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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

APR 26 2018

BUREAU OF REAL ESTATE

By B. Nicholas

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In the Matter of the Application of)	CalBRE No. H-6623 SAC
ANTHONY VICTOR RUGGIERO,)	OAH No. 2018010078
Respondent.)	

DECISION

The Proposed Decision dated March 22, 2018, 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. The earliest date on which the applicant may reapply for a license is one year from the effective date of this Decision. If and when application is again made for this license, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

Pursuant to Government Code Section 11521, the Bureau 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 Bureau'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

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11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on MAY 17 2018

IT IS SO ORDERED April 25, 2018

WAYNE S. BELL
REAL ESTATE COMMISSIONER

A handwritten signature in blue ink, appearing to read "Daniel J. Sandri", is written over a horizontal line.

By: DANIEL J. SANDRI
Chief Deputy Commissioner

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

In the Matter of the Application of:

ANTHONY VICTOR RUGGIERO,

Respondent.

Case No. H-6623 SAC

OAH No. 2018010078

PROPOSED DECISION

This matter was heard before Dena Coggins, Administrative Law Judge, Office of Administrative Hearings, on March 8, 2018, in Sacramento, California.

Adriana Badilas, Counsel for the Bureau of Real Estate (Bureau), represented Tricia Parkhurst (complainant), a Supervising Special Investigator of the State of California.

Respondent Anthony Victor Ruggiero (respondent) represented himself at the hearing.

Submission of the matter was deferred to allow respondent time to submit additional documentary evidence relating to the status of his probation. Respondent submitted additional evidence within the time period allotted.¹ The record was closed and the matter was submitted on March 16, 2018.

FACTUAL FINDINGS

1. On or about March 26, 2016, respondent signed and thereafter filed with the Bureau on March 30, 2016, an application for a real estate salesperson license (application). No license has been issued.

¹ On March 15, 2018, respondent submitted a letter from the Placer County Probation Department, dated March 12, 2018, marked for identification as Exhibit B and Completion Notice from the Roseville Service Center, dated March 14, 2018, marked for identification as Exhibit C, along with a proof of service. Receiving no objection to the documents from the Bureau, the documents were admitted into evidence as administrative hearsay.

2. On December 14, 2017, complainant made and thereafter filed the Statement of Issues in her official capacity. Complainant seeks to deny respondent's application based on his criminal conviction for driving under the influence of alcohol (DUI). Complainant also seeks to deny respondent's application based upon his failure to comply with the terms and conditions of a Stipulation and Agreement relating to a two-year restricted real estate salesperson license granted to respondent on November 13, 2007.

3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Respondent's April 18, 2017 DUI Conviction

4. On April 18, 2017, in the Placer County Superior Court, Case No. 62-149141, respondent, on a plea of nolo contendere, was convicted of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor. Respondent was sentenced to 30 days in jail and four years of formal probation. He was ordered to pay fine, penalties, and assessments of approximately \$3,097. The terms of respondent's probation include submitting to drug, narcotic, or alcohol testing as directed by the probation officer or any peace officer, abstaining from the use and possession of intoxicants, and not being in any place where alcohol is the primary item of sale. Additional probation terms include attending a 9-month DUI offender program and installing an Ignition Interlock Device in any vehicle owned or operated by respondent for a period of one year to ensure that he does not drive a car while under the influence of alcohol. Respondent remains on probation until April 2021. He completed the 9-month DUI offender program in January 2018, and he is on a payment plan to pay his fines, penalties, and assessments.

5. The facts underlying the conviction occurred on October 12, 2016. Respondent rapidly turned in front of traffic and directly towards two minor pedestrians crossing the driveway of a grocery store parking lot. Respondent entered the parking lot at a high rate of speed before he was stopped by a California Highway Patrol officer. Respondent denied drinking to the officer, but admitted to drinking the night before. Respondent failed to perform as directed on field sobriety tests administered by the officer. A Preliminary Alcohol Screening test showed respondent had a blood alcohol content of .25% on the first test, and .23% on the second test administered four minutes later at the scene.

Suspension and Expiration of Respondent's Restricted Real Estate Salesperson License

6. On February 7, 2007, respondent applied for a real estate salesperson license. The Bureau filed a Statement of Issues against respondent on September 17, 2007, seeking to deny respondent's application for licensure based on his prior convictions. On October 10, 2007, respondent entered into a stipulation and agreement with the Bureau, which granted respondent a two-year restricted salesperson license subject to respondent completing two

educational courses within 18 months of the issuance of the restricted license pursuant to Business and Professions Code section 10153.4. The stipulation and agreement became effective on November 13, 2007, and respondent's restricted real estate salesperson license was issued that day pursuant to an order of the Real Estate Commissioner.

7. Respondent's restricted real estate salesperson license was suspended indefinitely on or about May 27, 2009, after he failed to complete the required educational courses. On November 25, 2011, respondent's license rights expired.²

Matters in Aggravation

8. Between 1997 and 2004, respondent was convicted of four criminal offenses, including violation of Penal Code section 594, subdivision (a), vandalism; violation of Penal Code section 242, battery; a violation of Vehicle Code section 243, subdivision (e), battery against a spouse, former spouse, or cohabitant;³ violation of Penal Code section 647, subdivision (f), drunk in public;⁴ and violation of Vehicle Code Section 23152(a), driving under the influence of alcohol.⁵ Respondent's DUI conviction occurred on July 7, 2004.

Respondent's Evidence

9. Respondent is 44 years old. He has been married for 18 years and has three children. He owns his own home and is the sole provider for his family. He has worked at Wells Fargo as a home mortgage consultant since April 2016. As a home mortgage consultant, he attains financing for clients interested in purchasing or refinancing a mortgage. Prior to working at Wells Fargo, he worked at a health club as a manager from 1998 to 2004, pursued his real estate license, and then returned to working at the health club in June 2008 through January 2016. He now wants to pursue a career in real estate.

² The Statement of Issues misstates that respondent's restricted real estate salesperson license was suspended on November 25, 2011.

³ The official court record of this conviction was not offered into evidence. Evidence relating to this conviction was provided through respondent's admissions and a court case summary.

⁴ The official court record of this conviction was not offered into evidence. Evidence relating to this conviction was provided through respondent's admissions and incident reports.

⁵ The Statement of Issues alleged a 1993 conviction for violation of Vehicle Code section 23103, wet reckless driving; however, no evidence was introduced relating to the alleged conviction.

10. Respondent began attending junior college at Diablo Valley College in 1992 and earned his associate's degree. He transferred to California State University, Chico in fall 1996 to pursue a degree in exercise physiology, but did not complete his coursework.

11. Respondent testified that he did not comply with the stipulation and waiver relating to his restricted real estate salesperson license that required him to complete two educational courses. Respondent did not comply with the stipulation and waiver because he did not plan to pursue a career in real estate at that time because of the "mortgage meltdown." Also, respondent did not believe he would receive income in the real estate industry.

12. Respondent testified about his convictions at hearing. He explained that in 2004, he received a conviction for driving under the influence of alcohol after attending an after-work function at a local restaurant where he drank alcohol. He completed the First Time Offender program, a three-month program he was ordered to attend as a term of his probation. Regarding his conviction for the battery against a cohabitant in 1997, respondent testified that he got into an argument with his then-girlfriend after both had been drinking. He described the incident as opening the door "[a]nd she went flying." As for his most recent DUI conviction in 2017, respondent testified that he went to a sports bar to watch a sporting event with friends on October 12, 2016. While there, he drank heavily. The next day he woke up intoxicated and continued drinking. Later that day, he drove intoxicated to an Automatic Teller Machine near his home. All of respondent's convictions stemmed from alcohol and he admitted to having an anger management issue when under the influence of alcohol.

13. Respondent believes he has had a problem with alcohol his entire life. He has been sober since October 12, 2016, the day he was arrested in connection with his most recent conviction for driving under the influence of alcohol. Prior to his current sobriety date, respondent was last sober for three to four years beginning in 2004.⁶ Respondent attended Alcoholic Anonymous (AA) meetings between November 2016 and April 2017, after he was arrested for driving under the influence in October 2016. He stopped attending the AA meetings once he started attending the court ordered DUI offender program in connection with his 2017 DUI conviction. Respondent explained that he has learned a great deal from the DUI offender program, including being responsible and the effects of alcohol, however, he had a difficult time explaining his triggers for drinking. Respondent expressed embarrassment and shame about his conduct that led to his 2017 DUI conviction.

14. Respondent was the only witness to testify at hearing. Respondent submitted one undated character reference letter from his wife who described respondent as bettering

⁶ Although respondent testified he was sober for three to four years beginning in 2004, he sent a letter to the Bureau on or about June 25, 2017, wherein he claimed to have been sober for 10 years. He could not reconcile the inconsistencies relating to his claimed sobriety.

himself and not touching alcohol in over a year. Respondent has coached youth sports in his community, including basketball, football, and baseball, for over 12 years.

Discussion

15. The Bureau has adopted criteria for determining whether an applicant has been rehabilitated since committing the acts for which denial of licensure is sought. (Cal. Code of Regs., tit. 10, § 2911.) The following criteria relevant to respondent are:

(1) The time that has elapsed since commission of the act(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.

[¶] . . . [¶]

(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.

[¶] . . . [¶]

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

[¶] . . . [¶]

(14) Change in attitude from that which existed at the time of the conduct in question

16. At hearing, respondent testified that he was embarrassed and ashamed of his conduct leading to his 2017 DUI conviction. He has been active in his community by volunteering to coach youth sports teams year round. He is the sole provider for his family and has maintained a stable work history at Wells Fargo. Respondent expressed remorse for his wrongdoing and has complied with the probation terms for his 2017 DUI conviction. Respondent attended AA meetings after being arrested for driving under the influence in 2016 on his own accord, and he has maintained his sobriety since October 12, 2016. He submitted a character reference letter from his wife praising him for his abstinence from alcohol and noting he has bettered himself.

17. However, between 1997 and 2017, respondent received no less than five serious convictions, all occurring at a time respondent was intoxicated. Two of his convictions, spanning 13 years, were for driving under the influence of alcohol and all of his convictions resulted from respondent's conduct while intoxicated. While respondent testified that much of his misconduct occurred when he was in college, his most recent conviction cannot be explained by immature college antics. Respondent's recent DUI shows behavior reminiscent of his conduct that led to his numerous convictions from 20 years ago. Further, the passage of less than two years since his 2017 DUI conviction provides an additional cause for concern regarding his rehabilitation. Respondent has not shown sufficient evidence of rehabilitation and he remains on probation. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099 ["Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a bar applicant did not commit additional crimes ... while on probation or parole."])

18. Respondent admits to having a problem with alcohol his entire life and having anger management issues when intoxicated. Respondent maintained a limited period of sobriety between the time of his first DUI conviction in 2004 and his subsequent DUI conviction in 2017. Although respondent should be commended for his 17-month sobriety beginning in October 2016, his sobriety is a recent change in the context of his many years of attempting to maintain his sobriety.

19. The objective of an administrative proceeding relating to licensing is to protect the public. Such proceedings are not for the primary purpose of punishment. (See *Fahmy v. MBC* (1995) 38 Cal.App.4th 810, 817.) The Bureau must be assured that an individual it licenses possesses good judgment and integrity. Based on the evidence, respondent has not demonstrated that it would be consistent with the public interest, safety, and welfare to issue him a real estate salesperson license, at this time.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a)(1), provides that a license may be denied if an applicant has been convicted of a crime.

2. Business and Professions Code section 10177, subdivision (b), provides that an application for a real estate license may be denied if the applicant has “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”

3. In California Code of Regulations, title 10, section 2910, the Bureau has set forth criteria for determining whether a conviction is substantially related to the qualifications, functions, or duties of a licensee. Subdivision (a) of section 2910, in relevant part, provides that a conviction will be deemed to be substantially related if it evidences:

(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.

[¶] . . . [¶]

(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.

4. As set forth in Factual Findings 4 and 5, respondent’s conduct of driving while under the influence of alcohol posed a threat of substantial injury to another. Therefore, his 2017 DUI conviction is substantially related to the qualifications, functions, and duties of a real estate salesperson under California Code of Regulations, title 10, section 2910, subdivision (a)(8). As the court explained in *Griffiths v. Superior Court (Medical Board of California)* (2002) 96 Cal.App.4th 757, 770, “Driving while under the influence of alcohol . . . shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society.”

5. As set forth in Factual Findings 4, 5, and 8, respondent’s convictions considered together are substantially related to the qualifications, functions, or duties of a licensee because they constitute “conduct which demonstrates a pattern of repeated and willful disregard of law.” (Cal. Code of Regs., tit. 10, § 2910, subd. (a)(10).)

6. Additionally, as set forth in Factual Findings 4, 5, and 8, respondent received two DUI convictions that are substantially related to the qualifications, functions, and duties of a real estate salesperson under California Code of Regulations, title 10, section 2910, subdivision (a)(11). As a result, cause exists to deny respondent's application for a real estate salesperson license under Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b).

7. Business and Professions Code section 10177, subdivision (d), provides that an application for a real estate license may be denied if the applicant has:

Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and the enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2. (Definition of willfully)

8. Business and Professions Code section 10177, subdivision (k), provides that an application for a real estate license may be denied if the applicant has "violated any of the terms, conditions, restrictions, and limitations contained in an order granting a restricted license."

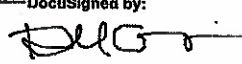
9. As set forth in Factual Findings 6, 7, and 11, respondent willfully disregarded and violated the real estate law by failing to comply with Business and Professions Code section 10153.4, and thereby violated the terms and conditions contained in the order granting respondent a restricted license. Consequently, cause exists to deny respondent's application for a real estate salesperson license under Business and Professions Code section 10177, subdivisions (d) and (k).

10. As set forth in Findings 16 through 19, when all evidence is considered, respondent did not provide sufficient evidence of rehabilitation to justify granting his real estate salesperson application.

ORDER

Respondent Anthony Victor Ruggiero's application for a real estate salesperson license is DENIED.

DATED: March 22, 2018

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DENA COGGINS
Administrative Law Judge
Office of Administrative Hearings