

FILED

BEFORE THE

BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

FEB 18 2015

BUREAU OF REAL ESTATE

By S. Black

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In the Matter of the Application of

ERICK GLENN SMITH,

Respondent.

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NO. H-6173 SAC

OAH NO. 2014110009

**DECISION**

The Proposed Decision dated January 15, 2015, 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.

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when application is made for a real estate license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon  
on MAR 06 2015

IT IS SO ORDERED

2/5/2015

REAL ESTATE COMMISSIONER

  
WAYNE S. BELL

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

In the Matter of the Application of:

ERICK GLENN SMITH,

Respondent.

Case No. H-6173 SAC

OAH No. 2014110009

**PROPOSED DECISION**

This matter convened for hearing before Vincent Pastorino, Administrative Law Judge for the Office of Administrative Hearings, State of California, in Sacramento, California, on December 18, 2014.

John W. Barron, Counsel, was present and represented complainant Tricia D. Parkhurst, Deputy Real Estate Commissioner of the State of California.

Respondent Erick Glenn Smith (respondent or Mr. Smith) was present and represented himself.

Following the receipt of evidence and argument, the record was closed and the matter submitted on December 18, 2014.

**FACTUAL FINDINGS**

*Background*

1. On or about January 29, 2014, Mr. Smith applied to the Bureau of Real Estate of the State of California (Bureau) for a real estate salesperson license. The license has not been issued.

2. Complainant filed a Statement of Issues in her official capacity on October 3, 2014. The Statement of Issues alleges that Mr. Smith had a series of criminal convictions which, individually and collectively under California Code of Regulations, title 10, section 1444.5, bore a substantial relationship to the qualifications, functions, or duties of a real estate licensee.

3. The Statement of Issues further alleges that the convictions therefore constitute cause under Business and Professions Code section 480, subdivision (a), and section 10177, subdivision (b) for denial of Mr. Smith's application for a license, and it requests denial of the issuance of a real estate salesperson license to Mr. Smith.

4. Respondent filed a timely Notice of Defense, and this matter was set for hearing before an Administrative Law Judge pursuant to the procedures set forth in Government Code section 11500 et seq.

### *Criminal Convictions*

5. On November 1, 2001, respondent entered a nolo contendere plea in the San Joaquin County Superior Court and was convicted of violating Vehicle Code section 23103, i.e., reckless driving. Because the offense involved use of alcohol and the original charges had been brought under Vehicle Code section 23152, the court sentenced respondent under the provisions of Vehicle Code section 23103.5 and placed him on three years of probation, which included orders to obey all laws and enroll in a County approved alcohol program and not drink and drive with any measurable amount of alcohol in the blood. The conviction occurred 12 days before the respondent's 19th birthday.

6. On August 6, 2002, respondent entered a guilty plea in the San Joaquin County Superior Court and was convicted of violating Penal Code section 647, subdivision (f), i.e., disorderly conduct in a public place while under the influence of liquor, drugs, and or controlled substances. The court placed respondent on three years of probation, which included orders to obey all laws, obey court orders, and not commit the same or a similar offense.

7. On August 8, 2003, respondent pled nolo contendere in the San Joaquin County Superior Court and was convicted of violating Vehicle Code section 23152, subdivision (b), with a "prior." Subdivision (b) prohibits driving a vehicle while having a blood alcohol content of 0.08 percent or more. Respondent's blood alcohol level was measured at 0.18 percent. The November 2001 conviction for reckless driving, involving alcohol, was the "prior." The court placed respondent on five years of formal probation, which included orders to obey all laws, obey all court orders, not commit the same or a similar offense, pay fees, enroll in a County approved alcohol program, and not drink and drive with any measurable amount of alcohol in the blood.

8. On August 11, 2004, respondent pled no contest in the San Joaquin County Superior Court and was convicted of violating Penal Code section 647, subdivision (f), i.e., disorderly conduct in a public place while under the influence of liquor, drugs, and or controlled substances. The court placed respondent on 3 years of conditional probation, which included orders to obey all laws, not commit the same or similar offense, and abstain from the use of alcohol "in excess."

