must follow the procedures set forth in California Government Code section
16 11522.

17 5. Respondent further understands that the restricted license issued to Respondent shall
18 be subject to all the provisions of California Business and Professions Code section 10156.7 and
19 to the following conditions, limitations, and restrictions imposed under authority of California
20 Business and Professions Code section 10156.6:

21 1. The restricted license shall not confer any property right in the privileges to be
22 exercised including the right of renewal, and the Real Estate Commissioner may
23 by appropriate order suspend the right to exercise any privileges granted under
24 the restricted license in the event of:

25 a. Respondent's conviction (including a plea of nolo contendere) of a crime
26 that bears a substantial relationship to Respondent's fitness or capacity as
27 a real estate licensee; or

1 b. The receipt of evidence that Respondent has violated provisions of the
2 California Real Estate Law, the Subdivided Lands Law, Regulations of
3 the Real Estate Commissioner, or conditions attaching to this restricted
4 license.

5 2. Respondent shall not be eligible to apply for the issuance of an unrestricted real
6 estate license nor the removal of any of the conditions, limitations, or restrictions
7 attaching to the restricted license until two (2) years have elapsed from the date
8 of issuance of the restricted license to Respondent. Respondent shall not be
9 eligible to apply for any unrestricted licenses until all restrictions attaching to the
10 license have been removed.

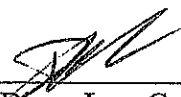
11 3. With the application for license or with the application for transfer to a new
12 employing broker, Respondent shall submit a statement signed by the prospective
13 employing broker on a form approved by the Department of Real Estate, such as
14 the Restricted Salesperson Change Application (RE 214A), wherein the
15 employing broker shall certify as follows:

- 16 a. That broker has read the Stipulation and Waiver which is the basis for the
17 issuance of the restricted license; and
18 b. That broker will carefully review all transaction documents prepared by
19 the restricted licensee and otherwise exercise close supervision over the
20 licensee's performance of acts for which a license is required.

21 4. Respondent shall notify the Real Estate Commissioner in writing within 72 hours
22 of any arrest by sending a certified letter to the Real Estate Commissioner at the
23 Department of Real Estate, Post Office Box 137013, Sacramento, CA 95813-
24 7013. The letter shall set forth the date of Respondent's arrest, the crime for
25 which Respondent was arrested, and the name and address of the arresting law
26 enforcement agency. Respondent's failure to timely file written notice shall
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1 constitute an independent violation of the terms of the restricted license and shall
2 be grounds for the suspension or revocation of that license.

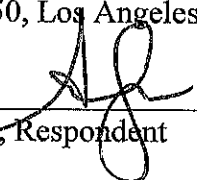
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4 DATED: 01/24/2019


Diane Lee, Counsel
Department of Real Estate

6
7 Respondent has read this Stipulation and Waiver, and its terms are understood by
8 Respondent and are agreeable and acceptable to Respondent. Respondent understands that
9 Respondent is waiving rights given to Respondent by the California Administrative Procedure
10 Act (including, but not limited to, California Government Code sections 11504, 11506, 11508,
11 11509, and 11513), and Respondent willingly, intelligently, and voluntarily waives those rights,
12 including, but not limited to, the right to a hearing on a Statement of Issues at which Respondent
13 would have the right to cross-examine witnesses against Respondent and to present evidence in
14 defense and mitigation of the charges.

15 Respondent shall send a hard copy of the original signed Stipulation and Waiver to
16 Diane Lee, Department of Real Estate, 320 W. 4th St., Ste. 350, Los Angeles, CA 90013-1105.

17 DATED: 01/18/19


Edgar Gilbert, Respondent

18
19 I have read the foregoing Stipulation and Waiver signed by Respondent. I am satisfied
20 that the hearing for the purpose of requiring further proof as to the honesty and truthfulness of
21 Respondent need not be called and that it will not be inimical to the public interest to issue a
22 restricted real estate salesperson license to Respondent.

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1 Therefore, IT IS HEREBY ORDERED that a restricted real estate salesperson license be
2 issued to Respondent Edgar Gilbert if Respondent has otherwise fulfilled all of the statutory
3 requirements for licensure. The restricted salesperson license shall be limited, conditioned, and
4 restricted as specified in the foregoing Stipulation and Waiver.

5 This Order is effective immediately.

6 IT IS SO ORDERED February 8, 2019.

7 DANIEL J. SANDRI
8 ACTING REAL ESTATE COMMISSIONER

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FILED

JAN 24 2019

DEPT. OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of) DRE No. H-05016 SD
EDGAR GILBERT,)
Respondent.) OAH No. 2018090733

NOTICE

TO: EDGAR GILBERT, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated December 18, 2018, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated December 18, 2018, 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 Monday, December 10, 2018, and any written argument hereafter submitted on behalf of respondent and complainant.

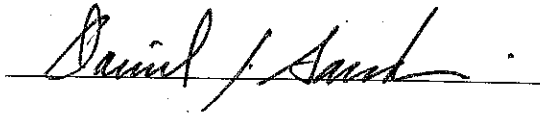
Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Monday, December 10, 2018, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good

1 cause shown.

2 Written argument of complainant to be considered by me must be submitted within
3 15 days after receipt of the argument of respondent at the Los Angeles Office of the Department of
4 Real Estate unless an extension of the time is granted for good cause shown.

5 DATED: January 9, 2019.

6 DANIEL J. SANDRI
7 ACTING REAL ESTATE COMMISSIONER

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

EDGAR GILBERT,

Respondent.

Case No. H-05016 SD

OAH No. 2018090733

PROPOSED DECISION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on December 10, 2018.

Diane Lee, Real Estate Counsel, represented complainant, Veronica Kilpatrick, Supervising Special Investigator, Department of Real Estate,¹ State of California (department).

Edgar Gilbert, respondent, represented himself.

The matter was submitted on December 10, 2018.²

FACTUAL FINDINGS

Jurisdiction

1. On August 24, 2017, respondent made application to the department for issuance of a real estate salesperson license. On November 15, 2017, the department notified respondent that he had successfully passed his real estate salesperson examination, but that due to his background, additional information was required.

¹ The Bureau of Real Estate became the Department of Real Estate on July 1, 2018.

² Confidential information was redacted from the documents by complainant's counsel at the time of their submission at hearing.

2. On July 31, 2018, complainant, in her official capacity, filed a statement of issues against respondent. The statement of issues alleges that respondent's application should be denied because of a substantially related conviction.

Respondent timely filed a notice of defense and this hearing ensued.

Respondent's Conviction

3. On or about November 21, 2011, in the United States District Court, Southern District of California, respondent was convicted on one count of violating Title 18, United States Code, section 1951(a), conspiracy to obstruct, delay and affect commerce and the movement of articles and commodities in commerce, by robbery and extortion, a felony.

4. Respondent's conviction arose in connection with an August 2010 conspiracy to commit a robbery involving a reported 100 kilograms of cocaine that were thought to be present at a cocaine "stash house."³ Respondent was one of nine persons involved in the conspiracy. Respondent was also one of five of these persons who were present at a sporting goods store when three Beretta model 92F style air guns were purchased; these firearms were apparently to be used in connection with the robbery. The robbery never took place because of the intervention of an undercover officer.⁴

Respondent was sentenced to 24 months in prison. On his release in May 2012, he was placed on supervised release for a term of three years. In addition to the standard conditions of supervision, special conditions imposed on respondent included that he not possess a firearm or other dangerous weapon; that he cooperate in the collection of a DNA sample; that he submit his person, residence, and vehicle to search and seizure; that he not enter the Republic of Mexico without written permission from the court or probation officer; and that he report to his probation officer all vehicles he owned or operated. In addition, "all right, title and interest" of respondent in several firearms, including the three Beretta model air guns, were forfeited.

On April 14, 2014, the court issued an order terminating respondent's supervised release.

³ The facts set forth in this paragraph are based on respondent's plea agreement and are thus admissible under the party admission exception to the hearsay rule, Evidence Code section 1220.

⁴ It also appears that there was no actual "stash house," and that instead the entire incident was a "sting" operation.

*Prehearing Statements*⁵

5. Respondent submitted three statements in support of his application for licensure.

In a letter dated December 7, 2018, Monica Vasquez, a licensed real estate salesperson, stated that she had met respondent in 2012, when he listed his home with the company where Ms. Vasquez was employed. Respondent was thereafter hired for in-house marketing and as a graphics designer. She added, "He has always worked well with others and he is highly respected in our real estate community." Ms. Vasquez considers respondent to be "very talented." She and respondent "established a dear friendship," and she trusts him to be in her home, where she has two young children. For the past year, respondent has been working as Ms. Vasquez's "executive assistant/marketing director." In that capacity he "helps me by organizing my day to day schedule and takes care of all my marketing." In addition, "[h]e is a man of integrity and a good citizen," he "has been a true blessing in my life," and he has "shown he can be trusted." She believes he has "learned his lesson and is a true example of how to turn a negative into a positive. If given his License I vouch for him and would volunteer to oversee his day to day activity."

In a letter dated December 1, 2018, Jahmai-Yen E. Adams stated that he has known respondent since 2014. Mr. Adams currently works as a Department of Defense contractor. Mr. Adams is respondent's partner, and he sees respondent daily. Mr. Adams referred to respondent as "a good person," who, with regard to his job, "is dependable to accomplish his tasks and use his known resources to help him accomplish his tasks." Mr. Adams stated, "I don't know exactly what happened that sent him to prison, but I can say with certainty that he is not that person that he was before prison." He believes that respondent "would be a good candidate for getting a real estate license," has "courage to face his peers that he works with," and has "a good support group within the realtor community and at home that will continue to support him and will report him if he does anything against the law."

In an undated letter submitted in support of his application, respondent stated that after his release from prison he enrolled in the Art Institute and "made it through." He recounted how he was hired to do graphic design by the real estate company with which he listed his home for sale. He referred a few old friends to the realtor, "where they were helped in their Real Estate purchase." Respondent "followed the transaction closely and I learned the satisfactory feeling of helping someone when they completed their home purchase."

Respondent stated that after he graduated from the Art Institute, he began working as a graphic design freelancer and in that capacity has had the opportunity to work with a

⁵ The prehearing statements of Ms. Vasquez and Mr. Adams are received as administrative hearsay pursuant to Government Code section 11513, subdivision (d). The prehearing statement of respondent is received as a party admission pursuant to Evidence Code section 1220.

number of realtors. About a year ago, he was hired by Ms. Vasquez as her executive assistant/marketing director. "I would say this is the most satisfactory job I ever had."

Respondent added the following:

Looking back to everything I've been through after my release since 2012 to today I can say that I have learned my lesson, that there's no shortcut in life to accomplish a goal and that we all deserve a second chance in life. It took me 4 years of dedication to accomplish a career. Today I am a business owner and can understand what a compromise with a client is. As of today, I feel that I am a rehabilitated man that would never put myself in a position that might lead me to where I am coming from.

Acquiring the license would be an important step on this position and in my life to prove myself that the past it's only the past and we can find in our "present" the best way to become a better "future" for myself and humanity.

Other Documentary Evidence

6. Respondent submitted with his application for licensure transcripts of completion in August and September 2016 of three real estate courses taken from Real Estate License Services.

7. At hearing, respondent submitted a copy of his diploma from the Art Institute of Pittsburgh, which stated that he earned his Associate of Science degree in Graphic Design on September 5, 2015.

Testimony

8. Respondent testified with regard to the incident leading to his conviction that he had been hanging around with the wrong people, one of whom told him of a way he could make some money to help him pay his mortgage. He knew at the time that he was going to be involved in something illegal, but he did not know that either drugs or firearms would be involved. It was also his belief at the time that he could back out if he wished to.

Respondent testified that of the approximately nine individuals involved in the conspiracy, the only one respondent knew previously was the primary instigator. Respondent believes this individual is still incarcerated, but in any event respondent has had no contact with him since respondent's conviction.

Respondent testified that though he was present at the sporting goods store where the three air pistols were purchased, he himself was not aware of the purchase of these firearms. He did know the group was at the store in connection with some form of illegal activity.

Respondent testified that he knows what he did was wrong. He added that no one was, however, hurt.

Respondent testified he had no probation violations, and this testimony stands uncontroverted in the record. The record does not establish that respondent has suffered any other criminal convictions. He testified he has had none since the one at issue in this proceeding.

