

SEP 17 2020

DEPT. OF REAL ESTATE

By Carl Nelson

In the Matter of the Application of:) DRE No. H-05081 SD
BRYCE DAVID TUTTLE,) OAH No. 2020020614
Respondent.)

The Revised Proposed Decision dated July 7, 2020, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Order, Page 12, Line 7, reads as, “Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000...” corrected as, “...Department of Real Estate, Post Office Box 187013, Sacramento, CA 95818-7013...”

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to

the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

If and when a petition for removal of restrictions is filed, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

This Decision shall become effective at 12 o'clock noon on OCT 17 2020.

IT IS SO ORDERED

8/27/20

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the First Amended Statement of Issues

Against:

BRYCE DAVID TUTTLE, Respondent

Case No. H-05081 SD

OAH No. 2020020614

REVISED¹ PROPOSED DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 10, 2020.²

¹ On July 14, 2020, the Department of Real Estate requested clarification regarding the length of probation and also the use of standardized language in the Order. Those changes are granted and are reflected in bold print in this revised decision.

² In light of the President's declaration of a national emergency over the COVID-19 pandemic; the Governor's proclamation of a State of Emergency and Executive Orders N-25-20, N-33-20 and N-63-20 pertaining to the pandemic; the declarations of county and city public health emergencies throughout the State; the directives from

Complainant Veronica Kilpatrick was represented by Judith Vasan, Staff Counsel, Department of Real Estate (Department), State of California.

Respondent Bryce David Tuttle was present and represented himself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 10, 2020.

FACTUAL FINDINGS

Jurisdictional Matters

1. On May 9, 2018, respondent applied to the Department for a real estate salesperson license.
2. The Department learned respondent had suffered criminal convictions in 2006, 2008, 2009, 2013, and 2016. The Department denied respondent's application.
3. On April 20, 2020, complainant filed the First Amended Statement of Issues in her official capacity as Supervising Special Investigator, Department of Real Estate, alleging the 2013 and 2016 convictions as a basis to deny respondent's application, and the 2006, 2008, and 2009 convictions as factors in aggravation.
4. Respondent filed a Notice of Defense and this hearing followed.

state and local officials to ensure social distancing and sheltering-in place; and in order to protect the health and safety of all public and OAH personnel, this matter was heard telephonically.

Respondent's Convictions

5. The following two convictions were alleged as a basis to deny respondent's application:

On January 28, 2016, in the Superior Court of California, County of Orange, Case Number 15HM01239, respondent was convicted on his plea of guilty for violation of Vehicle Code section 23152 subdivision (e) (driving under the influence of drugs with two priors), a misdemeanor. The court suspended the imposition of sentence and placed respondent on informal probation for five years on certain terms and conditions including, in part, payment of fines and fees, serving 120 days in county jail (to run consecutive to Case Number 12HM10525), completing an 18-month multiple offender alcohol program (concurrent with Case Number 12HM10525), and attending and completing Mothers Against Drunk Driving Victim's Impact Panel.

On July 22, 2013, in the Superior Court of California, County of Orange, Case Number 12HM10525, respondent was convicted on his plea of guilty for a violation of Vehicle Code sections 23152, subdivision (a) (driving under the influence of alcohol and/or drugs with one prior) and 14601.1, subdivision (a) (driving on suspended or revoked license), and Health and Safety Code section 11550, subdivision (a) (use and under the influence of a controlled substance - methamphetamine), all misdemeanors. The court suspended the imposition of sentence and placed respondent on informal probation for five years on certain terms and conditions including, in part, payment of fines and fees, serving ninety days in county jail, completing an 18-month multiple offender alcohol program, and attending and completing Mothers Against Drunk Driving Victim's Impact Panel.

6. The following three convictions were alleged as factors in aggravation in the determination of whether respondent's application should be denied, and not as a basis to deny respondent's application in and of themselves:

On July 28, 2009, in the District Court of the State of Utah, County of Utah, Case Number 091400607, respondent was convicted on his plea of guilty for violation of Title 58, Chapter 37, Section 8(2)(a)(i) of the Utah Code (attempted possession or use of a controlled substance), a misdemeanor. Respondent was sentenced to pay fines and serve three hundred sixty-five (365) days in county jail, three hundred forty-six (346) days of which were suspended. Respondent was allowed to perform sixty (60) days of community service in lieu of serving the eight (8) days in jail.

On October 22, 2008, in the Lehi City Justice Court of the State of Utah, County of Utah, Case Number 085004366, respondent was convicted on his plea of guilty for violation of Title 58, Chapter 37A, Section 5 of the Utah Code (possession of drug paraphernalia), Title 41, Chapter 12A, Part 3, Section 302 of the Utah Code (operating a vehicle without insurance), and Title 41, Chapter 6A, Section 528 (reckless driving), misdemeanors. Respondent was placed on probation for twelve (12) months and ordered to complete an evaluation and to receive treatment.

On March 7, 2006, in the District Court of the State of Utah, County of Utah, Case Number 041404690, respondent was convicted on his plea of guilty for violation of Title 58, Chapter 37, Section 8 of the Utah Code (illegal possession or use of controlled substance), a misdemeanor. Respondent was ordered to pay a fine of \$325 and to complete an alcohol and substance abuse evaluation.

7. Based on the nature of these convictions, and the fact that they all involve, in some manner, the use of or possession of a controlled substance or driving

under the influence of alcohol and/or drugs, they evidence a pattern of unlawful conduct and consistent use of poor judgement. A real estate salesperson must use good judgement and be an upstanding citizen at all times, while remaining honest and trustworthy. Engaging in repeated unlawful acts over an approximate 10-year period does not show the good judgement expected of any professional. Thus, the convictions are substantially related to the qualifications, functions, and duties of a real estate salesperson.

Respondent's Testimony and Other Evidence

8. Respondent's testimony is summarized as follows: July 29, 2016, was respondent's first day of recovery from years of alcohol and drug abuse, and he has been sober since that time. Respondent lived a privileged life but lost his father at age 18, which spun him "out of control." Respondent lived with guilt and shame for years.

Respondent started attending Alcoholics Anonymous (AA) on July 29, 2016. He attends every day. He helps others in AA, especially the "newcomers." Respondent explained that he "spent over a decade ruining [his] life" and now he sees his duty as being a servant to others, and wants to be there for people who need him. Respondent always wanted to be a real estate agent. He feels that investing in a home is an important time in people's lives and he would like to be a part of that. Respondent speaks to his sponsor, Richard Lillibridge, every day. Respondent prays every morning and writes a gratitude list for things in his life. Respondent participates in volunteer work, such as cleaning up beaches.

Regarding his convictions, respondent attributed them to his alcohol and drug use during those years. Respondent explained: he had been using Xanax, which had been prescribed by his psychologist. Respondent felt that the Xanax was like a "band

aid" after his father died, however, while it "brought him back to life" it also became his demise. Respondent suffered at the time from anxiety, depression, and Post Traumatic Stress Disorder. In addition to the Xanax, he had also been prescribed Valium and Clonopin. Respondent also used marijuana on occasion. Respondent accepted responsibility for his convictions.

Respondent has been employed for the past three years with a pool service, but also owns and operates his own company. Tuttle Water Solutions is a company that offers water softening services to hotels.

Respondent passed his real estate exam several years ago, loves learning, and is grateful to have gone through all he has in life. Respondent has faith that everything in his life will be "OK" going forward.

9. Mark Walton testified as a character witness. He is a bishop at respondent's church. He has known respondent since respondent was a child. He is aware of respondent's convictions and noted that respondent has moved forward and taken responsibility for his life. Respondent works two jobs and is a responsible person. He is aware that respondent attends AA. He believes respondent would be a good real estate agent.

10. Richard Lillibridge is respondent's current AA sponsor and has known respondent for a year and a half. Respondent attends AA multiple times per week. Mr. Lillibridge believes respondent is an honest person and would make a good real estate agent.

11. Paul McVay is respondent's uncle and has known respondent since respondent's birth. He is aware of respondent's convictions. Mr. McVay said that respondent was "indulged" as he grew up. He feels that the indulgence by his parents

are what led respondent to begin using alcohol and drugs. Respondent's father also died when respondent was a teenager. When respondent was released from jail, he was destitute. Now that respondent has gotten his life back on track, respondent knows that if he gets involved with drugs or alcohol again he will be dead. Respondent does yoga, attends AA, and meditates. Mr. McVay supports respondent in his endeavor to become a real estate agent 100 percent.

12. Respondent also submitted 12 character letters from a variety of personal and professional individuals. Each individual wrote the letter of support specifically for this hearing. Three of the letters were written by respondent's character witnesses. All of the individuals who wrote the letters spoke very highly of respondent.