9. On November 26, 2007, respondent pled no contest in the Fresno County Superior Court and was convicted of violating Vehicle Code section 23152, subdivision (b), with two "priors." Subdivision (b) prohibits driving a vehicle while having a blood alcohol content of 0.08 percent or more. Respondent's blood alcohol level was measured at 0.13 percent. The "priors" were the November 11, 2001 and August 28, 2003 convictions. The court sentenced respondent on June 13, 2008, after he had already served 70 days in jail. The court granted respondent three years of probation, with multiple orders that included payment of fines and fees, attending and completing an 18-month Multiple Offender Alcohol Program, no use or possession of alcoholic beverages, not being present in any establishment where the primary items for sale are alcoholic beverages, and "proof of Completion in Newport harbor Recovery Program, 64 days."

10. On July 1, 2009, respondent pled nolo contendere in the Los Angeles County Superior Court and was convicted of violating Penal Code section 148, subdivision (a)(1), which prohibits resisting/obstructing a public officer, peace officer, or emergency medical technician in the discharge of his or her duties. The court placed respondent on summary probation for 3 years, gave him credit for having served 3 days in jail, and ordered him to pay \$50 in assessments.

11. All of the six convictions listed in Findings 5 through 10 were misdemeanors.

12. Respondent's convictions from 2002 through 2009 occurred while he was still on probation from prior convictions. In each instance, the terms of probation had included an order that respondent obey all laws. (Findings 5, 6, 7, 8, 9, 10.)

13. Respondent has paid all fines and fees incurred in his convictions, and he successfully completed probation on his July 2009 conviction.

#### *License Application*

14. On July 7, 2014, respondent submitted his Interview Information Statement (Information Statement) to the Bureau in support of his application for a real estate salesperson license. Respondent listed each of his criminal convictions and completed and submitted a separate Conviction Detail Report form for each conviction. The standard Conviction Detail Report form requests details of the facts and circumstances of a listed crime and, as optional information, the offender's explanation of why he or she committed the crime.

15. The information provided by respondent on the Conviction Detail Reports showed that alcohol use was involved in each of the respondent's six convictions, including the three convictions under the Penal Code.

In the 2002 disorderly conduct conviction under Penal Code section 647, subdivision (f), respondent was in a public park at 11:30 p.m., sitting in a his friend's car and drinking with that friend when police approached and questioned them. In some manner unspecified

by respondent in the Conviction Detail Report, respondent "refused arrest" because he wanted the officers to let him walk to his parents' house.

In the 2004 disorderly conduct conviction under Penal Code section 647, subdivision (f), respondent was a volunteer in a beer booth at an asparagus festival and became intoxicated on beer as he was serving customers. In some manner, again unspecified by respondent in the Conviction Detail Report, he became "disorderly" in the booth and was arrested.

In the 2009 conviction for obstructing a police officer in violation of Penal Code section 148, subdivision (a)(1), respondent was "walking down" a street in Long Beach with a friend at about 11:00 p.m., and each was holding a beer. The police stopped them and arrested respondent upon learning that he "had a warrant in Fresno for the remaining jail time [he] was supposed to serve." He resisted, in some unspecified manner, as they were arresting him.

16. The Conviction Detail Reports completed by respondent also showed that in each of the instances leading to his criminal convictions, he stated that he had made bad decisions concerning the use of alcohol, including "I had to get home and made a bad decision to drive" (2001); "another bad decision" made while being young, enjoying partying, and wanting to get away from his parents (2002); "I had to get home and made a bad decision to drive" (2003); "wrong [booth] for me to work at" (2004); "wanted to get home, bad decision" (2007); "just a bad decision to walk down the street with an alcoholic beverage" (2009).

