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FILED

SEP 12 2018

DEPARTMENT OF REAL ESTATE

By X. Krapp

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of
ISIDRO AGUAYO, JR.,
Respondent.

DRE No. H-6649 SAC

OAH No. 2018030903

STIPULATION AND WAIVER
AND DECISION AFTER REJECTION

This matter came on for hearing before Marilyn A. Woollard, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California, on June 14, 2018.

Adriana Z. Badilas, Counsel, represented the Complainant, Tricia Parkhurst, in her official capacity as a Supervising Special Investigator with the Department of Real Estate ("the Department"). Respondent, ISIDRO AGUAYO, JR., appeared and represented himself. Evidence was received, the record was closed and submitted on June 14, 2018.

On June 28, 2018, the Administrative Law Judge rendered a Proposed Decision which the Real Estate Commissioner (hereinafter "the Commissioner") declined to adopt as his Decision herein. Pursuant to Section 11517 of the Government Code of the State of California, Respondent was served with notice of the Commissioner's determination not to adopt the Proposed Decision along with a copy of the Proposed Decision. Respondent was notified that the case would be decided by the Commissioner upon the record, the transcript of proceedings,

1 and upon written argument offered by Respondent and Complainant.

2 Written argument was not submitted by Respondent. Written argument was not
3 submitted on behalf of Complainant. The parties wish to settle this matter without further
4 proceedings.

5 The following shall constitute the Decision of the Commissioner in these
6 proceedings.

7 The Findings of Fact and Legal Conclusions in the Proposed Decision dated June
8 28, 2018, and attached hereto as Exhibit A are hereby adopted in full as part of this Decision.

9 Pursuant to Section 11517(c)(2)(B) of the California Government Code, the
10 Order in the Proposed Decision dated June 28, 2018, is hereby amended as follows:

11 ORDER

12 The application of Respondent ISIDRO AGUAYO, JR., for a real estate
13 salesperson license is denied; provided, however, a restricted real estate salesperson
14 license shall be issued to Respondent pursuant to Section 10156.5 of the Business and
15 Professions Code ("the Code"). The restricted license issued to Respondent shall be
16 subject to all of the provisions of Section 10156.7 of the Code and to the following
17 limitations, conditions and restrictions imposed under authority of Section 10156.6 of the
18 Code:

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

22 (a) The conviction of Respondent (including a plea of nolo
23 contendere) of a crime that is substantially related to

24 Respondent's fitness or capacity as a real estate licensee; or

25 (b) The receipt of evidence that Respondent has violated

26 provisions of the California Real Estate Law, the subdivided
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lands law, regulations of the 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 limitations, conditions, or restrictions of a
restricted license until three (3) years have elapsed from the date of the 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
broker on a form approved by the Department wherein the employing broker shall certify as
follows:

a. That broker has read the Stipulation and Waiver which is the basis
for the issuance of the restricted license; and

b. That 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.

4. 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 137000, Sacramento, CA 95813-7000. 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.

* * *

1 I have read the Stipulation and Waiver and Decision After Rejection and its terms
2 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
3 rights given to me by the Administrative Procedure Act, and I willingly, intelligently, and
4 voluntarily waive those rights.

5 8-9-18

6
7 DATED

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9 
10 ISIDRO AGUAYO, JR.
11 Respondent

12 * * *

13
14 The foregoing Stipulation and Waiver and Decision After Rejection is hereby
15 adopted as my Decision and Order in this matter and shall become effective at 12 o'clock noon
16 on ~~OCT 03~~ 2018
17 on _____.

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19 IT IS SO ORDERED September 10, 2018.

20 DANIEL J. SANDRI
21 ACTING REAL ESTATE COMMISSIONER

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BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA¹

In the Matter of the First Amended
Statement of Issues Against:

ISIDRO SALAS AGUAYO,

Respondent.

Case No. H-6649 SAC

OAH No. 2018030903

PROPOSED DECISION

Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, heard this matter in Sacramento, California, on June 14, 2018.

Adriana Z. Badilas, Real Estate Counsel, Bureau of Real Estate (Bureau), represented complainant Tricia Parkhurst, in her official capacity as a Supervising Special Investigator of the State of California (complainant).

Respondent Isidro Salas Aguayo appeared on his own behalf.

Oral and documentary evidence was received. At the conclusion of the hearing, the parties offered oral closing argument. The record was then closed and the matter was submitted for decision on June 14, 2018.

FACTUAL FINDINGS

1. On December 1, 2005, respondent applied for a real estate salesperson license, the denial of which was upheld following an evidentiary hearing in the Proposed Decision issued March 22, 2007, in Case Number H-4642 SAC, OAH Number N2007010702. The basis for the denial was respondent's failure to provide sufficient evidence of rehabilitation from the conviction described in Finding 7. On April 17, 2007, the Real Estate Commissioner (Commissioner) adopted this Proposed Decision as its Decision, effective May 9, 2007.

¹Effective July 1, 2018, the Bureau of Real Estate will become the Department of Real Estate; all references in this decision to the Bureau of Real Estate after that date are to the Department of Real Estate. (Bus. & Prof. Code, § 10005, effective July 1, 2018.)

2. On June 22, 2016, respondent signed his current application for a real estate salesperson license, which was received by the Bureau on June 28, 2016. On November 9, 2016, respondent passed his Real Estate Salesperson examination. By letter dated December 9, 2016, the Bureau informed respondent of his examination results and further advised him that additional information was required before a determination could be made on his license request.

3. On February 14, 2018, complainant signed the Statement of Issues in her official capacity, requesting that respondent's application be denied based upon the conviction outlined in Finding 7.

4. On March 7, 2018, respondent signed his Notice of Defense and request for a hearing. The matter was then 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. By order dated April 25, 2018, the hearing was continued to June 14, 2018.

5. On June 13, 2018, complainant signed the First Amended Statement of Issues in her official capacity, requesting that respondent's application be denied pursuant to Business and Professions Code sections 480, subdivisions (a) and (d), and 10177, subdivisions (a) and (b), based upon: (a) the conviction described in Finding 7; and (b) respondent's alleged attempt to procure a real estate license by fraud, misrepresentation or deceit, or by making a material misstatement of fact in an application for licensure. The additional allegations were deemed controverted. (Gov. Code, § 11507.)

6. At the June 14, 2018 hearing, respondent indicated that he did not require additional time to prepare a defense to the new charges. Complainant presented documentary evidence to support the license denial. Respondent offered documents and testified about his efforts toward rehabilitation. His relevant testimony is paraphrased below.

Respondent's Conviction

7. On July 31, 2000, in Case Number F2154, the Calaveras County Superior Court convicted respondent of a felony violation of Penal Code section 261.5, subdivision (c), unlawful sexual intercourse with a minor more than three years younger, based on his guilty plea. Respondent was placed on five years of formal probation and ordered to serve one year in County Jail, with credit granted for 20 days. In addition to standard terms and conditions, respondent was ordered to: pay a fine of \$1,620; not consume or possess alcohol or drugs; and follow the reasonable directions of the Probation Officer, including by participating and completing educational or therapeutic programs and by making restitution to the victim in an amount directed by the Probation Officer. Respondent was ordered to have no contact with the victim or her family. Respondent was not ordered to register as a sex offender.

8. On August 22, 2005, respondent filed a Petition for Expungement in the Calaveras County Superior Court in Case Number F2154, noting that his formal probation ended on July 31, 2005. In its May 9, 2007 Decision in OAH Case Number N2007010702, the Commissioner adopted the finding that: "on December 12, 2005, respondent's petition to have his felony conviction reduced to a misdemeanor pursuant to Penal Code section 17, and for expungement of his conviction was granted by the court."

9. The facts and circumstances underlying this conviction were detailed in Calaveras County Sheriff's Department Report in Case Number 99-06105, which was admitted and considered pursuant to *Lake v. Reed* (1997) 16 Cal. 4th 448. The offense occurred between midnight and 1:00 a.m. on June 27, 1999. Respondent was 19 years old at the time. A birthday party was held at the house of respondent's girlfriend to celebrate the 16th birthday of her younger sister, who was the victim. Respondent, the two sisters and other young attendees at the party drank large amounts of beer, wine and liquor which had been supplied by the victim's father. At some point, respondent's girlfriend danced provocatively in front of him, but she declined to have intercourse with him at her father's house. The victim became intoxicated and went into her bedroom where she passed out on the floor wearing a top and shorts. Respondent then stated he was going to the bathroom, but instead went into the victim's bedroom, removed her shorts and raped her.

Respondent's girlfriend later entered the victim's room and asked respondent what he was doing. Respondent pretended to be looking for a blanket. The victim was not aware of the sexual assault until the next morning, when she awoke to find her shorts were missing. She felt a dull pain in her groin and noticed what she believed to be semen in her underwear. She had no recollection of the assault. That day, respondent's girlfriend asked him whether he had had sex with her sister the previous evening. Respondent initially denied it, but then admitted taking the victim's shorts off, sliding her underwear aside and having sex with her. The family provided the victim's underwear to the deputies investigating the matter. When analyzed, the DNA profile of the semen was the same as that provided by respondent.

10. The Decision denying respondent's previous request for licensure concluded that his explanation of the offense demonstrated insufficient rehabilitation because he did not fully acknowledge his crime. Specifically, respondent's statements that everyone was drunk, that "we [he and the victim] had sex," and that the victim "was not completely unconscious" during the act, were "equivocation [that] demonstrates a lack of rehabilitation, irrespective of his success in obtaining an expungement."

Respondent's Failure to Disclose Prior License Denial.

11. The application section entitled "Background Information" instructs applicants to: "Carefully read and provided detailed answers to questions 28-33." Applicants "must provide a "yes" or "no" response to all questions, and completely and accurately provide the detailed information required. ... Failure to disclose pertinent information may result in denial of your license application and/or delays."

12. Application Question 30 asks:

HAVE YOU EVER HAD A DENIED, SUSPENDED, RESTRICTED OR REVOKED BUSINESS OR PROFESSIONAL LICENSE (INCLUDING REAL ESTATE) IN CALIFORNIA OR ANY OTHER STATE? IF YES, COMPLETE ITEM 35.”²

13. Respondent replied “NO” to this question. He disclosed his conviction and indicated that it was both a felony and a misdemeanor due to the expungement. Respondent wrote that he did not remember the specific Penal Code section violated and he provided an explanation of his efforts to obtain complete information about the conviction by contacting various agencies in Calaveras County.

14. The application requires applicants to certify the accuracy of the information they have provided. Specifically, at the end of the application, there is a section entitled “Salesperson Exam & License Certification.” In pertinent part, this section provides:

License – I certify under penalty of perjury under the laws of the State of California that the foregoing answers and statements given in this application are true and correct, . . .

After completing his application, respondent signed this certification under penalty of perjury.

Respondent’s Evidence

15. Respondent is now 39 years old. He testified that he is a middle child in a family of eight children. He was raised in Calaveras County where he played many sports and had a primary passion for baseball. He dreamed of becoming a professional baseball player, but due to injury, this did not work out. He has continued to play baseball and to live an active, athletic life. His second career passion was to become a firefighter. After high school, respondent attended San Joaquin Delta College (Delta) in Stockton, where he enrolled in fire science and business classes. He later developed an interest in working in real estate. Since 2013, respondent has worked as the member service manager at Fitness Works gym (Sparetime, Inc.) in Lodi, where he is responsible for all operations. He has a second job at a car wash in Stockton.

16. Since his conviction, respondent has tried to live a positive, healthy, normal life. He has been in no trouble since age 19 and has never used drugs. Respondent returned to junior college and completed his Associate of Arts degree at Delta. He then transferred to University of California, Davis (UCD) to obtain a degree in business. His primary reason for

² Bolding and letter case are as they appear in the application. Question 35 asks for: “A DETAILED EXPLANATION OF ITEM 30....”

going to UCD was to play baseball and, when he did not make the team, he dropped out. Respondent eventually returned to college and attended California State University, Stanislaus, where he obtained a Bachelor of Science degree in business in May 2011. He has since tried to get management jobs in business.

17. From 2011 to 2013, respondent worked as a housekeeping manager at a nursing home in Lodi. During this time, he learned he could manage such a facility without a nursing degree if he had an administrator certificate from the Department of Social Services (DSS). Respondent obtained his first professional license on May 17, 2018 from DSS, after completing the Residential Care for the Elderly (RFCE) Administrator Certification Program. Prior to obtaining this certificate, respondent was required to attend a class for several months, pass a state examination, submit his fingerprints and explain his criminal background.

18. Respondent recently engaged in the application process to become a Fire Fighter Trainee with the City of Stockton. His writing exercise for this position was accepted and he took the written examination for the position on June 12, 2018. While he is interested in firefighting as a career, respondent's primary goal is to obtain his real estate license.

19. Respondent described his conduct leading to his conviction as a "horrible act." He agreed with the facts as described in the police report, and admitted that the sexual intercourse he had with the victim was not consensual. He had sex with her when she was passed out and did not consent. This is why he considers his conduct to have been horrible. Respondent did not intend to imply that the victim had consented to have sex with him in any way. The next day, when confronted by his girlfriend, respondent confessed to what he had done.

20. Respondent accepts responsibility for his conduct and the negative effects it has had on the victim. In explaining the circumstances around his conduct, respondent indicated that he was intoxicated and "not in his right mind." He spent eight months in county jail and participated in counseling for sex offenders as directed by his probation officer for approximately three years. Even though his conduct occurred 19 years ago, respondent has spent years working on himself, trying to get past it.

21. Respondent has been interested in becoming a licensee for many years. He has not had any experience working in a real estate office, but believes it is an active job that involves significant opportunities to interact with people. In 2005, respondent filed his first application for a real estate license, which was denied in 2007. At that time, he had a sponsoring broker, but this individual has since sold his practice. He did not list a sponsoring broker on his current application, but hopes to contact Keller Williams if his license is approved.

22. Respondent remembered being at the previous licensing hearing. He specifically recalled being very nervous, particularly about explaining the circumstances of

his conviction. He remembered that his application was denied at that time. He explained that he failed to disclose this prior license denial on his 2016 application because he found the question confusing. He interpreted Question 30 to ask whether he had received a license from the Bureau, which had then been denied. Because the Bureau never issued him a license, he believed the appropriate answer was "No." He has since re-read the question and understands it means the previous denial of a license before issuance.

23. Respondent is single, but has been in a committed relationship for five years. His girlfriend has three sons, two of whom are out of home attending college. Her 17 year old son lives at their home in Lodi. Respondent remains actively involved in sports. He has been involved in competitive CrossFit Games, sponsored by Reebok. He also plays in summer league baseball, which involves vintage baseball. The league plays by the rules and with equipment similar to that used in the 1800s. Many youngsters are interested in this unique type of baseball and respondent and other players explain the history to them.

24. In the distant past, respondent went to Mexico to help build homes for the less fortunate and he later coached YMCA baseball for seven-year-olds. He is not presently engaged in social or community groups designed to help others, but he does help out individuals on occasion.

25. Respondent provided a February 14, 2017 letter from Lisa Bernardo, Director of Enrollment Service/Registrar, California State University, Stanislaus. Ms. Bernardo verified that, on May 26, 2011, respondent obtained a Bachelor of Science degree in business administration, with a concentration in management/human resources.

26. Respondent provided a copy of the RCFE Administrator Certification Program issued to him by DSS's Community Care Licensing Division on May 7, 2018. This certificate is in effect and has an expiration date of May 6, 2020.

27. Respondent provided copies of two references he obtained and submitted to DSS in conjunction with his RCFE Certification Program. These references were admitted and are considered to the extent permitted under Government Code section 11513, subdivision (d).³

a. In his December 26, 2017 reference, Steven James Hess indicated that he met respondent 27 years ago, grew up with him and has remained lifelong friends. He described respondent as a "very smart and reliable" man who "always applies himself to the task at hand," in both his personal and professional life. Mr. Hess has seen respondent interact with

³ Government Code section 11513, subdivision (d), provides in pertinent part that "hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions..."

elderly and mentally impaired individuals with "great respect and a very relaxed demeanor." He concluded by stating that respondent is very honest.

b. Aide Leon provided a reference for respondent written in Spanish. Respondent translated this reference and provided the original reference for comparison. In his December 18, 2017 reference, Mr. Leon indicated he has known respondent for 10 years as the housekeeping supervisor at a Lodi nursing home. In Mr. Leon's experience, respondent is a hardworking, professional, ethical, patient, honest and respectful person who knows how to treat workers and knows English and Spanish well.

Discussion

28. The Bureau has developed criteria to be used when determining the rehabilitation of an applicant for a license based on a criminal conviction or act. As relevant to this matter, the criteria include: the time that has elapsed since commission of the acts or offenses; whether the criminal convictions have been expunged; successful completion or early discharge from probation or parole; payment of fines or other monetary penalty imposed in connection with the conviction; stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial; completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement; 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; change in attitude from that which existed at the time of the conduct in question as evidenced by: (a) testimony and/or other evidence of rehabilitation; (b) evidence from family members, friends and/or other persons familiar with applicant's previous conduct and with his subsequent attitudes and/or behavioral patterns; (c) evidence from probation or parole officers and/or law enforcement officials about applicant's social adjustments; (d) evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances; and (e) the absence of subsequent felony or 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. (Cal. Code Regs., tit. 10, § 2911.)

29. Respondent completed his criminal probation 13 years ago. In its May 9, 2007 Decision in OAH Case Number N2007010702, the Commissioner adopted findings that respondent paid the ordered fines and completed the court-ordered Adult Sex Offender Treatment Program, as verified by Valley Community Counseling Services on July 25, 2005. The primary reason for the prior license denial was his equivocation about the facts of the offense, which demonstrated a lack of rehabilitation.

30. In his testimony at the present hearing, respondent initially hesitated to discuss the specific facts of his offense and could only repeat that it was a "horrible" offense.

Respondent's overall demeanor suggested that this hesitation was due to a genuine sense of shame about his conduct, rather than minimization of his conduct. On cross-examination, respondent unequivocally admitted the true nature of his offense. His expressions of remorse and responsibility were credible.

31. In 2016, respondent failed to disclose his previous license denial, which raises concerns about his honesty. Honesty and trustworthiness are qualities of utmost importance in a real estate licensee, who must frequently act in a fiduciary capacity. "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee." (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) "If appellant's offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson." (*Harrington, supra*, at p. 402; *Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.) "The Legislature intended to insure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear." (*Harrington, supra*, at p. 402; *Ring v. Smith* (1970) 5 Cal.App.3d 197, 205.)

32. Respondent's testimony that he did not intend to deceive the Bureau by failing to disclose the prior license denial, considered in conjunction with his responses to the application as a whole, was persuasive. As recognized by the appellate court in *Krug Real Estate Investments, Inc., v. Praszker* (1994) 22 Cal.App.4th 1814, 1821, misrepresentation may be intentional or negligent, and a "negligent misrepresentation is a species of 'actual fraud' and a form of deceit."

33. It has been 19 years since respondent engaged in the conduct that resulted in his 2000 conviction. He successfully completed probation 13 years ago. His probation included three years of therapy regarding his conduct. His conviction has been reduced to a misdemeanor and expunged. There was no evidence that respondent has had any further encounters with the law and he has suffered no further convictions. He has engaged positively in education, training, employment and career development since that time. He has been cleared by DSS to be an administrator in an RCFE, which involves a vulnerable client population. He has been in a stable relationship and has shared parenting responsibilities. Two years ago, respondent negligently failed to disclose his prior license denial. As recognized by complainant after listening to his testimony, when all the evidence is considered, it would not be against the public interest to allow respondent to work as a real estate salesperson under a restricted license, subject to the terms and conditions set forth below.

LEGAL CONCLUSIONS

1. **Burden of Proof:** An applicant for a license bears the burden of proving that he should be granted the license. (*Martin v. Alcohol Beverage Control Appeals Bd.* (1959) 52 Cal.2d 238.) In addition, 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.) Except

as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

2. Business and Professions Code section 480 provides, in pertinent part, as follows:

(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. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. . .

[¶] . . . [¶]

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

3. Business and Professions Code section 10177 provides, in pertinent part, that the Commissioner may deny the issuance of a license to an applicant, who has done any of the following:

(a) Procured, or attempted to procure, a real estate license . . . for himself . . . by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license. . .

(b)(1) 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, and the time for appeal has elapsed or the judgment of 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 that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

4. California Code of Regulations, title 10, section 2910, subdivision (a)(8), provides that a criminal conviction or an act "shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Bureau" if it involves: "[d]oing 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."

5. As set forth in Factual Finding 7 and the Legal Conclusions as a whole, respondent's criminal conviction is substantially related to qualifications, functions or duties of a real estate licensee within the meaning of California Code of Regulations, title 10, section 2910, subdivision (a)(8). Because this conviction was expunged, it cannot be the sole basis for the denial of his application. (Bus. & Prof. Code, § 480, subd. (c).)

6. As set forth in Factual Finding 32, respondent engaged in negligent misrepresentation when he failed to disclose to the Bureau that he had previously been denied a real estate license. This conduct constitutes a violation of Business and Professions Code sections 480, subdivision (d), and 10177, subdivision (a). This act, considered in conjunction with his expunged conviction, establishes legal cause to deny respondent's application for licensure pursuant to Business and Professions Code sections 480, subdivisions (a) and (d), and 10177, subdivisions (a) and (b).

7. The rehabilitation factors discussed in Factual Finding 28 have been considered. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly in Factual Findings 28 through 33, respondent established that he is substantially rehabilitated from the conduct that resulted in his conviction. Based on respondent's recent failure to disclose his prior license denial, a restricted license should issue and will provide the Bureau with an opportunity to ensure that respondent's life changes are permanent.

ORDER

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 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.

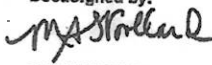
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions

attaching to the restricted license until three (3) 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 Bureau 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: June 28, 2018

DocuSigned by:

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MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings

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JUL 26 2018
DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of
ISIDRO AGUAYO, JR.,
Respondent.

) DRE No. H-6649 SAC
)
) OAH No. 2018030903
)

NOTICE

TO: ISIDRO AGUAYO, JR., Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated June 28, 2018, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated June 28, 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 Thursday, June 14, 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 Thursday, June 14, 2018, at the Sacramento office of the Department of Real Estate unless an extension of the time is granted for good cause

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shown.

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

DATED: July 26, 2018.

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA¹

In the Matter of the First Amended
Statement of Issues Against:

ISIDRO SALAS AGUAYO,

Respondent.

Case No. H-6649 SAC

OAH No. 2018030903

PROPOSED DECISION

Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, heard this matter in Sacramento, California, on June 14, 2018.

Adriana Z. Badilas, Real Estate Counsel, Bureau of Real Estate (Bureau), represented complainant Tricia Parkhurst, in her official capacity as a Supervising Special Investigator of the State of California (complainant).

Respondent Isidro Salas Aguayo appeared on his own behalf.

Oral and documentary evidence was received. At the conclusion of the hearing, the parties offered oral closing argument. The record was then closed and the matter was submitted for decision on June 14, 2018.

FACTUAL FINDINGS

1. On December 1, 2005, respondent applied for a real estate salesperson license, the denial of which was upheld following an evidentiary hearing in the Proposed Decision issued March 22, 2007, in Case Number H-4642 SAC, OAH Number N2007010702. The basis for the denial was respondent's failure to provide sufficient evidence of rehabilitation from the conviction described in Finding 7. On April 17, 2007, the Real Estate Commissioner (Commissioner) adopted this Proposed Decision as its Decision, effective May 9, 2007.

¹Effective July 1, 2018, the Bureau of Real Estate will become the Department of Real Estate; all references in this decision to the Bureau of Real Estate after that date are to the Department of Real Estate. (Bus. & Prof. Code, § 10005, effective July 1, 2018.)

2. On June 22, 2016, respondent signed his current application for a real estate salesperson license, which was received by the Bureau on June 28, 2016. On November 9, 2016, respondent passed his Real Estate Salesperson examination. By letter dated December 9, 2016, the Bureau informed respondent of his examination results and further advised him that additional information was required before a determination could be made on his license request.

3. On February 14, 2018, complainant signed the Statement of Issues in her official capacity, requesting that respondent's application be denied based upon the conviction outlined in Finding 7.

4. On March 7, 2018, respondent signed his Notice of Defense and request for a hearing. The matter was then 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. By order dated April 25, 2018, the hearing was continued to June 14, 2018.

5. On June 13, 2018, complainant signed the First Amended Statement of Issues in her official capacity, requesting that respondent's application be denied pursuant to Business and Professions Code sections 480, subdivisions (a) and (d), and 10177, subdivisions (a) and (b), based upon: (a) the conviction described in Finding 7; and (b) respondent's alleged attempt to procure a real estate license by fraud, misrepresentation or deceit, or by making a material misstatement of fact in an application for licensure. The additional allegations were deemed controverted. (Gov. Code, § 11507.)

6. At the June 14, 2018 hearing, respondent indicated that he did not require additional time to prepare a defense to the new charges. Complainant presented documentary evidence to support the license denial. Respondent offered documents and testified about his efforts toward rehabilitation. His relevant testimony is paraphrased below.

