

FILED

FEB 17 2021

DEPARTMENT OF REAL ESTATE  
By B. Nicholas

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Application of:	)	DRE No. H-6975 SAC
	)	
ERNESTO MANUEL AGUILA, JR.,	)	OAH No. 2020070352
	)	
Respondent.	)	

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DECISION

The Proposed Decision dated January 11, 2021, 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.

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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 MAR 10 2021.

IT IS SO ORDERED 2 - 12 - 21

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER

Douglas R. McCauley

**FILED**

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DEPARTMENT OF REAL ESTATE  
By B. Nicholas

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

**In the Matter of the Application of:**

**ERNESTO MANUEL AGUILA, JR., Respondent**

**Agency Case No. H-6975 SAC**

**OAH No. 2020070352**

**PROPOSED DECISION**

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter telephonically on December 10, 2020.

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

Ernesto Manuel Aguila, Jr. (respondent) appeared on his own behalf.

Evidence was received, the record was closed, and the matter was submitted for decision on December 10, 2020.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On November 1, 2019, respondent applied to the Department for a real estate salesperson license. On June 22, 2020, complainant, in her official capacity, filed a Statement of Issues seeking to deny respondent's application based on his criminal conviction for conspiracy to distribute methamphetamine. Respondent timely filed a Notice of Defense, and this hearing followed.

### **Conviction**

2. On March 7, 2008, in the United States District Court for the Eastern District of California, case number 2:05-CR-00496-02, respondent was convicted, on his guilty plea, of violating title 21, United States Code, sections 846 and 841(a)(1) (conspiracy to distribute at least 50 grams of methamphetamine), a felony. The court sentenced respondent to serve 222 months in prison, with a term of 60 months of supervised release upon his release from incarceration.

3. The circumstances underlying the conviction are as follows: On August 31, September 21, and October 11, 2005, a Drug Enforcement Administration (DEA) confidential source purchased methamphetamine that respondent had supplied to another individual. On November 3, 2005, DEA agents searched respondent's house and discovered more than four pounds of methamphetamine and other items that were consistent with narcotics distribution.

## **Matters in Aggravation**

4. On May 24, 2007, in the Superior Court of California, County of San Joaquin, case number LM036845A, respondent was convicted, on his plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content of 0.08 percent or greater), a misdemeanor. The court suspended imposition of sentence and placed him on informal probation for five years with conditions that required him to serve two days in jail and pay fines and fees. The parties did not submit evidence of the circumstances underlying the conviction.

## **Respondent's Evidence**

5. Respondent is 39 years old. He grew up in a "dog-eat-dog neighborhood" where he "wasn't exposed to positivity." In respondent's youth, his father struggled with drug addiction. His parents divorced when he was a teenager, and he began to "hang out with the wrong crowd." His peers were three or four years older than him, and he drank alcohol and smoked cigarettes with them. In his early 20s, he continued to associate with "the wrong crowd." Together, they made "bad decisions to make quick money," which included selling drugs.

6. In 2005, when he was 24 years old, respondent was arrested for conspiring to distribute methamphetamine. He was convicted and remained incarcerated until October 11, 2019. He described his arrest as "an epiphany." He sold drugs to make money, but he "didn't realize the impact it had on [him] and [his] family." He used his incarceration "to assess [his] life" and "chose to take it as a life lesson."

7. While in prison, respondent completed a 500-hour residential drug and alcohol program. The program helped him "go deeper into the reasons for [his]

involvement with drugs" and "see [his] life as a product of [his] choices." He committed himself to a healthy lifestyle and lost approximately 100 pounds through weight training. After the program, respondent participated in weekly individual and group counseling sessions for approximately five months. He submitted a letter of support from his counselor, who noted "[respondent's] progress was such that no further counseling was recommended for his supervised release status."

8. Respondent also attended college courses in prison. He earned four separate associate degrees, in social behavior science, sociology, behavioral science, and business, and earned a certificate in business achievement. He also took real estate courses, which he found to be "an outlet to apply [his] efforts and ambition in a positive way." In 2014, respondent earned certificates from First Tuesday Real Estate School in real estate practices, real estate principles, and real estate law.

9. After his release from incarceration on October 11, 2019, respondent worked as an in-home supportive services (IHSS) provider for his father, who was receiving cancer treatment. Respondent provided IHSS services for his father from October 2019 through his father's death in June 2020. In July 2020, respondent began to work as a food delivery driver. He also volunteers his time serving meals at the Salvation Army and proving landscaping and manual labor at his local Moose Lodge.

10. In the 2020 Spring semester, respondent enrolled in California State University, Sacramento (CSUS), with the help of Project Rebound, a college admission and retention program for formerly incarcerated students. Project Rebound's director, George Turner, submitted a letter of support in which he characterized respondent as motivated, attentive, and sincere. Respondent is currently pursuing a bachelor's degree in economics at CSUS.