LEGAL CONCLUSIONS

1. Except as otherwise provided by law, a party asserting at an administrative hearing that he or she should be granted a certain benefit, such as a license or permit, has the burden to establish by a preponderance of the evidence that he or she should be granted that benefit. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-52.) "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that one is unable to say that the evidence on either side of an issue preponderates, the finding on that issue must be against the party who had the burden of proving it. (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

2. Under Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b), an application for a real estate license may be denied if an

applicant was convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee.

3. California Code of Regulations, title 10 (Regulation), section 2910, subdivision (a), sets forth when a crime is considered substantially related to the qualifications, functions, and duties of a licensee. Relevant portions provide:

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

[11] . . . [11]

(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.

Evaluation

4. Cause exists to deny respondent's application for a real estate salesperson license pursuant to Code sections 480, subdivision (a)(1), and 10177,

subdivision (b), because respondent was convicted of crimes in 2013 and 2016. The convictions are substantially related to the qualifications, functions, and duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivisions (10) and (11).

5. Criteria have been developed by the Department to evaluate the rehabilitation of an applicant who has been convicted of substantially related crimes. The relevant criteria are found at California Code of Regulations, title 10, section 2911, subdivision (a)(1), which provides the following factors for consideration: time that has elapsed since commission of the act(s) or offense(s); nature and severity of the crime(s) and/or act(s) committed by the applicant; 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; restitution paid, where applicable; expungement of criminal convictions; successful completion or early discharge from probation or parole; 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 Department action sought is attributable in part to the use of controlled substances and/or alcohol; payment of the fine and/or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment; 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 Department action sought; completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement; discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others; correction of business practices resulting in injury to others or with the potential to cause such injury; significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; 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 Department action sought; and a change in attitude from that which existed at the time of the conduct at issue.

6. Rehabilitation is akin to an affirmative defense; consequently, the burden of proof of establishing an affirmative defense is on the proponent of that defense. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App.156, 164.) 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.)

7. It has been four years since respondent's 2016 conviction. He is on probation through 2021. There is no evidence that respondent has violated probation or otherwise had any issues in connection with his probation. He has not been arrested or convicted of any more crimes. Respondent is actively involved in AA and attends meetings daily. He has been sober since July 29, 2016. He has sponsored two people in AA. He engages in volunteer activities such as beach cleanups and has maintained stable employment. Respondent passed the real estate salesperson exam as well. Respondent clearly has a vast network of support as evidenced by the character witnesses who testified on his behalf, as well as those who wrote letters attesting to his good character. Respondent's testimony was credible, forthright, and very reflective on his past actions, all of which demonstrated that he has made significant changes in his life and learned a lot from his life experiences. Finally, respondent took full responsibility for his actions, acknowledged that he took the wrong path in life, and desires to dedicate the rest of his life to helping people find their homes.

Public protection does not require denial of respondent's application. However, given that he is still on criminal probation through 2021 and that, in addition to the two convictions that form the basis for discipline, respondent had three additional

convictions involving the use of alcohol and/or drugs dating back to 2006 as factors in aggravation, a restricted license is appropriate.

ORDER

The application of respondent Bryce David Tuttle for a real estate salesperson license is **denied**; however, **a restricted license is issued** pursuant to Business and Professions Code sections 10156.5, 10156.6, and 10156.7 for a period of three years, and is subject to the following limitations, conditions and restrictions:

1. During the period of restriction, respondent shall report any arrest to the board within 72 hours of the occurrence of the arrest, or if incarcerated following arrest, within 72 hours of release from incarceration.
2. The restricted license issued to respondent may be suspended prior to hearing by order of the commissioner in the event of respondent's conviction or plea of nolo contendere to a crime that is substantially related to respondent's fitness or capacity as a real estate licensee.
3. The restricted license issued to respondent may be suspended prior to hearing by order of the commissioner on evidence satisfactory to the commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations

or restrictions of a restricted license until ~~three~~ years have elapsed from the effective date of this decision and order.

5. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the bureau certifying that:

(a) the employing broker has read the decision and order in this matter; and

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

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

7. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000¹³, Sacramento, CA 95818-7000¹³. 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.

DATE: July 7, 2020

DocuSigned by:
Kimberly Belvedere
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KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearing