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**FILED**

AUG 06 2018  
DEPARTMENT OF REAL ESTATE

By *K. Kuopis*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Application of  
ERIC LEMAR SPIVEY,  
Respondent.

DRE No. H-6661 SAC  
OAH No. 2018031188

STIPULATION AND WAIVER  
AND DECISION AFTER REJECTION

This matter came on for hearing before Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California, on June 11, 2018.

Richard K. Uno, Counsel, represented the Complainant, Tricia Parkhurst, in her official capacity as a Supervising Special Investigator with the Department of Real Estate ("the Department"). Respondent, ERIC LEMAR SPIVEY appeared and represented himself. Evidence was received, the record was closed and submitted on June 11, 2018.

On June 22, 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 22, 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 August 16, 2016, is hereby amended as follows:

11 ORDER

12 The application of Respondent ERIC LEMAR SPIVEY 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  
27

1 lands law, regulations of the Commissioner or conditions  
2 attaching to this restricted license.

3 2. Respondent shall not be eligible to apply for the issuance of an unrestricted  
4 real estate license nor the removal of any of the limitations, conditions, or restrictions of a  
5 restricted license until two (2) years have elapsed from the date of the issuance of the  
6 restricted license to Respondent.

7 3. With the application for license, or with the application for transfer to a new  
8 employing broker, Respondent shall submit a statement signed by the prospective employing  
9 broker on a form approved by the Department wherein the employing broker shall certify as  
10 follows:

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

13 b. That broker will carefully review all transaction documents  
14 prepared by the restricted licensee and otherwise exercise close supervision over the licensee's  
15 performance of acts for which a license is required.

16 4. Respondent shall notify the Commissioner in writing within 72 hours of any  
17 arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post  
18 Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of  
19 Respondent's arrest, the crime for which Respondent was arrested and the name and address  
20 of the arresting law enforcement agency. Respondent's failure to timely file written notice  
21 shall constitute an independent violation of the terms of the restricted license and shall be  
22 grounds for the suspension or revocation of that license.

23 \* \* \*

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  
6 7-27-18  
7 DATED

  
ERIC LEMAR SPIVEY  
Respondent

9 \* \* \*

10 The foregoing Stipulation and Waiver and Decision After Rejection is hereby  
11 adopted as my Decision and Order in this matter and shall become effective at 12 o'clock noon  
12 on AUG 27 2018  
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14 IT IS SO ORDERED August 3, 2018.

15 DANIEL J. SANDRI  
16 ACTING REAL ESTATE COMMISSIONER

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**FILED**

**JUL 26 2018**  
DEPARTMENT OF REAL ESTATE

By                     

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of	)	DRE No. H-6661 SAC
ERIC LEMAR SPIVEY,	)	
	)	OAH No. 2018031188
Respondent.	)	

NOTICE

TO: ERIC LEMAR SPIVEY, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated June 22, 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 22, 2018, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on Monday, June 11, 2018, and any written argument hereafter submitted on behalf of respondent and complainant.

Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Monday, June 11, 2018, at the Sacramento office of the Department of Real Estate unless an extension of the time is granted for good cause

1 shown.

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

5 DATED: July 24, 2018.

6 DANIEL J. SANDRI  
7 ACTING REAL ESTATE COMMISSIONER

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

In the Matter of the Statement of Issues  
Against:

ERIC LEMAR SPIVEY,

Respondent.

Case No. H-6661 SAC

OAH No. 2018031188

**PROPOSED DECISION**

This matter was heard before Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 11, 2018, in Sacramento, California.

Richard K. Uno, Legal Counsel, represented Tricia D. Parkhurst (complainant), Supervising Special Investigator, Bureau of Real Estate (Bureau), Department of Consumer Affairs, State of California.

Eric Lemar Spivey (respondent) represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on June 11, 2018.

**FACTUAL FINDINGS**

1. Complainant made and filed the Statement of Issues in her official capacity.
2. On October 23, 2015, the Bureau received respondent's application for a real estate salesperson license. Complainant seeks to deny respondent's application based upon his convictions described below and his failure to disclose the conviction in Factual Finding 4 on his application.

### *Respondent's Convictions*

3. On June 26, 2012,<sup>1</sup> in the United States District Court for the District of Oregon, No. 3:11-cr-00370-JO-2, respondent, on a plea of guilty, was convicted of violating Title 18, United States Code section 922, subdivision (a)(6), making a false statement in connection with the acquisition of a firearm. Respondent was sentenced to six months of house arrest and three years of informal probation, with the condition that he forfeit any firearm in his possession. Respondent completed the terms of his sentencing, and was released from probation early.

The circumstances underlying this conviction occurred when respondent was 24 years old and in college at Western Oregon University. He purchased ten 40-caliber pistols from a sporting goods store in Oregon, under the guise of purchasing for himself or selling to Oregon residents. His associate planned to sell the firearms in Stockton, California. Prior to any of the pistols being sold, respondent was arrested.

4. On January 22, 2007, in San Joaquin County Superior Court, Case No. SM252735A,<sup>2</sup> respondent, on a plea of no contest, was convicted of trespassing, in violation of Penal Code 602, subdivision (1), a misdemeanor. Respondent was placed on conditional probation for three years. He was ordered to stay away from Van Buren School, and to pay fines and fees.

The circumstances underlying this conviction occurred on August 18, 2006, when respondent was 19 years old. Police officers from the Stockton Unified School District were called to Van Buren School on a report that subjects were seen on the fence of the school. Respondent was cited for trespassing.

### *Respondent's Failure to Disclose*

5. The application asked whether respondent had been convicted of a misdemeanor or felony, and if so, to list his convictions. Respondent checked the "yes" box to indicate he had been convicted. In the detail section, he listed his 2012 federal conviction, but not his 2007 conviction. Pursuant to the application, a conviction must be disclosed "no matter how long ago [it] occurred and whether the convicted person was a minor (under 18 years of age, if tried as an adult). Convictions do not include juvenile adjudications." Respondent signed the application under penalty of perjury.

6. On August 8, 2017, respondent completed an Interview Information Statement, which asks, among other things, that respondent explain why he failed to disclose

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<sup>1</sup> The Statement of Issues incorrectly states respondent's conviction was on September 19, 2012, which was the date of sentencing.

<sup>2</sup> The Statement of Issues incorrectly states the case number as SM 23735A. No evidence was produced regarding a case with that case number.



his conviction on his application. Respondent explained that he failed to disclose his 2007 misdemeanor conviction for trespassing because he forgot about it.

*Evidence in Mitigation, Aggravation, and Explanation*

7. Respondent lives in Stockton, California with his wife and their combined six children. He works as a driver for a moving company. About four years ago, he also started a non-profit, Impact, that supports and mentors at-risk youth in Stockton. The non-profit brings together mentors, parents, police officers, and the community to provide role models, activities, and learning opportunities to youth. He has been an assistant football coach, and is involved in his children's activities.

8. At the hearing, respondent testified that he was in college and a single father when he tried to "make extra money." He purchased firearms at a sporting goods store in Oregon, and intended to sell them to private parties. Respondent learned that this type of firearm sale was legal in Oregon. When he arranged to sell the firearms to buyers in California, however, he violated federal law.

9. Respondent has had no convictions since 2012. He regrets this mistake, and believes that it has made him a stronger person. He does not allow the mistakes of his past to define who he is now, or limit the possibilities in his future. He also uses his experiences to reach out to youth groups at his church, and other churches in his community, to educate young people regarding life choices.

10. Respondent did not remember his 2007 conviction. He also did not remember if he was over 18 when it occurred, and he believed it was a citation for being on school grounds after hours. He did not intend to hide this conviction from the Bureau.

11. Respondent would like to make a career in real estate. When he and his wife purchased their home, it was a significant experience for them. He wants to help others purchase and sell homes, and to give them a great experience. He has a sponsoring broker, Peter Fong, who is aware of his federal conviction, and who would supervise and mentor him if licensed by the Bureau.

12. In the last few years, respondent has renewed his involvement and commitment to his church. He and his family regularly attend services. He works with the church youth groups to share his story and encourage their ambitions.

13. Respondent submitted six letters in support of his application:

- a. Soninke Barlow has known respondent for six years. She respects respondent for all the help he has provided Stockton's youth, his maturity, and his creativity. She appreciates his sharing his experiences to guide and reach the youth with whom he works.

- b. Pastor Nathaniel Bullock has known respondent for 15 years. He met respondent when respondent was a youth member of Pastor Bullock's ministry. He is aware of respondent's conviction, and believes that it has made him a stronger mentor, and citizen.
- c. Cozetta Easter is the First Lady at the Greater New Hope Deliverance Church of God in Christ. She has known respondent for seven years. She views him as being family oriented, concerned for today's youth, and a positive spiritual role model.
- d. James Frazier, Jr. and Chauncy Saffold attend church with respondent at Greater White Rose Church. Both respect respondent's dedication to his family, his community, and his faith.
- e. Kevin Archangel, Sr. has known respondent since respondent was a boy. He saw respondent struggle through living with a single mother, and adjust to his father being in prison. He described respondent as being respected for his dedication to his community and the work he has done to mentor young people. He believes that respondent has used his past experiences to make himself and his community better.

### *Discussion*

14. In California Code of Regulations, title 10, section 2911, the Bureau has set forth the rehabilitation criteria to be applied when reviewing whether a real estate license should be issued to an applicant who has been convicted of crimes. The relevant rehabilitation criteria include: (1) the passage of not less than two years since the most recent criminal conviction; (2) expungement of criminal convictions resulting from immoral or antisocial acts; (3) successful completion or early discharge from probation or parole; (4) payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment; (5) stability of family life and fulfillment of parental and familial responsibilities; (6) completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement; (7) significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; (8) new and different social and business relationships from those which existed at the time of the criminal conduct; and (9) change in attitude from that which existed at the time of the conduct in question.

15. Applying the criteria, respondent has submitted substantial evidence of rehabilitation. He has changed in the six years since his last conviction. He was released from parole early, completed the terms of his sentence, and has integrated the lessons of his past to impact his present and future. Respondent is committed to his family, his community, and his church. He has made a positive impact on the at-risk youth of Stockton. Respondent

wants to be a real estate agent to positively affect others, and has the support of a broker in doing so.

16. Respondent's failure to disclose his conviction for trespassing was a mistake. The conviction occurred when he was in high school, and was a harmless action. His recollection that it was a "citation" is understandable after more than ten years and a minimal sentence.

17. At hearing, respondent was candid, humble, and forthright. His testimony was credible and sincere, and he did not shirk responsibility for his actions. When all the evidence is considered, respondent has demonstrated the level of rehabilitation sufficient to ensure public safety if he were issued a restricted license to sell real estate.

### LEGAL CONCLUSIONS

1. Respondent bears the burden of proving that he meets all prerequisites necessary for the requested license. (*Martin v. Alcoholic Beverage Control Appeals Board* (1959) 52 Cal.2d 238 ["An applicant for a license bears the burden of proving that he should be granted a license"].) Except as otherwise provided by law, the standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

2. An application for a real estate license may be denied if the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate license. (Bus. & Prof. Code, §§480, subd. (a)(1); 10177, subd. (b).) California Code of Regulations, title 10, section 2910, subdivision (a) states that 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 Business and Professions Code section 480, if it involves:

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

3. Respondent was convicted of making a false statement in connection with the acquisition of a firearm. This conviction is substantially related to the duties, functions, and qualifications of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(4). Therefore, cause exists to deny respondent's application pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b).

4. Under Business and Professions Code section 480, subdivision (d), a license application may be denied when the applicant has "knowingly made a false statement of fact that is required to be revealed in the application for the license." Under Business and Professions Code section 10177, subdivision (a), a license application may be denied when the applicant has "attempted to procure, a real estate license or license renewal, for himself

or herself or a salesperson, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement." Pursuant to Factual Findings 5, 6, and 9, cause exists to deny respondent's license application.

5. As set forth in Findings 13 through 16, respondent demonstrated sufficient rehabilitation such that it would not be contrary to the public interest, safety, and welfare to issue a restricted license to him at this time.

### ORDER

Respondent Eric Lemar Spivey'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. 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:

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

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

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

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

3. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Bureau of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

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

4. Respondent's restricted real estate salesperson license is issued subject to the requirements of Business and Professions Code section 10153.4, to wit: respondent shall, within 18 months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective 18 months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, respondent has submitted the required evidence of course completion and the Commissioner has given written notice to respondent of lifting of the suspension.

5. Pursuant to Business and Professions Code section 10154, if respondent has not satisfied the requirements for an unqualified license under section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to section 10153.4 until four years after the date of the issuance of the preceding restricted license.

DATED: June 22, 2018

DocuSigned by:  
Heather M. Rowan  
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HEATHER M. ROWAN  
Administrative Law Judge  
Office of Administrative Hearings