11. Respondent also continued to take real estate courses after his release from prison. In August 2020, he earned certificates from the California Association of Realtors in classes titled "All About Disclosures," "Transaction Talk," "Real Estate Dos and Don'ts for Non-Licensees," "Fundamentals of Transaction Coordination," and "Transaction Coordination 2: Beyond the Contract." In November 2020, he completed a six-hour course to become a notary public. He has applied to the California Secretary of State to be a notary public, but has not yet received a response.

12. Respondent's original criminal sentence included a five-year period of supervised release upon his release from incarceration. On May 7, 2020, his probation officer wrote a letter of support in which she noted respondent "has continued to show focus and determination in being a productive member of society." On November 3, 2020, the Assistant U.S. Attorney assigned to respondent's case joined in a stipulation to terminate respondent's supervised release. The stipulation stated, in relevant part,

[Respondent's] experience in the federal prison system changed him profoundly and has set him on the stable path that he is on today. The Court is often called upon to impose serious consequences for defendants who violate supervised release. [Respondent] has completed every condition asked of him and has gone far beyond the requirements of his supervision. He has fully reintegrated into society and is a valued worker, family member, and citizen. He has achieved stable community reintegration in terms of housing, family, and employment. He is in full compliance with all terms of supervision. He has no

aggravated role in the offense, no violence in this offense, and is not using controlled substances. He has no psychiatric issues. He enjoys the support of his community. He is an ideal candidate for early termination of supervised release based on every factor the Court must consider.

13. The federal court terminated respondent's supervised release on November 4, 2020.

14. Currently, respondent lives with his son, his fiancée, and his fiancée's daughter. He works part-time, takes on-line college classes, and helps his son and his fiancée's daughter with school. His son is in eighth grade and achieved honor roll with a 3.67 grade point average (GPA) in November 2020. He had not previously achieved honor roll. His fiancée's daughter also achieved honor roll with a 3.80 GPA. Respondent is proud of their hard work and believes his commitment to education will set a positive example for them in the future. He wants to be a real estate salesperson so he can have a career he is proud of and help people achieve their dreams of homeownership. He regrets his past criminal behavior, and he does not want "mistakes [he] made when [he] was young" to dictate the rest of his life.

#### **CHARACTER WITNESSES AND LETTERS**

15. Angela Garibay-Romero testified at hearing. She is a licensed real estate broker and owner of Valley Capital Realty in Stockton, California. She has known respondent since the early 1990s and believes he is confident, hard-working, and persistent. Respondent has visited her office several times to observe and ask questions, and Ms. Garibay-Romero believes he would be a successful real estate



agent. She is aware of his conviction and believes he has "learned his lesson." She intends to employ and supervise respondent if he is licensed.

16. Natasha Ruiz is respondent's sister and "best friend." She is a revenue officer for the Internal Revenue Service. She testified at hearing that respondent is "a completely different person" today than he was when he was arrested 15 years ago. She believes he went to prison as a "young, impressionable" man and exited as "a focused adult." She is proud of respondent and was especially impressed by his tireless care for their father in the last six months of his life. She believes he will excel in any career he chooses.

17. Ceasar Aguila is respondent's cousin. He has worked for the Department of Corrections and Rehabilitation for approximately 26 years and is presently a captain for the California Correctional Healthcare Services. He has known respondent "his whole life." Mr. Aguila testified at hearing that respondent has openly discussed his criminal conduct and has "no intention of going back to prison." Mr. Aguila believes respondent presently lives "a clean life" wherein he "puts family first." He characterized respondent as "an inspiration to many family and friends" due to his commitment to health and fitness. Respondent has provided informal personal training for friends and family and regularly hosts fitness classes at his home "for all that are interested." Mr. Aguila believes respondent will succeed in any career he chooses "based on his mindset."

18. Jimmy Aguila is respondent's uncle. He is now retired from a 30-year career as a mechanical engineer for the California Air Resources Board. He testified at hearing that respondent's "changes are nothing short of miraculous." He noted that respondent's teen years were "troubled" because of his father's drug addiction and his parents' conflict. He does not believe respondent received adequate or appropriate

guidance as a young man. In his opinion, respondent used his time in prison productively and developed "strong personal discipline." Mr. Aguila believes that, since respondent's release, he has repaired the personal relationships in his life. In his opinion, respondent is honest, ethical, driven, and ambitious.