#### *Rehabilitation*

17. Respondent testified in detail concerning his rehabilitation. His testimony was consistent with what he wrote on his Conviction Detail Reports and his July 1, 2014 explanatory letter that he submitted to the Bureau in his Interview Information Statement. Those documents and respondent's testimony addressed respondent's understanding of the causes of his criminal conduct, his strategies for never again engaging in such conduct, his commitment and actions towards rehabilitation, his actions toward contributing positively to the community, his commitment to being involved in real estate, and his desire to have a wife and children and be a good example and provider to them.

18. After his 2009 conviction, respondent realized that his decision making was bad and was continually getting him into trouble. He also realized that he wanted to be successful in life and to be successful he needed to turn away from his past attitude and lifestyle. He decided that success, for him, would primarily mean a future centered on family, with a wife and children in a stable and healthy relationship.

19. Starting in 2009, respondent began changing the way he viewed the world. He came to the realization that he needed to follow society's laws and also contribute positively to society. He began surrounding himself with people that he believed would benefit his

character and his professional career and make him a better person overall. These people included his parents, his sister, and helpful friends such as Scott Sherman and Bryan Laber. Mr. Smith also became involved in community activities, which included joining a weekly soccer and running club, joining the Stockton Chamber of Commerce, and participating in charity events.

20. Mr. Smith's parents are a positive influence on him. In his earlier years they constantly came to his assistance when he was in trouble, but eventually they made him leave the household. Mr. Smith now realizes that his parents' wisdom and his sister's wisdom give him great assistance in maintaining stability in his life. His parents live in Stockton, and his sister lives in the San Francisco area. He attempts to visit them or at least speak with them multiple times each week.

21. Respondent presented two witnesses, Scott Sherman and Bryan Laber. They knew respondent during the years he was convicted of multiple criminal offenses, and they testified concerning the changes they had observed in him since his last criminal conviction.

22. Mr. Sherman has known Mr. Smith since their high school years. Mr. Sherman describes Mr. Smith as exemplifying "the kid" in high school that people wanted to go out and have fun with, but not in a positive way. Mr. Sherman went into the military and benefitted from the structure, but Mr. Smith did not have the benefit of such structure. Eventually, however, Mr. Sherman saw that Mr. Smith was realizing, albeit late, that it was time to mature and grow up. He has seen major changes in Mr. Smith's behavior over the past five years. Mr. Smith is now family oriented and consistently calls on and goes out with his family instead of the "buddies" from his past. He and Mr. Smith speak about business and set goals with each other and pursue those goals, whereas previously there had been such conversations but no action. They became business partners in 2010, purchasing and restoring a multiplex property. They are not currently in business together. They both have many friends in Stockton who are "just trying to make ends meet" financially. Mr. Smith tries to help by teaching those friends some basic skills in drywall, electrical, foundation, and roof work.

23. Mr. Laber is a licensed real estate broker and the owner of Miracle Mile Realty. He has known Mr. Smith for 10 years and began mentoring Mr. Smith in early 2010. He has focused on teaching Mr. Smith to "address his past honestly and move forward." He has shown Mr. Smith some aspects of the real estate business, including networking with investors. He has also worked with Mr. Smith on setting goals and has had Mr. Smith participate in multiple charity events for the homeless. Since 2010, he has seen Mr. Smith grow significantly in what Mr. Laber describes as mentality, maturity, and morality. He has told Mr. Smith that if he feels that drinking is an issue, he should stop, but if he feels that drinking is not an issue, he may drink in moderation but only in a "safe haven" to avoid any repeat of past issues with the law.

24. Respondent has shown dedication to the real estate profession. He completed his two-year degree at Long Beach City College in June 2008, with classes that addressed his

educational requirements for a real estate salesperson license. He first applied for a real estate salesperson license in 2009, but was not successful in the application process. Since that time, he has focused on continuing to change his life for the positive, as evidenced by his successful completion of probation on the 2009 conviction, his positive associations with Mr. Sherman and Mr. Laber in real estate activities, his community and charity activities, and his current activities working for real estate investors in the Los Angeles and Stockton areas.

25. Respondent spent two months in an in-house rehabilitation program in February and March 2008, following his 2007 conviction in the Fresno County Superior Court. He testified that his goal in entering the program was not to stop drinking alcohol, but rather to change his way of thinking by having more regard for other people and the law, and focusing on being successful in life with a family and career. Respondent realizes that alcohol, if abused, would remain a barrier to achieving his goals. His explained that his approach in dealing with alcohol is to keep himself out of situations where problems could arise with police or alcohol. Years ago he stopped his associations with people who binge drink. He testified that he now drinks alcohol about once per week, such as at dinner with his parents, but avoids situations where he might drive after drinking or drink in a public setting. He testified that he must be 100 percent effective at recognizing situations where drinking alcohol could lead to trouble. He stated that if he has been drinking, he remains stationary with his family or sister and does not drive. Respondent last attended an "AA" meeting about eight months ago.

26. Respondent presented letters from his parents and from two attorneys. All of them knew respondent throughout the years of his criminal convictions and were knowledgeable concerning his prior attitude, behaviors, and criminal convictions. All of them indicated that respondent has changed his behaviors and was sincere in his rehabilitation efforts.

## LEGAL CONCLUSIONS

### *Statutes and Regulations Relied on in the Statement of Issues*

1. The Bureau asserts that pursuant to the provisions of California Code of Regulations, title 10, section 2910, the respondent's criminal convictions bear a substantial relationship to the qualifications, functions, or duties of a real estate licensee and thereby constitute cause under Business and Professions Code sections 480, subdivision (a) and 10177, subdivision (b), for denial of respondent's application for a license.

2. Business and Professions Code section 480, subdivision (a), states in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

- (1) Been convicted of a crime....
- (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.
- (3)(A) Done any act that if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.
- (B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

3. Business and Professions Code section 10177, subdivision (b), states in pertinent part:

The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has done any of the following . . .

[¶]...[¶]

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee . . .

4. California Code of Regulations, title 10, section 2910, subdivisions (a) and (c), states in pertinent part:

(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 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.

(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.

[¶]...[¶]

(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.

#### *Burden of Proof*

5. Business and Professions Code section 10152 authorizes the Real Estate Commissioner to require proof of an applicant's honesty and truthfulness before issuing a real estate license, but it does not address the burden of proof in a hearing on the application. In the absence of a statute to the contrary, the burden of proof is on the applicant seeking a license or permit to prove his or her fitness for issuance of the license he or she seeks. In the absence of any law to the contrary, the required standard of proof is a preponderance of the evidence. (Evid. Code § 115; see also *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051; *Owen v. Sands* (2009) 176 Cal.App.4th 985, 992.)

#### *Analysis*

##### **CONVICTION OF CRIME; SUBSTANTIAL RELATIONSHIP**

6. To establish cause to deny issuance of a real estate salesperson license to the respondent, the Bureau must show that one or more of the six criminal convictions listed in Findings 5, 6, 7, 8, 9 and 10 are substantially related to the qualifications, functions, or duties of a real estate salesperson licensee. (Bus. & Prof. Code, §§ 480, subd. (a)(1)(B), and 10177, subd. (b).)

7. Respondent's November 2001 conviction/sentencing under Vehicle Code sections 23103 and 23103.5, i.e., reckless driving involving alcohol; his August 2003

conviction, i.e., driving a vehicle while having a blood alcohol content of 0.08 percent or more, with a prior; and his November 2007 conviction, i.e., driving a vehicle while having a blood alcohol content of 0.08 percent or more, each involved unlawful acts with the threat of doing substantial injury to the person or property of another. Accordingly, each of those crimes is deemed to be substantially related to the qualifications, functions, or duties of a licensee of the Bureau within the meaning of Business and Professions Code section 480, subdivision (a). (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

8. Respondent's August 2002 and November 2004 convictions under Penal Code section 647, subdivision (f) each involved disorderly conduct in a public place, while under the influence of alcohol. (Findings 6, 8, 15.) The July 2009 conviction under Penal Code section 148, subdivision (a)(1), i.e., obstructing a police officer, did not involve alcohol usage as one of the elements of the crime, but the crime did occur while respondent was walking on a public street with an open beer in his hand. (Findings 10, 15.) The three Penal Code violations, in combination with the three Vehicle Code violations involving alcohol, show a pattern of repeated and willful disregard of law and, on that basis, are deemed to be substantially related to the qualifications, functions, or duties of a licensee of the Bureau within the meaning of Business and Professions Code section 480, subdivision (a). (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10).)

9. Respondent's November 2001, August 2002, August 2003, November 2004, and November 2007 convictions establish multiple instances of two or more convictions involving the consumption of alcohol when at least one of the convictions involved driving and the use or consumption of alcohol. Under California Code of Regulations, title 10, section 2910, subdivision (a)(11), this constitutes additional grounds for the conclusion that respondent has committed crimes substantially related to the qualifications, functions, or duties of a licensee of the Bureau within the meaning of Business and Professions Code section 480, subdivision (a).

10. Finally, as stated in Findings 12, respondent committed many of the above-listed crimes while he was on probation, terms of which included orders to obey all laws. Thus, respondent has in multiple instances shown willful failure to comply with a court order, with each instance constituting additional grounds for the conclusion that respondent has committed multiple crimes substantially related to the qualifications, functions, or duties of a licensee of the Bureau within the meaning of Business and Professions Code section 480, subdivision (a).

11. On the basis of the Factual Findings and Legal Conclusions as a whole, and in particular Legal Conclusions 7, 8, 9, and 10, the Bureau has established legal cause under Business and Professions Code section 480, subdivision (a)(1) and (a)(3)(A) and (B), and section 10177, subdivision (b) for the denial of respondent's application for a real estate salesperson license on the grounds that respondent has been convicted of crimes substantially related to the qualifications, functions, or duties of a real estate licensee.

*Mitigation, Rehabilitation*

12. Real estate licensees facing administrative action by the Bureau due to the licensee's commission of a crime should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449; *Brandt v. Fox* (1979) 90 Cal.App.3d 737, 747).

13. With regard to mitigating circumstances, respondent made no effort to excuse or minimize his criminal history. He fully acknowledged that his actions were wrong, and he offered no excuse. He asked the Bureau to consider that although each of his crimes had the potential to cause injury or property damage, none of the crimes caused injury to third persons or damage to their property, and he further asked the Bureau to consider his assertion he is a changed person in comparison to what his is shown in his criminal record.

14. With regard to rehabilitation, California Code of Regulations, title 10, section 2911, addresses rehabilitation criteria, in pertinent part, as follows:

The following criteria have been developed by the Bureau pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

(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 Bureau 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 Bureau.)

[¶] ... [¶]

(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 Bureau 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 Bureau action sought.

(i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

[¶]...[¶]

(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. . . .

15. In the present case, respondent has a history of multiple convictions showing a pattern of illegal activity. However, more than five years have passed since his most recent criminal conviction. (Cal. Code Regs., tit. 10, § 2911, subd. (a).) Respondent failed to comply with terms of his probation imposed in most of his convictions, but he successfully completed probation on his most recent offense and has paid all fines and fines ordered under each conviction. (Cal. Code Regs., tit. 10, § 2911, subds. (e) & (g); Findings 13.) Respondent has not abstained from the use of alcohol and has no intention to do so; however, he has avoided criminal violations by managing the situations in which he consumes alcohol. (Cal. Code Regs., tit. 10, § 2911, subd. (f); Findings 25.)

Respondent has had no spouse or children, but he has stabilized his family relationship with his parents and sister. (Cal. Code Regs., tit. 10, § 2911, subd. (h); Findings 20, 22.) Respondent completed his formal education in June 2008, prior to his last criminal

conviction, but more recently received informal mentoring for economic self-improvement from Mr. Laber at Mile High Realty. (Cal. Code Regs., tit. 10, § 2911, subd. (i); Findings 23, 24.) Respondent has shown significant and conscientious involvement in programs designed to provide social benefits, as demonstrated in his charity work and mentoring of friends in construction-related skills. (Cal. Code Regs., tit. 10, § 2911, subd. (l); Findings 19, 22, 23, 24.)

Respondent has emphasized and been successful at establishing new and different social and business relationships, such as his relationships with Mr. Sherman, Mr. Laber, various investors, and his family. Although such people are not necessarily new in his life, the recent nature of his relationships with them is fundamentally different from the nature of their relationships in the past. In addition, he has been diligent at eliminating relationships of the type that led to his history of criminal activity related to alcohol usage. (Cal. Code Regs., tit. 10, § 2911, subd. (m); Findings 18, 19, 20, 25.)

Finally, respondent has demonstrated a marked change in attitude from that which existed up to the time of his last conviction in 2009. This was confirmed in respondent's testimony, and testimony and letters from family and friends who knew him from 2001, or earlier, through the present and were knowledgeable regarding his past conduct and convictions. Respondent's prior convictions, and by his own acknowledgment, his attitude, were reflective of respondent's unwillingness to conform to societal rules. Respondent has turned away from that attitude and since 2010 has demonstrated an ability, as well as desire, to conform to societal rules. (Cal. Code Regs., tit. 10, § 2911, subd. (n)(1), (2) & (5); Findings 22, 23, 24, 25, 26.)

16. Respondent has demonstrated a remarkable turnaround in his attitude, conduct, and goals. He has met many of the rehabilitation criteria set forth by the Bureau in California Code of Regulations, title 10, section 2911. Although his criminal history includes six convictions in eight years, he has had no criminal convictions since 2009—a significant factor in assessing rehabilitation. All of respondent's criminal convictions were, in some manner, related to alcohol. Respondent believes that he can moderate his consumption of alcohol and avoid situations where alcohol consumption could lead to violation of the law. His five-year history of no criminal convictions, as well as his focus on constructive associations with friends, family, and business associates show that respondent's approach toward alcohol has kept him out of trouble with the law.

Respondent's sincere realization, as stated by Mr. Sherman, that it was time to "mature and grow up" is a primary motivator in respondent's avoidance of alcohol-related problems with law enforcement for the past five years. However, given his history, respondent essentially invites adverse conduct by consuming alcohol. Notably, respondent's long-term avoidance of illegal activity related to alcohol coincided with his enrollment in an in-house rehabilitation program and continued periodic participation in alcohol rehabilitation programs. Unfortunately, he has been absent from such programs for approximately eight months.

## *Conclusion*

17. Respondent has demonstrated sufficient rehabilitation to merit a restricted license under the limitations, conditions, and restrictions set forth in the orders below. Other than the history of criminal convictions, the Bureau has raised no other issues concerning respondent's meeting of the requirements for a license. The limitations, conditions, and restrictions listed in the orders below reflect provisions for restricted licenses as authorized in Business and Professions Code section 10156.5, 10156.6, and 10156.7.

## ORDER

1. Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5.

2. The restricted license issued to the respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

(a) 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:

(1) 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

(2) 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.

(b) 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 three years have elapsed from the date of issuance of the restricted license to respondent.

(c) With the application for license, or with the application for transfer to a new employing broker, respondent shall submit

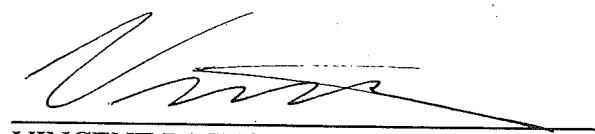
a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Bureau of Real Estate which shall certify as follows:

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

(2) 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.

3. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. 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.

Dated: January 15, 2015.



VINCENT PASTORINO  
Administrative Law Judge  
Office of Administrative Hearings