Respondent testified that after his release from prison, he enrolled in the Arts Institute, and graduated after three years of full-time study.

Respondent testified that in 2013, he began working with Ms. Vasquez as a freelance graphic designer. This work was part time and somewhat intermittent. For the past year, he has been working directly for Ms. Vasquez, an average of about six hours per day, five days per week.

Respondent testified that for the past three years, he has been living in a room that he rents from his aunt.

Respondent testified he has gone to Mexico about three times per year over the past three years with a group that provides food and supplies to a facility for elderly persons who have no family. Respondent has also assisted in the production of a public relations video that highlights the charitable work done at this facility.

Respondent testified he finds helping people in the real estate area to be satisfying. His ultimate goal is to become a producing agent. His more immediate goal is to work as a salesperson alongside Ms. Vasquez.

9. The testimony of Ms. Vasquez closely tracked her prehearing statement. She testified in addition that respondent has always been a team player, and that he is trustworthy in the community. Ms. Vasquez was asked what she knew about the events leading to respondent's conviction. She appeared to have no more than a somewhat vague, general understanding of the underlying events. She did assert that respondent would not "do that" anymore, that "he's not that man."

//

LEGAL CONCLUSIONS

Purpose of Administrative Licensing Proceedings

1. The purpose of an administrative proceeding seeking the revocation or suspension of an occupational license or registration 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.)⁶

Burden and Standard of Proof of Proof

2. In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show that he or she is qualified to hold the license. The standard of proof is a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

3. "'Preponderance of the evidence' means evidence that has more convincing force than that opposed to it. [Citations.]" (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) "The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Ibid.*)

Statutory Authority for Denial of Application

4. Business and Professions Code section 480, subdivision (a)(1), authorizes the commissioner to deny an application if the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

5. Business and Professions Code section 10177, subdivision (b)(1), authorizes the commissioner to deny an application if the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession of a real estate licensee, and the time for appeal has elapsed or the judgment or 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 the individual to withdraw the plea of guilty and enter a plea of not guilty, or dismissing the criminal pleading.

⁶ This principle applies equally to proceedings involving the denial of a license to an applicant.

Substantial Relationship

6. California Code of Regulations, title 10, section 2910, sets forth the department's substantial relationship criteria and provides:

(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 Bureau⁷ within the meaning of Sections 480 and 490 of the Code if it involves:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

(2) Counterfeiting, forging or altering of an instrument or the uttering of a false statement.

(3) Willfully attempting to derive a personal financial benefit through the nonpayment or underpayment of taxes, assessments or levies duly imposed upon the licensee or applicant by federal, state, or local government.

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

(5) Sexually related conduct affecting a person who is an observer or non-consenting participant in the conduct or convictions which require registration pursuant to the provisions of Section 290 of the Penal Code.

(6) Willfully violating or failing to comply with a provision of Division 4 of the Business and Professions Code of the State of California.

(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.

⁷ The regulations still use the word "bureau."

(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.

(9) Contempt of court or willful failure to comply with a court order.

(10) Conduct which demonstrates a pattern of repeated and willful disregard of law.

(11) Two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs.

(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.

Rehabilitation

7. California Code of Regulations, title 10, section 2911, sets forth the department's criteria for rehabilitation for applicants and provides:

(a) The following criteria have been developed and will be considered by the Bureau pursuant to Section 482 of the Business and Professions Code for the purpose of evaluating whether or not an applicant is rehabilitated for purposes of issuance or for reinstatement of a license:

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

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

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

- (i) The nature and severity of the crime(s) and/or act(s) committed by the applicant.
- (ii) The applicant's history of criminal convictions and/or license discipline that are "substantially related" to the qualifications, functions, or duties of a real estate licensee. However, no rehabilitation shall be required where the sole proven basis or bases for denial of an application is an expunged conviction as described in Business and Professions Code Section 480(c).
- (2) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant, or escheat to the State of these monies or other properties if the victim(s) cannot be located.
- (3) Expungement of criminal convictions.
- (4) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.
- (5) Successful completion or early discharge from probation or parole.
- (6) Abstinence from the use of controlled substances and/or alcohol for not less than two years if the conduct which is the basis to deny the Bureau action sought is attributable in part to the use of controlled substances and/or alcohol.
- (7) Payment of the fine and/or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.
- (8) 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 Bureau action sought.
- (9) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

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

(11) Correction of business practices resulting in injury to others or with the potential to cause such injury.

