

BEFORE THE DEPARTMENT OF REAL ESTATE

FILED

STATE OF CALIFORNIA

OCT 24 2018

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of:

MOHAMMED EID,

Respondent.

) DRE No. H-6695 SAC

) OAH No. 2018060317

By K. Kuyepo

DECISION

The Proposed Decision dated September 19, 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, but the right to a restricted real estate salesperson license is granted to Respondent.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

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

Commissioner.

This Decision shall become effective at 12 o'clock noon on NOV 14 2018.

IT IS SO ORDERED October 22, 2018

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri

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DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

MOHAMMED EID,

Respondent.

Case No. H-6695 SAC

OAH No. 2018060317

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, Office of Administrative Hearings, on August 27, 2018, in Sacramento, California.

Kyle Jones, Counsel, Department of Real Estate (Department), represented Tricia D. Parkhurst, Supervising Special Investigator (complainant). The Bureau of Real Estate became the Department of Real Estate on July 1, 2018.

Mohammed Eid (respondent) appeared on his own behalf.

Evidence was received and closing argument was considered. The record remained open to afford respondent an opportunity to submit reference letters from prospective employing real estate brokers or others. He was to do so by September 10, 2018, with any response by complainant due September 12, 2018. No documents were received. The matter was submitted for decision on September 10, 2018.

FACTUAL FINDINGS

1. Complainant made and filed the Statement of Issues in her official capacity.
2. On March 13, 2017, respondent submitted an application to the Bureau of Real Estate for the issuance of a real estate salesperson license. This license application is pending and no license has been issued.

Criminal Convictions

3. On April 26, 2001, in the Los Angeles Superior Court, Case No. BA 207080-01, respondent was convicted of violating Welfare and Institutions Code section 10980, subdivision (c)(2) (welfare fraud), a felony which bears a substantial relationship to the

qualifications, functions or duties of a real estate licensee. Pursuant to said conviction, respondent was given a suspended sentence, placed on formal probation for a period of five years on certain terms and conditions, including serving 120 days in the Los Angeles County Jail, payment of restitution in the amount of \$100,000 to Los Angeles County, obedience to all laws and orders of the court, and payment of applicable fines and fees. Respondent completed the terms of his criminal sentence. On February 26, 2010, respondent's conviction was reduced to a misdemeanor and then expunged pursuant to Penal Code section 1203.4.

4. The facts and circumstances underlying this conviction occurred over the period December 5, 1996, through February 1, 2000. Respondent by means of false statements, representations or other fraudulent device obtained and retained public aid for family members who were not otherwise entitled to such assistance. More specifically, he signed documents for Los Angeles County which indicated that his relatives were receiving less income than they actually received from work. This allowed them to receive MediCal benefits to which they were not entitled.

5. On April 27, 1995, in the Sacramento County Superior Court, Case No. 94M03464, respondent was convicted of violating Health and Safety Code section 11364.7, subdivision (a) (furnishing drug paraphernalia), a misdemeanor which bears a substantial relationship to the qualifications, functions or duties of a real estate licensee. Pursuant to said conviction, respondent was placed on probation for a period of 36 months on certain terms and conditions, including obedience to all laws and orders of the court, and payment of applicable fines and fees.

6. The facts and circumstances underlying this conviction occurred on March 3, 1994, when a search warrant for drug paraphernalia was served on a store where respondent was employed. Property recovered during the search included glass narcotic pipes (16), hand scales (6), small triple beam scales (6), Ziploc baggies (2,800), keychain narcotic pipes (11), and packages of small screens (16).

Failure to Disclose Conviction/Denial of License

7. Question 34 on the March 13, 2017 application for licensure required respondent to disclose his criminal convictions and to: "Complete one line for each violation and provide explanation below. If you are unable to provide this information, provide all the requested information you can obtain, with an explanation for the missing information." Respondent concealed and failed to disclose his April 27, 1995 conviction described above in Finding 5.

8. Question 30 on the March 13, 2017 application for licensure asked: "Have you ever had a denied, suspended, restricted or revoked business or professional license (including real estate) in California or any other state?" Respondent answered "No." In fact, the Department had previously denied respondent's application for a real estate salesperson license. (Decision in Case No. H-4110 SAC, effective February 14, 2005.)