19. Veronica Barragan is respondent's fiancée. She works as an escrow officer for a large title company and has been in the industry since 2004. She has known respondent for more than 20 years. At hearing, she testified that respondent was negative and self-centered prior to his incarceration, but now he is caring, positive, and God-oriented. She credits respondent with motivating and encouraging her to pursue her own career and financial goals as well as to achieve her own fitness goals. With respondent's help, Ms. Barragan has lost more than 100 pounds. She believes respondent is honest and trustworthy and would succeed as a real estate salesperson because of his drive and commitment. He wakes up at 5:00 a.m. each day to exercise, helps his son and her daughter with their schoolwork, cleans and maintains the home, and works part-time to provide financial support.

20. Respondent submitted six letters of support from two aunts, two uncles, his cousin, and his brother-in-law. Collectively, his family praised respondent's focus, determination, responsibility, wisdom, dignity, charisma, intelligence, motivation, leadership, honesty, and positivity. They are all aware of his conviction and believe respondent has changed for the better since then and that he would excel in a real estate career.

## **Analysis**

21. The Department has adopted criteria to evaluate the rehabilitation of license applicants. The criteria relevant to this matter include: the time that has

elapsed since commission of the acts or offenses; the nature and severity of the acts or crimes; payment of fines, penalties, and restitution; successful completion of probation; 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 formal education or vocational training courses for economic self-improvement; and a change in attitude from that which existed at the time of the conduct in question. (Cal. Code Regs., tit. 10, § 2911.)

22. Since respondent's 2008 felony conviction, he has used his time to enhance his education and improve his life. He completed a residential drug and alcohol program, achieved four separate associate degrees while incarcerated, developed a healthy and disciplined lifestyle that enabled him to lose a significant amount of weight, and served his sentence without incident. He satisfied the conditions of his post-release supervision, which was terminated four years early.

23. After his release from incarceration, respondent enrolled in a bachelor's degree program and continued to take real estate courses. He moved in with his fiancée and cares for his son and his fiancée's daughter, provides for the household, and mutually supports his family members. He volunteers his time at local charitable organizations. He acknowledged his wrongdoing and demonstrated insight into how his actions affected him and his family. He has repaired relationships with his extended family and has their full support. He has also identified a license real estate broker who intends to employ and supervise him if licensed.

24. Respondent's conduct during and after his incarceration demonstrate his attitude has changed from the time he committed his crime. This change in attitude is "arguably the most important in predicting future conduct." (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.) Respondent credibly testified that he wants to pursue a career

he can be proud of and does not want his past mistakes to dictate his future. At hearing, he readily admitted responsibility for his criminal conduct. "Fully acknowledging the wrongfulness of [one's] actions is an essential step towards rehabilitation." (*Seide v. Com. of Bar Examiners of the State Bar of Cal.* (1989) 49 Cal.3d 933, 940.)

25. The statutes relating to licensing of professions are designed to protect the public (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451), not punish the individual (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165). When all the evidence is considered, respondent has demonstrated sufficient rehabilitation such that it would not be against the public interest to issue him a real estate license. To protect the public, however, and to ensure respondent is capable of practicing as a real estate salesperson without oversight, it would be consistent with public health, safety, and welfare to issue him a restricted real estate salesperson license.

## **LEGAL CONCLUSIONS**

1. A license applicant bears the burden to prove he should be granted the license. (*Martin v. Alcohol Beverage Control Appeals Bd.* (1959) 52 Cal.2d 238.) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.) The term preponderance of the evidence means "more likely than not." (*Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1388.)

2. The Real Estate Commissioner may deny a license to an applicant who has been convicted of a crime that is substantially related to the qualifications, functions or duties of a real estate licensee. (Bus. & Prof. Code, § 10177, subd. (b).) Business and Professions Code section 480, subdivision (a)(1), also authorizes the Real

Estate Commissioner to deny a license to an applicant who has been convicted of a crime that is substantially related to the qualifications, functions or duties of a real estate licensee and for which the applicant was released from incarceration within the preceding seven years from the date of application.

3. Pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8), a crime is substantially related to the qualifications, functions, or duties of a real estate licensee if it involves "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."

4. Respondent's conviction for conspiracy to distribute methamphetamine is substantially related to the qualifications, functions, or duties of a real estate licensee because it involved doing an unlawful act with the intent of conferring a financial or economic benefit upon respondent or with the threat of doing substantial injury to another person. Cause therefore exists to deny his application for a real estate salesperson license pursuant to Business and Professions Code section 10177, subdivision (b).

5. As discussed in the Factual Findings as a whole, and in particular Factual Findings 21 through 25, respondent provided sufficient evidence of rehabilitation to justify granting him a restricted real estate salesperson license.

### **ORDER**

1. Respondent Ernesto Manuel Aguila, Jr.'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.

2. 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.


3. 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.

4. 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 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.

5. 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.

DATE: January 11, 2021

  
Sean Gavin (Jan 11, 2021 16:53 PST)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings