

Flag

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE

APR 01 2020

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE  
By B. Nicholas

\* \* \*

In the Matter of the Application of:	)	DRE No. H-6895 SAC
	)	
DOMINIC MAES,	)	OAH No. 2019110974
	)	
Respondent.	)	

---

DECISION

The Proposed Decision dated February 28, 2020, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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

Pursuant to Government Code Section 11521, the 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.

This Decision shall become effective at 12 o'clock noon on APR 22 2020.

IT IS SO ORDERED

3/27/20  
SANDRA KNAU  
ACTING REAL ESTATE COMMISSIONER

  
\_\_\_\_\_

**BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

**In the Matter of the Statement of Issues Against:**

**DOMINIC MAES, Respondent.**

**Case No. H-6895 SAC**

**OAH No. 2019110974**

**PROPOSED DECISION**

Administrative Law Judge Wilbert E. Bennett, State of California, Office of Administrative Hearings, heard this matter on February 6, 2020, in Oakland, California.

Kyle T. Jones, Real Estate Counsel, represented complainant Tricia D. Parkhurst, Supervising Special Investigator, Department of Real Estate (Department).

Respondent Dominic Maes appeared and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on February 6, 2020.

## **FACTUAL FINDINGS**

1. On November 6, 2019, complainant filed the Statement of Issues in her official capacity. The Statement of Issues alleged, as causes for license denial, respondent's convictions for trespass and theft (misappropriation) of lost property.
2. On May 3, 2019, respondent submitted an application to the Department for the issuance of a real estate salesperson license. The license application is pending and no license has been issued.

### **Criminal Convictions**

3. On February 21, 2017, in the Superior Court of California, County of Santa Barbara, Case No. 17CR01075, respondent was convicted, by nolo contendere plea, of violating Penal Code section 485 (theft/misappropriation of lost property), a misdemeanor. Pursuant to this conviction, respondent was placed on informal probation for one year on certain terms and conditions, including payment of a \$250 fine and obedience to all laws.
4. The facts and circumstances underlying this conviction involved events which occurred on January 14, 2017. On that date, respondent, then a student in Santa Barbara, misappropriated a bicycle for his own use. Police authorities discovered respondent riding the bicycle after the bicycle owner reported a theft of the bicycle from a front yard. Respondent matched the description of the person identified as the bicycle thief. Respondent admitted to police that he took the bicycle with the intention of using it as a mode of transportation to a nearby liquor store. Upon police inquiry, respondent did not identify the property from which he had taken the bicycle.

5. On July 11, 2017, in the Superior Court of California, County of Santa Barbara, Case No. 17CR06893, respondent was convicted, by nolo contendere plea, of violating Penal Code section 602, subdivision (m) (trespass), a misdemeanor. Pursuant to this conviction, respondent was placed on informal probation for three years on certain terms and conditions, including a stay away order from Tropicana Gardens in Isla Vista, and payment of applicable fines and fees.

6. The circumstances underlying this conviction involved respondent's unlawful occupancy, on June 12, 2017, of residential premises in Isla Vista, known as Tropicana Gardens. (No police report associated with this offense was introduced into evidence.)

### **Factors in Aggravation, Mitigation, or Rehabilitation**

7. Respondent is 22 years old, and is currently employed as a server in a San Francisco restaurant in the Marina district. He currently lives in San Francisco, and reports that during the last 11 months he has performed charitable work by serving food at St. Anthony's Dining Room on one occasion and at Glide Memorial Church on two occasions. He attributed his criminal history to youthful indiscretion, and averred that he "made the wrong decisions" as an 18-year-old student living in Santa Barbara, but is now "a fully functioning adult," who has matured. Respondent needs another semester to obtain an Associate of Arts degree, but has placed his educational plans on hold while he pursues real estate licensure. He is hopeful of eventually being mentored in the real estate field by his mother, who has been a real estate agent for approximately 17 years.

8. Respondent testified regarding the circumstances underlying his convictions. With respect to the theft of lost property conviction, respondent stated

that he was cited by a police officer while riding a bicycle that had been reported stolen. He averred that he was returning to a friend's home after making a trip to a liquor store for snacks. With respect to the trespass conviction, respondent stated that the underlying circumstances involved an agreement with his "best friend" to sleep on the friend's couch for a summer in exchange for his performance of house cleaning chores. He explained that his dormitory lease had expired in June of 2017, and he simply moved across the hallway for the balance of the summer, in consideration of the agreement. He indicated that he was financially destitute at the time. Respondent stated that the property manager called police to report "trespassing" because he was living at the facility rent-free.

9. Respondent's testimony regarding the theft conviction was ambiguous and internally inconsistent. At one point in his testimony, he stated that he did not know that the bicycle he was riding was stolen, but suspected that it was, in fact, stolen because he knew it did not belong to him. At another point, he stated that he knew the bicycle was stolen because he was associating with friends who were stealing bicycles as part of the student culture in Isla Vista (near the UC Santa Barbara campus). Respondent further stated that at the time of the police officer's citation, he refused to identify the residence from which he had removed the bicycle because he did not wish to get his friends in trouble by being "a snitch."

10. Respondent's explanations of the theft offense are also reflected in the documents which he submitted to the Department. In item 31 of respondent's license application, dated April 22, 2019, he stated: "I wasn't thinking and just figured I wouldn't get caught." This statement indicates an acknowledgment of guilt. However, in the Conviction Detail Report submitted to the Department on July 5, 2019, respondent provided the following explanation: "I was under the impression my friend

owned the bike." He further stated: "I learned a lesson the hard way, on not being so careless and naive." The latter statements may be construed as an assertion of innocence, notwithstanding respondent's nolo contendere plea.

## LEGAL CONCLUSIONS

1. The burden of proof is on the applicant for a license to establish that he is qualified for the license he seeks to obtain. (*Martin v. Alcoholic Beverage Control Appeals Bd.* (1959) 52 Cal.2d 259, 265.) Rehabilitation is akin to an affirmative defense; therefore, the burden of proof of establishing an affirmative defense of rehabilitation is on the proponent of that defense. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App.156, 164.) The term "burden of proof" means "the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court." (Evid. Code, § 115.) Respondent did not meet his burden.

2. Honesty and integrity are important and necessary qualifications for a real estate licensee, who must frequently act in a fiduciary capacity. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402-403.) The public that utilizes the services of a real estate licensee has reason to believe the licensee must have demonstrated a degree of honesty and integrity in order to have obtained a license. (*Id.*, at 406.) If an applicant's offenses reflect unfavorably upon his honesty or integrity, it may be said that he lacks the necessary qualifications to become a real estate licensee.

3. 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 licensee. (Bus. & Prof. Code, §§ 480, subd. (a)(1); 10177, subd.

(b). Respondent was convicted of theft (misappropriation) of lost property, as set forth in Factual Findings 3 and 4. Such a crime is deemed to be substantially related to the qualifications, functions, or duties of a real estate licensee. (See, Cal. Code Regs., tit. 10, § 2910, subds. (a)(1) ["The fraudulent taking, obtaining, appropriating or retaining of ... property belonging to another person."], and (a)(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."] Respondent was also convicted of trespass under circumstances involving the conferral of an economic benefit upon himself by avoiding the payment of rent, as set forth in Factual Findings 5 through 7. Such a crime is also deemed to meet the "substantial relationship" criterion for the same reasons. (Cal Code Regs., tit. 10, §2910, subds. (a)(1), (8).) Respondent's crimes, which were committed within six months of each other, respectively reflect wrongful deprivation of the personal property of another and of the use and enjoyment of real property by its rightful owner. When respondent's two crimes are considered together, they are deemed to meet the "substantial relationship" requirement for license denial because they reflect "a pattern of repeated and willful disregard of law." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10).) Therefore, each of respondent's convictions constitutes separate cause for license denial pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b), individually and collectively.

4. Respondent, by entry of nolo contendere pleas to the charges of theft of lost property and trespass, stipulated to the elements of those offenses without the necessity for formal proof. The elements of the theft of lost property offense, as set forth in Penal Code section 485, are misappropriation of lost property "without first making reasonable and just efforts to find the owner and to restore the property to him." The trespass offense, as specified in Penal Code section 602, subdivision (a), by



its terms, involves "entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession." Significantly, a party in an administrative hearing cannot impeach or collaterally attack his convictions under the guise of explaining the circumstances surrounding his offenses. (*Arneson v. Fox* (1980) 28 Cal. 3d 440, 449.) Thus, any statements by respondent which purport to be assertions of innocence must be disregarded as inconsistent with the elements of the offenses to which he pled nolo contendere, except to the extent that such statements may indicate a lack of rehabilitation.

5. In considering respondent's rehabilitation from the acts underlying his criminal offenses of theft of lost property and trespass, it is significant that he has not taken an essential step towards rehabilitation: full acknowledgment of wrongdoing. (See, *Seide v. Committee of Bar Examiners of the State of California* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation."].) Neither respondent's testimony nor his statements to the Department reflect an acknowledgment of the wrongfulness of his actions in misappropriating the property of another for his own use and in unlawfully occupying real property without the consent of the owner or the person in lawful possession. Noticeably absent from respondent's evidentiary presentation was any acknowledgment of the dishonesty inherent in the criminal acts which he committed. Respondent expressed no remorse for his conduct, while emphasizing his youthful indiscretion as an 18-year-old who "made the wrong decisions" and was "careless and naive." With respect to the bicycle theft, he stated: "I wasn't thinking and just figured I wouldn't get caught," and "I was under the impression my friend owned the bike." With respect to the criminal trespass incident, he stated that "[e]verything was fine until the landlord found out."

6. The Department has developed criteria for evaluating whether an applicant has been rehabilitated since he committed the acts or criminal offenses constituting the 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; (2) successful completion or early discharge from probation; (3) significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; (4) the nature and severity of the crimes committed by the applicant; and (5) change in attitude from that which existed at the time of commission of the conduct in question.

7. The application of these criteria indicates that respondent has not been rehabilitated from his criminal offenses. Most importantly, respondent has not demonstrated a "change in attitude," by acknowledgment of wrongdoing, which is a prerequisite for a showing of rehabilitation. It has been judicially recognized that of the Department's various rehabilitation criteria, "change of attitude" is "arguably the most important in predicting future conduct." (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.) Respondent's crimes are serious in nature because they involved wrongful deprivations of the personal and real property of other persons, thereby implicating the honesty and integrity required of a real estate licensee. Moreover, respondent's self-reported charitable activities, consisting of serving food at St. Anthony's Dining Room on one occasion and at Glide Memorial Church on two occasions, do not reflect significant involvement in community social programs. Additionally, respondent's convictions are of relatively recent vintage. He remains on probation for the trespass offense until July 2020. Although he has been law-abiding since the criminal incidents in question, that factor is substantially discounted by the expectation that he remains so while on probation. It has been judicially recognized that compliance with criminal

probation requirements, standing alone, constitutes insufficient evidence of rehabilitation. (See, *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [little weight is given to person's good behavior while on probation because such conduct is expected].) Furthermore, it has been judicially recognized that rehabilitation requires sustained conduct over an extended period of time. (See, *In re Menna* (1995) 11 Cal.4th 975, 991.) Because respondent is still on probation and has neither fully acknowledged wrongdoing nor engaged in sustained exemplary conduct, he has a substantial way to go to achieve full rehabilitation.

8. As discussed above, cause exists to deny respondent's application based on his criminal convictions, and he has failed to establish that he has been sufficiently rehabilitated so that he may be issued even a restricted license, with due regard for public protection. Therefore, his application for a real estate salesperson license must be denied in order to assure public protection.

## ORDER

The application of respondent Dominic Maes for a real estate salesperson license is DENIED.

DATE: February 28, 2020

DocuSigned by:

*Wilbert Bennett*

WILBERT E. BENNETT

Administrative Law Judge

Office of Administrative Hearings