Factors in Aggravation, Mitigation, or Rehabilitation

9. On May 29, 2017, respondent completed the Bureau's Conviction Detail Report. He was asked to provide a "complete description of the facts and circumstances that led to your conviction." With regard to the April 26, 2001 conviction, respondent wrote:

Signed documentation for the Department of Human Resources which indicated receiving less income than actually earned from work. Did this to receive Medi-Cal.

At the time although it was classified [sic] that I can buy my own Health Insurance, it was actually not affordable.

This was a senseless crime which I regretted greatly. Just to save a little extra money. I would never consider doing any wrong in my life.

10. With regard to the April 27, 1995 conviction, respondent wrote:

I was working as a cashier in a liquor store that sold plastic coin bags. I was not aware that these bags were considered paraphernalia, and the store owners did not advise me that they were paraphernalia.

Did not commit this intentionally. Did not have knowledge that plastic bags of such nature were not to be sold in liquor stores.

Did not commit this for any personal gain. This was an honest mistake of not knowing.

11. At hearing, respondent characterized the 1995 conviction as having nothing to do with drugs, only paraphernalia that was not supposed to be sold. He indicated that he was managing the convenience store, and was not the owner. It was not within his control to determine what products were carried and sold in the store. He acknowledged that paraphernalia including glass narcotic pipes and scales were sold, but described these as "regular items" available in convenience stores.

Respondent acknowledged his welfare fraud conviction. He understood that the value to the parties receiving benefits approximated \$60,000. At the time, he was the manager of a supermarket. In that capacity he signed documents for employees that certified that they were receiving pay at a certain level that he knew was not accurate. Respondent paid full restitution, and complied with all terms of his criminal probation. His jail term was served through house arrest over a period of a month and a half.

12. Respondent explained that he did not disclose the 1995 conviction on his March 13, 2017 application for licensure because he either forgot about the conviction, or believed he did not need to disclose the conviction after he learned that his conviction record had been purged. He noted that when he went to the Sacramento County Superior Court to obtain information in connection with his earlier application for licensure, he learned that his criminal record had been purged.

With regard to his failure to disclose the previous Department denial of his application for licensure, respondent explained that he misread the question. He thought the question was asking whether he had held any professional licenses that were subsequently revoked or disciplined. He did not understand the question to also include disclosure of license denials. He denies any intent to deceive the Department. He indicated that he understands the need for every real estate document to be filled out properly, and that "honesty is an absolute must."

13. Respondent is now age 56. He described his convictions as "long over" and a subsequent history of being a good and responsible citizen. Respondent graduated from the University of California, Berkeley with a bachelor's degree in microbiology and immunology. He has been in the retail business sector over the past 25 years. He worked as a supermarket manager for approximately 20 years with F & M Market in Inglewood, California. From October 2011 through January 2014, he worked as an accounting manager with Hanina Group, Inc., in Gardena, California. From January 2014 through early 2018, he was the owner of three Cricket Wireless stores in Sacramento. He sold this business and is now looking to work in the service sector, specifically in the area of commercial real estate sales. If granted licensure he anticipates working full time as a real estate salesperson, and eventually as a real estate broker.

14. Respondent has been married for 37 years, and has five children, three who are still at home. He resides in Roseville, California. Respondent has been active in raising funds for the homeless through a local community center. Over the past eight years he has made calls to local businesses to solicit donations for this cause.

15. Respondent has identified no individual broker with whom he would work. He was provided an opportunity to submit letters from potential employing brokers but failed to do so. He was also provided an opportunity to submit general reference letters. He submitted no reference letters at or post hearing.

16. Some period of time, over 17 years, has passed since the events leading to respondent's most recent conviction. Respondent's convictions have been expunged. He believes his past history is no reflection of the individual he is today, and that going forward he will be an honest, good citizen.

17. It has been judicially recognized that rehabilitation requires both a change in attitude and an acknowledgment of wrongdoing. (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149 [describing the criterion based on a change in attitude as "[a]rguably the most important

in predicting future conduct. . .”]; see also, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 [“Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation.”]) Respondent has acknowledged the wrongfulness of his criminal actions. His attitude has matured and changed with the passage of time. In assessing respondent’s rehabilitation, he has taken this essential first step.

The concern in this case relates more to respondent’s recent nondisclosure of both his 1995 conviction, and the Department’s earlier denial of his application for licensure. He credibly explained his failure to disclose the 1995 conviction due to his misunderstanding of the effect of having his conviction record in Sacramento County purged. He fully disclosed his more serious and recent conviction on his application. He also explained his mistaken understanding of the question relating to the denial of his earlier application. Although the recent nondisclosures are concerning, it does appear that respondent understands the importance of completing documents fully and accurately. His failures to do so in this case did not appear to be purposeful.

18. The Bureau has developed criteria for evaluating whether an applicant has been rehabilitated since he suffered the conviction(s) or committed the act(s) constituting grounds for denying the application. (Cal. Code Regs., tit. 10, § 2911.) The criteria relevant here are (1) the passage of at least two years since the applicant’s most recent conviction or disqualifying act; (2) expungement of criminal convictions resulting from immoral or antisocial acts; (3) successful completion or early discharge from probation; (4) restitution to any person who has suffered monetary losses through “substantially related” acts or omissions of the applicant; (5) significant or conscientious involvement in community programs designed to provide social benefits or to ameliorate social problems, and (6) change in attitude from that which existed at the time of the commission of the acts in question. (Cal. Code Regs., tit. 10, § 2911, subs. (a), (b), (c) (e), (1), & (n).)

19. The application of these criteria indicates that respondent has been substantially rehabilitated. Respondent’s most recent conviction was over 17 years ago. He has both matured and changed his attitude, necessary conditions for rehabilitation. He paid restitution for monetary losses to Los Angeles County. He completed his criminal probation. He successfully had his convictions expunged. Respondent has demonstrated significant or conscientious involvement in a community program that benefits the homeless.

20. 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 Department must be assured that an individual it licenses possesses good judgment and integrity. Respondent’s testimony was candid, persuasive, and credible. He accepted responsibility, and demonstrated he has worked hard to improve himself and provide for his family. Based on the evidence, respondent has demonstrated that it would be consistent with the public interest, safety, and welfare to issue him a restricted real estate salesperson license.

LEGAL CONCLUSIONS

1. 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).) The Bureau has set forth criteria to determine whether a conviction is substantially related to the qualifications, functions or duties of a licensee. California Code of Regulations, title 10, section 2910, subdivision (a)(8), provides that a conviction will be deemed to be substantially related if it evidences “[d]oing of any wrongful act with the intent of conferring a financial or economic benefit upon the perpetrator”

2. Respondent was convicted of welfare fraud and furnishing drug paraphernalia. (Findings 3 through 6.) Such crimes are deemed to be substantially related to the qualifications, functions, and duties of a real estate licensee. (See, Cal. Code Regs., tit. 10 § 2910, subd. (a)(8).)

3. Respondent’s two convictions constitute cause for license denial pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b), individually and collectively.

4. An application for a real estate license may be denied if the applicant “[k]nowingly made a false statement of fact required to be revealed in the application for the license.” (Bus. & Prof. Code, § 480, subd. (d).) Pursuant to Factual Findings 7 and 8, respondent made a false statement of fact on his application when he failed to disclose his 1995 conviction, and the earlier denial of his application for licensure. Cause therefore exists to deny respondent’s application pursuant to Business and Professions Code section 480, subdivision (d).

5. An application for a real estate license may be denied if the applicant “procured, or attempted to procure, a real estate license . . . by fraud, misrepresentation, or deceit” (Bus. & Prof. Code, § 10177, subd. (a).) Respondent’s failure to disclose his 1995 conviction and the denial of his application for licensure constituted such conduct. Cause therefore exists to deny respondent’s application pursuant to Business and Professions Code section 10177, subdivision (a).

6. When all of the evidence is considered, and in particular Factual Findings 9 through 20, respondent produced sufficient evidence of rehabilitation to justify granting him a restricted real estate salesperson license at this time.

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 Business and Professions Code section 10156.5. The restricted license issued to the re-

spondent 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 notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 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.

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 Department 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.

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4. 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 (2) years have elapsed from the date of issuance of the restricted license to respondent.

Dated: September 19, 2018

DocuSigned by:



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JONATHAN LEW

Administrative Law Judge

Office of Administrative Hearings

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