

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
APR 18 2022
DEPARTMENT OF REAL ESTATE
By: *J. Taggart*

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In the Matter of the Application of:)
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Respondent.

DRE No. H-7082 SAC
OAH No. 2021120525

DECISION

The Proposed Decision dated March 14, 2022, 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 MAY 09 2022.

IT IS SO ORDERED 4.14.22

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

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

FILED
APR 14 2022
DEPARTMENT OF REAL ESTATE
By J. Targan

In the Matter of the Statement of Issues Against:

JOHNNY ALEC SANEZ, Respondent

Agency Case No. H-7082 SAC

OAH No. 2021120525

PROPOSED DECISION

Matthew S. Block, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on February 15, 2022, by videoconference from Sacramento, California.

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

Johnny Alec Sanz (respondent) appeared and represented himself

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on February 15, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. On December 10, 2020, respondent filed an application with the Department for a real estate salesperson license. The application remains pending, and no license has been issued.

2. On December 1, 2021, complainant, acting in her official capacity, filed the Statement of Issues. Complainant alleges cause exists to deny respondent's application based on seven criminal convictions that are substantially related to the qualifications, functions, or duties of a real estate licensee.

3. On December 9, 2021, respondent signed and timely filed a Notice of Defense. The matter was set for an evidentiary hearing pursuant to Government Code section 11500 et seq.

Complainant's Evidence

4. On November 15, 2016, in the Superior Court of the State of California, County of Sonoma, Case No. SCR 669598, respondent was convicted upon a plea of nolo contendere of possession of a concealed dirk or dagger in violation of Penal Code section 21310, a felony. He was sentenced to serve two years in prison.

5. The circumstances underlying the conviction are that on August 7, 2015, respondent was contacted by police officers working gang suppression because he was wearing multiple red articles of clothing. Red is a color associated with the Norteno criminal street gang. Respondent denied being a gang member but admitted

that he was in possession of a knife. The officers searched respondent and found a switchblade with a three-inch blade in his right front pants pocket.

6. On November 15, 2016, in the Superior Court of California, County of Sonoma, Case No. SCR 694311, respondent was convicted upon a plea of nolo contendere of felon in possession of a firearm in violation of Penal Code section 29800, subdivision (a), a felony. He was sentenced to serve two years in prison, concurrent with the sentence imposed in Case SCR 669598.

7. The circumstances underlying the conviction are that on September 10, 2016, respondent was moving his belongings out of a storage unit when a friend who was helping him got stopped by officers with the Santa Rosa Police Department. The officers searched respondent's property and found a handgun. Respondent has a prior felony conviction, which prohibited him from possessing a gun.

8. On February 19, 2015, in the Superior Court of California, County of Sonoma, Case No. SCR 659331, respondent was convicted upon pleas of nolo contendere of resisting or obstructing a peace officer in violation of Penal Code section 148, subdivision (a)(1), a misdemeanor, and driving with a blood alcohol content (BAC) of 0.08 percent or higher in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. Imposition of sentenced was suspended, and the court placed respondent on probation for three years with terms and conditions, including that he serve 30 days in jail, obey all laws, install an ignition interlock device on his car, and pay various court fees and fines.

9. The circumstances underlying the convictions are that on November 24, 2014, respondent was stopped by police officers after he failed to negotiate a turn while driving and his vehicle collided with and became stuck on a large boulder.

Respondent fled the scene of the collision on foot but was apprehended shortly after. Respondent had bloodshot and watery eyes, slurred speech, and the odor of alcohol on his breath and person. He admitted drinking three or four beers and was arrested for driving under the influence (DUI).

10. On February 19, 2015, in the Superior Court of California, County of Sonoma, Case No. SCR 656083, respondent was convicted upon a plea of nolo contendere of driving with a BAC of 0.08 percent or higher in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor, resisting an executive officer in violation of Penal Code section 69, a misdemeanor, and possession of an unregistered firearm in violation of Penal Code section 25400, subdivision (a)(1), a felony. Imposition of sentence was suspended, and the court placed respondent on probation for three years with terms and conditions, including that he serve 120 days in jail, obey all laws, and pay various court fees and fines. Probation was subsequently revoked, and respondent was sentenced to serve two years in prison, concurrent with the sentence imposed in Case No. SCR 669598 and Case No. SCR 694311.

11. The circumstances underlying the convictions are that on September 11, 2014, respondent was drinking alcohol heavily at various bars when he purchased a handgun from another individual. He put the handgun in his car and continued drinking. In the early morning hours of September 12, 2014, respondent was stopped by a police officer who observed his vehicle swerving on Highway 101. He refused to cooperate with the officer and refused to participate in field sobriety tests. The officer searched respondent's vehicle and found the concealed handgun.

Respondent's Evidence

12. Respondent testified at hearing. He described his childhood as "rough." He was placed in foster care at the age of two and again at the age of fourteen. He lived with his biological father from the age of five to the age of thirteen. However, he freely acknowledged in his testimony that his upbringing was not an excuse for his criminality.

13. Respondent has never had a drug problem, but he testified to severe alcohol addiction, and said that it played a large role in his past criminal behavior. Every one of his arrests has involved alcohol consumption to some degree. Respondent described his last arrest as "rock bottom," and said it was the last time he consumed alcohol.

14. Respondent believes that going to prison rehabilitated him, and that it taught him accountability. He testified that prison "inspired" him to quit drinking. He served 11 months in custody before being released on post-release community supervision at a halfway-house in Sonoma County. He began working with a temp agency following his release, and then worked for Staggs Construction from 2017 to 2020. He then went to work for V3 Solar Company in Sacramento. He has worked for Vasko Electrical since October 2021. Respondent has been enrolled in Electrical Trainee and Journeyman coursework through the Western Electrical Contractors Association Merit Shop Advocacy and Industry Training program since January 2019. He never violated the terms and conditions of post-release community supervision and was released from supervision on July 22, 2018. He has paid all the fees and fines from his cases. None of his convictions have been expunged.

15. Respondent married his wife in 2019. They purchased a home in Olivehurst in July 2020. Respondent has five stepchildren, three of whom live with he and his wife. He supports them financially. He is a grandfather to twin boys. Respondent is active in the sports that his stepchildren play but is not presently performing any volunteer work.

16. Respondent denied ever associating with a gang. He explained that he was wearing red on the date of his last arrest because he is a San Francisco 49ers fan, which is also what he told the police officer at the time of his arrest. He admitted wrongdoing in all his cases. While he is not proud of his past, he testified that he "owns up to it." He believes his past will not define him, and that it gives him the drive to be the man he now desires to be.

Analysis

17. The Department has adopted criteria to consider when evaluating the rehabilitation of an applicant for a real estate license. (Cal. Code Regs., tit. 10, § 2911, subd. (a).) Applicable criteria include, but are not limited to: (1) time that has elapsed since commission of the acts; (2) passage of not less than two years since the act that is a cause of action in the Statement of Issues; (3) nature and severity of acts; (4) expungement of criminal convictions; (5) successful discharge or early completion of probation or parole; (6) abstinence from alcohol for more than two years if the basis for denial is attributable in part to the use of alcohol; (7) payment of fines; (8) stability of family life; and (9) completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

18. Respondent's criminal convictions are five and six years old. He was last arrested over six and a half years ago. His convictions were serious, in that they

involved weapons, the obstruction of police officers, and driving a vehicle while intoxicated. None of the convictions have been expunged. Respondent's prior performance on probation was poor, in that he continued to commit new crimes after being placed on probation. However, respondent successfully completed a term of post-release community supervision without a single violation.

19. Alcohol was a factor in each of respondent's criminal cases, and respondent candidly testified about his struggle with alcohol addiction. Significantly, he has not consumed alcohol since August 2015. He has paid all fees and fines associated with his convictions. He is now married and responsible for supporting his stepchildren, and he owns his own home. He has been gainfully employed since his release from prison, and he continues to participate in vocational courses with the Western Electrical Contractors Association.

20. Respondent's testimony at hearing demonstrated genuine remorse, insight into the issues underlying his prior misconduct, and acceptance of responsibility for his behavior. (*Seide v. Com. of Bar Examiners of the State Bar of Cal.* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of [one's] actions is an essential step towards rehabilitation."].) When the relevant criteria are considered, respondent demonstrated that he is sufficiently rehabilitated to be granted a license. However, given the serious nature of respondent's convictions, a period of supervision is warranted. Therefore, issuance of a restricted license for a period of four years is appropriate.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Respondent has the burden of proving by a preponderance of the evidence that he is fit for the license he seeks and that his application should be granted. (Evid. Code, § 115.)

Cause for Denial

2. The Department may deny a license to an applicant that 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).)

3. The Statement of Issues alleges that each of respondent's convictions are substantially related to the qualifications, functions or duties of a real estate agent, but does not specify how they are substantially related. However, a crime will be deemed substantially related "if it involves: . . . (10) Conduct which demonstrates a pattern of repeated and willful disregard of law." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10).

4. Based on the Factual Findings as a whole, respondent's criminal convictions are substantially related to the qualifications, functions or duties of a real estate licensee because they demonstrate a pattern of repeated and willful disregard of law. Therefore, cause exists to deny respondent's application pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b).

Rehabilitation

5. The Department has adopted criteria to consider when evaluating the rehabilitation of an applicant for a real estate license. (Cal. Code Regs., tit. 10, § 2911, subd. (a).) Based on the Factual Findings as a whole, respondent has demonstrated sufficient rehabilitation to be granted a restricted license for a period of four years. Such monitoring is appropriate to protect public health, safety, and welfare.

ORDER

The application of respondent Johnny Alec Sanz 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 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 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.

4. Respondent shall not be eligible to apply for the issuance of a restricted real estate license nor the removal of any of the conditions, limitations, or restrictions attaching to the restricted license until four (4) years have elapsed from the date of issuance of the restricted license to respondent.

DATE: March 14, 2022

Matthew Block

MATTHEW S. BLOCK

Administrative Law Judge

Office of Administrative Hearings