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

(13) 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 Bureau action sought.

(14) Change in attitude from that which existed at the time of the conduct in question as evidenced by the following:

(A) Testimony and/or other evidence of rehabilitation submitted by the applicant.

(B) Evidence from family members, friends and/or other persons familiar with applicant's previous conduct and with his or her subsequent attitudes and/or behavioral patterns.

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

(D) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(E) Absence of subsequent felony convictions, misdemeanor convictions, or other conduct that provides grounds to discipline a real estate licensee, which reflect an inability to conform to societal rules when considered in light of the conduct in question.

[¶] . . . [¶]

Those criteria were considered in rendering this decision.

8. Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented by sustained conduct over an extended period of time. (*In re*

Menna (1995) 11 Cal.4th 975, 991.) 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.)

9. Cases involving admission based on rehabilitation commonly involve a substantial period of exemplary conduct following the applicant's misdeeds. (*In re Gossage* (2000) 23 Cal.4th 1080, 1096, citing *Kwasnik, supra*.)

10. Since persons under the direct supervision of judicial or correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or continue inappropriate behavior while under supervision. (*In re Gossage, supra*, at p. 1099.)

11. 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.)

12. An individual's candor, cooperation and remorse, and a willingness to accept punishment and good faith efforts to rehabilitate himself, may be significant mitigating factors. (*Hipolito v. State Bar* (1989) 48 Cal.3d 621, 626.)

Evaluation

13. Respondent's conviction was substantially related to the qualifications, functions, or duties of a real estate licensee. (Cal. Code Regs., tit. 10, § 2910, subs. (a)(8) and (b).)

14. With regard to rehabilitation, the seven years that have elapsed since respondent's conviction represents a substantial period of time. The nature and severity of the crime are in one sense very serious, as the crime involved a large quantity of a dangerous controlled substance as well as firearms and the potential for great violence, personal injury, and even death; on the other hand, none of these potentially dangerous outcomes occurred, albeit because the entire incident was apparently a "sting" involving an undercover officer. It is also significant that respondent was not the instigator of the criminal activity; on the other hand, respondent's claim that he had no knowledge of the nature of the contemplated criminal activity at the time he agreed to participate, while not absolutely controverted by the record, does strike one as a bit disingenuous. The record does not reflect that respondent has suffered any other criminal convictions. Further, he had no probation violations and his probation was terminated about a year early.

Respondent's family life seems to have been relatively stable, in that he has rented a room from his aunt for the past three years.

Respondent went back to school after his release from prison and has earned an associate of science degree in graphic design. Respondent has also been working, albeit not on a consistent, full-time basis, in the real estate field. Respondent has also had some involvement in community activities, in particular by providing support for a home for the elderly south of the border on a recurring basis.

Respondent no longer associates with any of the persons who were involved in the conspiracy that led to his conviction.

Respondent provided two reference letters, and he offered the testimony of one of those two individuals. Though one of the two persons is respondent's partner and the other his good friend, the latter was also able to comment on respondent's character and activities in the context of the real estate sales business.

15. Taking into account all of the matters discussed above within the context of the applicable statutory and regulatory framework, it is concluded, as specified below, that cause exists to deny respondent an unrestricted license to act as a real estate salesperson. However, it would not be against the public interest to grant respondent a restricted license pursuant to Business and Professions Code sections 10156.5, subdivision (b), 10156.6, and 10156.7 under appropriate terms and conditions as specified below.

Cause Exists to Deny Respondent an Unrestricted License

16. Cause exists under Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b)(1), and California Code of Regulations, title 10, section 2910, subdivisions (a)(8) and (b), to deny respondent an unrestricted license because respondent has been convicted of a crime that is substantially related to the qualifications, functions, and duties of a real estate salesperson.

ORDER

Respondent'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 all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to respondent.

3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

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

(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 18, 2018

DocuSigned by:

Donald P. Cole

9EC9A359288A48B...

DONALD P. COLE

Administrative Law Judge

Office of Administrative Hearings