Respondent's Conviction

7. On July 31, 2000, in Case Number F2154, the Calaveras County Superior Court convicted respondent of a felony violation of Penal Code section 261.5, subdivision (c), unlawful sexual intercourse with a minor more than three years younger, based on his guilty plea. Respondent was placed on five years of formal probation and ordered to serve one year in County Jail, with credit granted for 20 days. In addition to standard terms and conditions, respondent was ordered to: pay a fine of \$1,620; not consume or possess alcohol or drugs; and follow the reasonable directions of the Probation Officer, including by participating and completing educational or therapeutic programs and by making restitution to the victim in an amount directed by the Probation Officer. Respondent was ordered to have no contact with the victim or her family. Respondent was not ordered to register as a sex offender.

8. On August 22, 2005, respondent filed a Petition for Expungement in the Calaveras County Superior Court in Case Number F2154, noting that his formal probation ended on July 31, 2005. In its May 9, 2007 Decision in OAH Case Number N2007010702, the Commissioner adopted the finding that: "on December 12, 2005, respondent's petition to have his felony conviction reduced to a misdemeanor pursuant to Penal Code section 17, and for expungement of his conviction was granted by the court."

9. The facts and circumstances underlying this conviction were detailed in Calaveras County Sheriff's Department Report in Case Number 99-06105, which was admitted and considered pursuant to *Lake v. Reed* (1997) 16 Cal. 4th 448. The offense occurred between midnight and 1:00 a.m. on June 27, 1999. Respondent was 19 years old at the time. A birthday party was held at the house of respondent's girlfriend to celebrate the 16th birthday of her younger sister, who was the victim. Respondent, the two sisters and other young attendees at the party drank large amounts of beer, wine and liquor which had been supplied by the victim's father. At some point, respondent's girlfriend danced provocatively in front of him, but she declined to have intercourse with him at her father's house. The victim became intoxicated and went into her bedroom where she passed out on the floor wearing a top and shorts. Respondent then stated he was going to the bathroom, but instead went into the victim's bedroom, removed her shorts and raped her.

Respondent's girlfriend later entered the victim's room and asked respondent what he was doing. Respondent pretended to be looking for a blanket. The victim was not aware of the sexual assault until the next morning, when she awoke to find her shorts were missing. She felt a dull pain in her groin and noticed what she believed to be semen in her underwear. She had no recollection of the assault. That day, respondent's girlfriend asked him whether he had had sex with her sister the previous evening. Respondent initially denied it, but then admitted taking the victim's shorts off, sliding her underwear aside and having sex with her. The family provided the victim's underwear to the deputies investigating the matter. When analyzed, the DNA profile of the semen was the same as that provided by respondent.

10. The Decision denying respondent's previous request for licensure concluded that his explanation of the offense demonstrated insufficient rehabilitation because he did not fully acknowledge his crime. Specifically, respondent's statements that everyone was drunk, that "we [he and the victim] had sex," and that the victim "was not completely unconscious" during the act, were "equivocation [that] demonstrates a lack of rehabilitation, irrespective of his success in obtaining an expungement."

Respondent's Failure to Disclose Prior License Denial

11. The application section entitled "Background Information" instructs applicants to: "Carefully read and provided detailed answers to questions 28-33." Applicants "must provide a "yes" or "no" response to all questions, and completely and accurately provide the detailed information required. ... Failure to disclose pertinent information may result in denial of your license application and/or delays."

12. Application Question 30 asks:

HAVE YOU EVER HAD A DENIED, SUSPENDED, RESTRICTED OR REVOKED BUSINESS OR PROFESSIONAL LICENSE (INCLUDING REAL ESTATE) IN CALIFORNIA OR ANY OTHER STATE? IF YES, COMPLETE ITEM 35.”²

13. Respondent replied “NO” to this question. He disclosed his conviction and indicated that it was both a felony and a misdemeanor due to the expungement. Respondent wrote that he did not remember the specific Penal Code section violated and he provided an explanation of his efforts to obtain complete information about the conviction by contacting various agencies in Calaveras County.

14. The application requires applicants to certify the accuracy of the information they have provided. Specifically, at the end of the application, there is a section entitled “Salesperson Exam & License Certification.” In pertinent part, this section provides:

License – I certify under penalty of perjury under the laws of the State of California that the foregoing answers and statements given in this application are true and correct, . . .

After completing his application, respondent signed this certification under penalty of perjury.

Respondent’s Evidence

15. Respondent is now 39 years old. He testified that he is a middle child in a family of eight children. He was raised in Calaveras County where he played many sports and had a primary passion for baseball. He dreamed of becoming a professional baseball player, but due to injury, this did not work out. He has continued to play baseball and to live an active, athletic life. His second career passion was to become a firefighter. After high school, respondent attended San Joaquin Delta College (Delta) in Stockton, where he enrolled in fire science and business classes. He later developed an interest in working in real estate. Since 2013, respondent has worked as the member service manager at Fitness Works gym (Sparetime, Inc.) in Lodi, where he is responsible for all operations. He has a second job at a car wash in Stockton.

16. Since his conviction, respondent has tried to live a positive, healthy, normal life. He has been in no trouble since age 19 and has never used drugs. Respondent returned to junior college and completed his Associate of Arts degree at Delta. He then transferred to University of California, Davis (UCD) to obtain a degree in business. His primary reason for

² Bolding and letter case are as they appear in the application. Question 35 asks for: “A DETAILED EXPLANATION OF ITEM 30....”

going to UCD was to play baseball and, when he did not make the team, he dropped out. Respondent eventually returned to college and attended California State University, Stanislaus, where he obtained a Bachelor of Science degree in business in May 2011. He has since tried to get management jobs in business.

17. From 2011 to 2013, respondent worked as a housekeeping manager at a nursing home in Lodi. During this time, he learned he could manage such a facility without a nursing degree if he had an administrator certificate from the Department of Social Services (DSS). Respondent obtained his first professional license on May 17, 2018 from DSS, after completing the Residential Care for the Elderly (RFCE) Administrator Certification Program. Prior to obtaining this certificate, respondent was required to attend a class for several months, pass a state examination, submit his fingerprints and explain his criminal background.

18. Respondent recently engaged in the application process to become a Fire Fighter Trainee with the City of Stockton. His writing exercise for this position was accepted and he took the written examination for the position on June 12, 2018. While he is interested in firefighting as a career, respondent's primary goal is to obtain his real estate license.

19. Respondent described his conduct leading to his conviction as a "horrible act." He agreed with the facts as described in the police report, and admitted that the sexual intercourse he had with the victim was not consensual. He had sex with her when she was passed out and did not consent. This is why he considers his conduct to have been horrible. Respondent did not intend to imply that the victim had consented to have sex with him in any way. The next day, when confronted by his girlfriend, respondent confessed to what he had done.

20. Respondent accepts responsibility for his conduct and the negative effects it has had on the victim. In explaining the circumstances around his conduct, respondent indicated that he was intoxicated and "not in his right mind." He spent eight months in county jail and participated in counseling for sex offenders as directed by his probation officer for approximately three years. Even though his conduct occurred 19 years ago, respondent has spent years working on himself, trying to get past it.

21. Respondent has been interested in becoming a licensee for many years. He has not had any experience working in a real estate office, but believes it is an active job that involves significant opportunities to interact with people. In 2005, respondent filed his first application for a real estate license, which was denied in 2007. At that time, he had a sponsoring broker, but this individual has since sold his practice. He did not list a sponsoring broker on his current application, but hopes to contact Keller Williams if his license is approved.

22. Respondent remembered being at the previous licensing hearing. He specifically recalled being very nervous, particularly about explaining the circumstances of

his conviction. He remembered that his application was denied at that time. He explained that he failed to disclose this prior license denial on his 2016 application because he found the question confusing. He interpreted Question 30 to ask whether he had received a license from the Bureau, which had then been denied. Because the Bureau never issued him a license, he believed the appropriate answer was "No." He has since re-read the question and understands it means the previous denial of a license before issuance.

23. Respondent is single, but has been in a committed relationship for five years. His girlfriend has three sons, two of whom are out of home attending college. Her 17 year old son lives at their home in Lodi. Respondent remains actively involved in sports. He has been involved in competitive CrossFit Games, sponsored by Reebok. He also plays in summer league baseball, which involves vintage baseball. The league plays by the rules and with equipment similar to that used in the 1800s. Many youngsters are interested in this unique type of baseball and respondent and other players explain the history to them.

24. In the distant past, respondent went to Mexico to help build homes for the less fortunate and he later coached YMCA baseball for seven-year-olds. He is not presently engaged in social or community groups designed to help others, but he does help out individuals on occasion.

25. Respondent provided a February 14, 2017 letter from Lisa Bernardo, Director of Enrollment Service/Registrar, California State University, Stanislaus. Ms. Bernardo verified that, on May 26, 2011, respondent obtained a Bachelor of Science degree in business administration, with a concentration in management/human resources.

26. Respondent provided a copy of the RCFE Administrator Certification Program issued to him by DSS's Community Care Licensing Division on May 7, 2018. This certificate is in effect and has an expiration date of May 6, 2020.

27. Respondent provided copies of two references he obtained and submitted to DSS in conjunction with his RCFE Certification Program. These references were admitted and are considered to the extent permitted under Government Code section 11513, subdivision (d).³

a. In his December 26, 2017 reference, Steven James Hess indicated that he met respondent 27 years ago, grew up with him and has remained lifelong friends. He described respondent as a "very smart and reliable" man who "always applies himself to the task at hand," in both his personal and professional life. Mr. Hess has seen respondent interact with

³ Government Code section 11513, subdivision (d), provides in pertinent part that "hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions..."

elderly and mentally impaired individuals with “great respect and a very relaxed demeanor.” He concluded by stating that respondent is very honest.

b. Aide Leon provided a reference for respondent written in Spanish. Respondent translated this reference and provided the original reference for comparison. In his December 18, 2017 reference, Mr. Leon indicated he has known respondent for 10 years as the housekeeping supervisor at a Lodi nursing home. In Mr. Leon’s experience, respondent is a hardworking, professional, ethical, patient, honest and respectful person who knows how to treat workers and knows English and Spanish well.

Discussion

28. The Bureau has developed criteria to be used when determining the rehabilitation of an applicant for a license based on a criminal conviction or act. As relevant to this matter, the criteria include: the time that has elapsed since commission of the acts or offenses; whether the criminal convictions have been expunged; successful completion or early discharge from probation or parole; payment of fines or other monetary penalty imposed in connection with the conviction; stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial; completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement; 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; change in attitude from that which existed at the time of the conduct in question as evidenced by: (a) testimony and/or other evidence of rehabilitation; (b) evidence from family members, friends and/or other persons familiar with applicant’s previous conduct and with his subsequent attitudes and/or behavioral patterns; (c) evidence from probation or parole officers and/or law enforcement officials about applicant’s social adjustments; (d) evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances; and (e) the absence of subsequent felony or 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. (Cal. Code Regs., tit. 10, § 2911.)

29. Respondent completed his criminal probation 13 years ago. In its May 9, 2007 Decision in OAH Case Number N2007010702, the Commissioner adopted findings that respondent paid the ordered fines and completed the court-ordered Adult Sex Offender Treatment Program, as verified by Valley Community Counseling Services on July 25, 2005. The primary reason for the prior license denial was his equivocation about the facts of the offense, which demonstrated a lack of rehabilitation.

30. In his testimony at the present hearing, respondent initially hesitated to discuss the specific facts of his offense and could only repeat that it was a “horrible” offense.

Respondent's overall demeanor suggested that this hesitation was due to a genuine sense of shame about his conduct, rather than minimization of his conduct. On cross-examination, respondent unequivocally admitted the true nature of his offense. His expressions of remorse and responsibility were credible.

31. In 2016, respondent failed to disclose his previous license denial, which raises concerns about his honesty. Honesty and trustworthiness are qualities of utmost importance in a real estate licensee, who must frequently act in a fiduciary capacity. "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee." (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) "If appellant's offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson." (*Harrington, supra*, at p. 402; *Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.) "The Legislature intended to insure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear." (*Harrington, supra*, at p. 402; *Ring v. Smith* (1970) 5 Cal.App.3d 197, 205.)

32. Respondent's testimony that he did not intend to deceive the Bureau by failing to disclose the prior license denial, considered in conjunction with his responses to the application as a whole, was persuasive. As recognized by the appellate court in *Krug Real Estate Investments, Inc., v. Praszker* (1994) 22 Cal.App.4th 1814, 1821, misrepresentation may be intentional or negligent, and a "negligent misrepresentation is a species of 'actual fraud' and a form of deceit."

33. It has been 19 years since respondent engaged in the conduct that resulted in his 2000 conviction. He successfully completed probation 13 years ago. His probation included three years of therapy regarding his conduct. His conviction has been reduced to a misdemeanor and expunged. There was no evidence that respondent has had any further encounters with the law and he has suffered no further convictions. He has engaged positively in education, training, employment and career development since that time. He has been cleared by DSS to be an administrator in an RCFE, which involves a vulnerable client population. He has been in a stable relationship and has shared parenting responsibilities. Two years ago, respondent negligently failed to disclose his prior license denial. As recognized by complainant after listening to his testimony, when all the evidence is considered, it would not be against the public interest to allow respondent to work as a real estate salesperson under a restricted license, subject to the terms and conditions set forth below.

LEGAL CONCLUSIONS

1. **Burden of Proof:** An applicant for a license bears the burden of proving that he should be granted the license. (*Martin v. Alcohol Beverage Control Appeals Bd.* (1959) 52 Cal.2d 238.) In addition, 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.) Except

as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

2. Business and Professions Code section 480 provides, in pertinent part, as follows:

(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. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. . .

[¶] . . . [¶]

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

3. Business and Professions Code section 10177 provides, in pertinent part, that the Commissioner may deny the issuance of a license to an applicant, who has done any of the following:

(a) Procured, or attempted to procure, a real estate license . . . for himself . . . by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license. . .

(b)(1) 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, and the time for appeal has elapsed or the judgment of 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 that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

4. California Code of Regulations, title 10, section 2910, subdivision (a)(8), provides that a criminal conviction or an act "shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Bureau" if it involves: "[d]oing 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."

5. As set forth in Factual Finding 7 and the Legal Conclusions as a whole, respondent's criminal conviction is substantially related to qualifications, functions or duties of a real estate licensee within the meaning of California Code of Regulations, title 10, section 2910, subdivision (a)(8). Because this conviction was expunged, it cannot be the sole basis for the denial of his application. (Bus. & Prof. Code, § 480, subd. (c).)

6. As set forth in Factual Finding 32, respondent engaged in negligent misrepresentation when he failed to disclose to the Bureau that he had previously been denied a real estate license. This conduct constitutes a violation of Business and Professions Code sections 480, subdivision (d), and 10177, subdivision (a). This act, considered in conjunction with his expunged conviction, establishes legal cause to deny respondent's application for licensure pursuant to Business and Professions Code sections 480, subdivisions (a) and (d), and 10177, subdivisions (a) and (b).

7. The rehabilitation factors discussed in Factual Finding 28 have been considered. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly in Factual Findings 28 through 33, respondent established that he is substantially rehabilitated from the conduct that resulted in his conviction. Based on respondent's recent failure to disclose his prior license denial, a restricted license should issue and will provide the Bureau with an opportunity to ensure that respondent's life changes are permanent.

ORDER

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 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 three (3) 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 Bureau 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: June 28, 2018

DocuSigned by:

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MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings