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MAR 18 2019

DEPARTMENT OF REAL ESTATE

By B. Nicholas

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of	)	DRE No. H-6704 SAC
	)	
MIKE SINGH GILL,	)	
	)	OAH No. 2018071156
Respondent.	)	

NOTICE

TO: MIKE SINGH GILL, Respondent, and JONATHAN C. TURNER, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated February 15, 2019, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated February 15, 2019, 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 Tuesday, January 22, 2019, 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 Tuesday, January 22, 2019, at the Sacramento office of the Department of Real Estate unless an extension of the time is granted for

1 good cause 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: March 14, 2019.

6 DANIEL J. SANDRI  
7 ACTING REAL ESTATE COMMISSIONER

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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

MIKE SINGH GILL,

Respondent.

Case No. H-6704 SAC

OAH No. 2018071156

**PROPOSED DECISION**

This matter was heard before Marcie Larson, Administrative Law Judge, Office of Administrative Hearings, State of California, on January 22, 2019, in Sacramento, California.

Kyle Jones, Counsel, represented complainant Tricia D. Parkhurst, Supervising Special Investigator, Department of Real Estate, State of California.

Jonathan Turner, Attorney at Law, represented respondent Mike Singh Gill, who appeared at the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on January 22, 2019.

**FACTUAL FINDINGS**

1. On or about July 7, 2017, respondent signed and thereafter on July 10, 2017, filed with the Department, an application for a real estate salesperson license (application). No license has been issued.
2. On June 28, 2018, complainant made the Statement of Issues in her official capacity and filed it on July 18, 2018. Complainant seeks to deny respondent's application based on two criminal convictions he sustained in 2014 and 2016.
3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

## *Respondent's Criminal Convictions*

### 2014 CONVICTION

4. On or about December 22, 2014, in the Superior Court of California, County of Sacramento, in Case No. 14M06919, respondent was convicted, on his nolo contendere plea, of evading a pursuing police officer, a violation of Vehicle Code section 2800.2, subdivision (a), a misdemeanor. Respondent was ordered to serve 218 days in jail with one-day credit for time served. He was allowed to serve his jail time through a Work Release Program. Respondent was placed on three years of informal probation and ordered to pay approximately \$70 in fees.

5. The facts underlying the conviction occurred on September 6, 2014, at approximately 3:00 a.m. A California Highway Patrol (CHP) officer observed a vehicle driven by respondent fail to stop at a stop sign. The officer followed the vehicle and activated his overhead emergency lights. In response, respondent's vehicle made a hard-right, accelerated to a high rate of speed and turned off his vehicle lights. The officer activated his siren and pursued respondent's vehicle. Respondent continued driving at high speed, traveling the wrong way down streets and running multiple stop signs, with the vehicle lights turned off. After approximately two and one-half miles, respondent pulled his vehicle over. He was arrested and transported to jail.

### 2016 CONVICTION

6. On or about September 16, 2016, in the Superior Court of California, County of Placer, in Case No. 62-139423, respondent was convicted, on his nolo contendere plea, of hit and run, a violation of Vehicle Code section 20002, subdivision (a), a misdemeanor. Respondent was ordered to serve 10 days in jail. He was allowed to serve his jail time through a Work Release Program. Respondent was placed on three years of informal probation and ordered to pay approximately \$1,000 in fees. Respondent complied with the terms of his sentence. On September 6, 2018, respondent's conviction was expunged pursuant to Penal Code section 1203.4.

7. The facts underlying the conviction occurred on April 22, 2015. Respondent drove his vehicle out of the Sierra College parking lot in Rocklin, California. As he exited the parking lot and drove onto a road, his vehicle struck the right side of another vehicle, causing damage to the passenger side of the vehicle and forcing the vehicle up onto the median in the road. Respondent continued driving. A witness to the collision followed respondent's vehicle, observed respondent driving, and obtained his license plate number. The witness called 911 and an officer for the Rocklin Police Department was dispatched and obtained statements from the witness who followed respondent and the driver of the vehicle that respondent's vehicle struck.

8. On May 6, 2015, a Rocklin police officer conducted an investigation to locate respondent. Ultimately, the officer located respondent and obtained his statement.

Respondent confirmed he had been driving the vehicle on April 22, 2015. Respondent stated that when he merged onto the road from the Sierra College parking lot, he felt a "tap" on his vehicle. He checked his mirrors but did not see another vehicle. Respondent thought he collided with a curb or center median, so he continued driving. Respondent told the officer he would have stopped his vehicle if he knew he had struck another vehicle. Respondent stated there was minor damage to the rear driver side wheel and several scratches on the rear driver side quarter panel.

### *Respondent's Evidence*

9. Respondent is 26 years old. He explained his first conviction occurred when he was 21 years old. He was young and acted on his emotions. Respondent became scared when the police officer activated his patrol lights. Respondent explained his father is strict, and he was afraid he would be upset if respondent received a ticket. Instead of stopping his vehicle, he continued to drive his vehicle to avoid the officer. As he was driving he realized what he was doing was wrong and stopped his vehicle. Respondent recently filed a motion with the court to have his conviction expunged. The judge informed him if he did not have any further convictions, the conviction would be expunged at the end of the year.

10. Respondent's hit and run conviction occurred when he was 23 years old. Respondent explained that through this incident, he learned that he needs to stop his vehicle if he is involved in a collision, even if he believes there is no damage. Respondent complied with the terms of his sentence. As result, his probation was terminated after 18 months and his conviction was expunged.

11. Respondent has not had any convictions or traffic violations since 2016. In January 2014, respondent obtained his insurance license. His license became restricted as a result of his September 2016 conviction. For two years, respondent worked as an insurance agent for Allstate Insurance. Kevin Mcmillar, the Owner of an Allstate agency in Roseville, employed respondent. Mr. Mcmillar wrote a letter of support for respondent in which he described respondent as punctual, hardworking, and trustworthy.

12. Respondent left Allstate in May 2017, to pursue a career in real estate. Respondent's father has been a real estate sales person for over 20 years. Respondent began working for his father renovating homes he had purchased. Respondent's father provided a letter of recommendation explaining that respondent has matured since his convictions, and has worked hard to take the required course work to pass the real estate examination. Respondent would like to obtain his real estate salesperson license so that he can work with his father, under his father's broker Sukhwinder Bhullar, owner of Folsom Real Estate. Mr. Bhullar wrote a letter of recommendation explaining that he is aware of respondent's convictions. Mr. Bhullar has known respondent for many years. He described respondent as being capable of handling the duties of a real estate sales person. Mr. Bhullar intends to hire respondent if he obtains his license.

### *Discussion*

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

- (a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.)

[¶] ... [¶]

- (e) Successful completion or early discharge from probation or parole.

[¶] ... [¶]

- (g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

- (h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the Bureau action sought.

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

[¶] ... [¶]

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

[¶] ... [¶]

- (n) Change in attitude from that which existed at the time of the conduct in question. . .

14. Applying the Department's criteria, respondent has two convictions involving conduct that occurred in 2014 and 2015. His conduct was serious, and demonstrated lack of good judgment and disregard for the law. However, respondent is now 26 years old and has not suffered any further convictions. He has matured and understands the gravity of his conduct. He has taken action to move past his convictions. His 2016 conviction has been expunged, and cannot be a basis to deny his application. Respondent has worked as an insurance agent for two years, without incident. Respondent's employer at Allstate described him as trustworthy and capable. Respondent has worked for his father for several years while waiting to obtain his real estate license. Respondent has a real estate broker who has known respondent for many years and is willing to hire him should he obtain his license.

15. 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 totality of the evidence demonstrates that it would be consistent with the public interest, safety, or welfare to issue him a restricted real estate salesperson license.

## LEGAL CONCLUSIONS

### *Burden of Proof*

1. The burden of proof is on the applicant for a license. (*Martin v. Alcohol Beverage Control Appeals Bd.* (1959) 52 Cal.2d 265.) In addition, rehabilitation is akin to an affirmative defense; 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.)

### *Applicable Laws*

2. Pursuant to Business and Professions Code section 480, the Department may deny a real estate salesperson application on the grounds that the applicant has:

(a)(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. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

[¶] . . . [¶]

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

3. Business and Professions Code section 10177, subdivision (b), provides that an application for a real estate license may be denied if the applicant has "entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee . . . ."

4. Business and Professions Code section 10177, subdivision (j), provides that an application for a real estate license may be denied if the applicant has "[e]ngaged in any other conduct, whether of the same or of a different character than specified in this section, that constitutes fraud or dishonest dealing."

5. In California Code of Regulations, title 10, section 2910, the Department has set forth criteria for determining whether a conviction is substantially related to the qualifications, functions, or duties of a licensee. Subdivision (a) of section 2910, subdivision (8) provides that a conviction will be deemed to be substantially related if it involves:

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

#### *Cause for Denial*

6. As set forth in Factual Findings 4 and 5, respondent's 2014 conviction for evading a police officer is substantially related to the qualifications, functions, and duties of a real estate licensee under California Code of Regulations, title 10, section 2910. Specifically, the conviction involved conduct by respondent that threatened to do substantial injury to the person or property of another. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Therefore, cause exists to deny respondent's application for a real estate salesperson license under Business and Professions Code sections 480, subdivisions (a)(1) and 10177, subdivision (b).



7. As set forth in Factual Finding 6 and 14, cause does not exist to deny respondent's application, based on his 2016 conviction for hit and run. Pursuant to Business and Professions Code sections 480, subdivision (c), "a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4."

8. As set forth in Factual Findings 5, 7, and 8, respondent engaged in dishonesty and deceit by attempting to avoid a police officer, and failing to stop his vehicle after being involved in a collision. Therefore, cause exists to deny respondent's application, pursuant to Business and Professions Code sections 480, subdivision (a)(2), and 10177, subdivision (j).

9. When all of the evidence is considered, respondent produced sufficient evidence of rehabilitation to justify granting him a restricted real estate salesperson license.

### ORDER

Respondent Mike Singh Gill'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 the 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 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 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.

DATED: February 15, 2019

DocuSigned by:

*Marcie Larson*

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MARCIE LARSON

Administrative Law Judge

Office of Administrative Hearings

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Department of Real Estate

FEB 19 2019

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