

**FILED**

**JUL 25 2022**

**DEPARTMENT OF REAL ESTATE**  
By J. Taggart

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of:	)	DRE No. H-7087 SAC
	)	
CHRISTOPHER TODD HOWARD,	)	OAH No. 2021120050
	)	
	)	
<u>Respondent.</u>	)	

DECISION

The Proposed Decision dated June 15, 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.

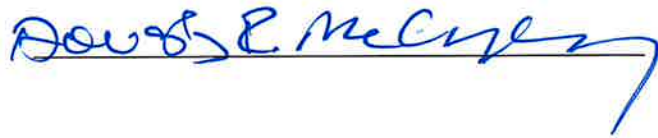
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If and when a petition for removal of restrictions is filed, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

This Decision shall become effective at 12 o'clock noon on AUG 15 2022.

IT IS SO ORDERED 7.22.22

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER

A handwritten signature in blue ink, appearing to read "Douglas R. McCauley", written over a horizontal line.

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

**FILED**  
JUL 19 2022  
DEPARTMENT OF REAL ESTATE  
By J. Taggart

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

**CHRISTOPHER TODD HOWARD, Respondent**

**Agency Case No. H-7087 SAC**

**OAH No. 2021120050**

**PROPOSED DECISION**

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter by videoconference on May 24, 2022, from Sacramento, California.

Kyle T. Jones, Counsel, represented complainant Tricia D. Parkhurst, a Supervising Special Investigator of the State of California.

Respondent Christopher Todd Howard represented himself.

Evidence was received, the record closed, and the matter submitted for decision on May 24, 2022.

## FACTUAL FINDINGS

### Jurisdictional Matters

1. The Department of Real Estate (Department) received respondent's Salesperson Exam/License Application on August 20, 2020. Complainant, acting solely in her official capacity, signed a Statement of Issues on November 8, 2021, alleging grounds for denying the application based on respondent's convictions of crimes substantially related to the qualifications, functions, or duties of a real estate licensee.

### Prior Convictions

2. On February 28, 2018, in the Superior Court of Athens-Clarke County, State of Georgia, Case Number SU17CR0431-N, respondent pled guilty to, and was convicted of, two felony violations of the Official Code of Georgia Annotated, sections 40-6-391/40-6-394, serious injury by vehicle—DUI (less safe).<sup>1</sup> The court ordered him to serve a 15-year probation term for each violation, the terms to run concurrently,

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<sup>1</sup>The evidence established that respondent pled guilty to, and was convicted of, two counts of violating Sections 40-6-391/40-6-394, serious injury by vehicle—DUI (less safe), two counts of violating Sections 40-6-391/40-6-394, serious injury by vehicle—DUI (unlawful BAC), and one count of violating Section 40-6-20, disregarding a traffic control device, of the Official Code of Georgia Annotated. However, complainant alleged only the convictions discussed in Factual Finding 2 in the Statement of Issues, and only those convictions may be the basis for denial. (See, e.g., *Coffin v. Alcoholic Beverage Control Appeals Board* (2006) 139 Cal.App.4th 471, 476 [the statement of issues must allege the grounds for denying the application].)

with the first three years served in confinement and the remainder on felony probation. The court further ordered him to complete the DUI Risk Reduction Program, perform 100 hours of community service, and submit to testing for alcohol upon the request of a probation officer, law enforcement officer, or a Georgia Department of Human Services-approved substance abuse or mental health provider.

3. The factual basis for respondent's convictions arose on October 1, 2016, when he collided with two cars while driving with a blood alcohol content of 0.192 percent. That afternoon, he was driving home from a tailgate party at a University of Georgia football game when he ran a red light. He collided with two cars and pushed one of them into a third. First responders had to extricate respondent and the second car's driver from their cars, and both were transported to the hospital by ambulance with serious injuries—respondent with a broken right hip, knee, and foot, and the second car's driver with a broken left arm and leg, torn radial nerve, elbow injury, and concussion. The second car's passenger suffered a broken nose, broken vertebrae, nerve damage to her left hip, laceration to her left arm, and injuries to her rotator cuff and left eye.

### **Substantial Relationship**

4. Respondent's convictions are substantially related to the qualifications, functions, or duties of a real estate licensee because they involved "the consumption . . . of alcohol" and "at least one of the convictions involve[d] driving and the . . . consumption of alcohol . . ." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(11).)

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

5. Respondent testified at hearing and explained he does not dispute his convictions or that he engaged in "morally reprehensible" conduct on October 1, 2016.

He is "incredibly remorseful," and he wishes he could change what happened. He described the difficulty of living with the fact that he severely injured others. Respondent was grateful for the opportunity to face his victims in criminal court and apologize. He found it "very moving" when the other driver hugged him and said "I love you" before the court remanded respondent into custody. Respondent has no other criminal convictions.

6. Respondent was incarcerated for 23 months, then received early release and 13 months of parole around January 10, 2020. He is on felony probation for the next 11.5 years. He must check in by telephone with his probation officer once a month, and they usually meet in person once a quarter. Respondent undergoes quarterly drug and alcohol testing, and all his tests have been negative. He understands that a positive test will result in his return to prison for the remainder of his 15-year sentence.

7. Respondent produced documents showing he completed the DUI Risk Reduction Program on July 10, 2007, and he fulfilled his community service requirement on February 23, 2018. He volunteered with SafeRide America, a program that provides rides to individuals who believe they may be unsafe to drive. Respondent and another volunteer drove together to the customer's location, the volunteer got into the customer's car and drove him or her home, and respondent followed and picked up the volunteer at the customer's home.

8. Respondent began attending Alcoholics Anonymous (AA) meetings on June 2, 2017, shortly after criminal charges were filed against him. He continued attending meetings during his incarceration and after his release, and consistently attended two or three meetings a week. He discovered Celebrate Recovery (CR) while incarcerated and began attending meetings in May 2018. He described CR as a

“Christ-focused” recovery support group that uses the same 12 steps of recovery as AA. He attends CR meetings once a week in addition to AA meetings.

9. Respondent described his participation in AA and CR as “a very eye-opening experience.” He has learned a lot about himself, what caused him to start drinking, and the effect his drinking has had on his family and friends. He is grateful he found both programs and continues to work the 12 steps of recovery. He last consumed alcohol on October 1, 2016, the day of the accident, and he has no desire to drink again.

10. Respondent had a girlfriend at the time of the accident, and they stayed together throughout the criminal proceedings, his incarceration, and his parole and probation. They married in May 2020, purchased a home the following year, and are expecting their first child.

11. The Georgia Real Estate Commission issued respondent a salesperson license on December 11, 2015. The Commission subsequently revoked his license based on his criminal convictions. The Oklahoma Real Estate Commission also issued respondent a salesperson license, which is valid and expires June 30, 2023, unless renewed.

12. Respondent began his career in commercial real estate with Coldwell Banker in Atlanta, Georgia. He continued as an Investment Advisor with Shane Investment Property Group, an Atlanta-based real estate brokerage firm that focused on multi-tenant retail investment sales. He returned to his position after being released on parole. Stan Johnson Co. acquired Shane Investment Property Group in October 2020, and respondent continues to work at Stan Johnson Co. as an Investment Sales Analyst. Stan Johnson Co. is an Oklahoma-based real estate

brokerage and advisory firm that focuses on investment sales and transactions for retail, office, healthcare, industrial, and specialty properties.

## **Analysis**

13. The Department has adopted criteria for evaluating an applicant's rehabilitation when he has substantially related convictions. Criteria relevant here include: (1) the amount of time that has elapsed since the convictions; (2) completion or early termination of parole or probation; (3) abstinence from alcohol; (4) stability of family life; and (5) a change in the attitude that existed at the time of the criminal behavior. (Cal. Code Regs., tit. 10, § 2911, subd. (a)(1), (5), (6), (8), & (14).) "The passage of less than two years" is not enough to establish rehabilitation. (*Id.*, subd. (a)(1)(A).) Additionally, "the two-year period may be increased" depending on the severity of the underlying criminal conduct. (*Id.*, subd. (a)(1)(B)(i).)

14. Respondent engaged in serious and dangerous behavior on October 1, 2016. He drove his car with a blood alcohol content more than twice the legal limit, crashed into two cars, and pushed one into a third car. He severely injured himself and two others. Though nearly six years have elapsed since the accident and more than four years have elapsed since his convictions, the severity of his conduct justifies a longer rehabilitation period. Additionally, he will be on felony probation through February 27, 2033. (See, e.g., *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [a complete and accurate assessment of one's rehabilitation necessarily requires a period of evaluation during which he is no longer on parole or probation].)

15. But rehabilitation is not an all-or-nothing proposition and there can be varying stages. Respondent has taken significant steps to demonstrate he can practice real estate in a manner consistent with public health, safety, and welfare. He readily



admitted his misconduct and did not make excuses for it. He credibly showed contrition and has gained substantial insight into his wrongdoing. He received early release from prison, successfully completed parole, and is compliant with his conditions of probation.

16. Respondent has not consumed alcohol in over five years. He demonstrates his commitment to maintaining his sobriety by regularly attending AA and CR meetings. He has a stable family life and is expecting his first child. His prior employer expressed its continued support and confidence in him by reemploying him upon his release from prison. His current employer demonstrated the same by continuing his employment after acquiring his prior employer.

## **LEGAL CONCLUSIONS**

### **Applicable Standard/Burden of Proof**

1. Respondent has the burden of proving he qualifies for a real estate salesperson license by a preponderance of the evidence. (*Coffin v. Alcoholic Beverage Control Appeals Board*, supra, 139 Cal.App.4th 471, 476 [the party seeking a professional license bears the burden of proof regarding the issues raised in the statement of issues]; see Evid. Code, § 115 [“Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence”].) This evidentiary standard requires respondent to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, respondent must prove it is more likely than not that he is qualified for licensure. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

## **Applicable law**

2. An application for a real estate license may be denied if the applicant has been convicted of a crime substantially related to the qualifications, functions, or duties of a real estate license. (Bus. & Prof. Code, §§ 480, subd. (a)(1), & 10177, subd. (b).)

## **Conclusion**

3. Respondent has two substantially related convictions. Therefore, cause exists to deny his application for a real estate salesperson license pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b), individually and collectively. When all the evidence is considered, respondent demonstrated sufficient rehabilitation to justify issuing him a restricted real estate salesperson license for the reasons discussed in Factual Findings 13 through 16. Therefore, his application for an unrestricted salesperson license should be denied, and instead he should receive a restricted license as set forth in the Order below.

## **ORDER**

Respondent Christopher Todd Howard's Salesperson Exam/License Application 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 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.

4. 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.

5. If respondent violates any of the conditions of his criminal probation imposed by the Superior Court of Athens-Clarke County, State of Georgia, in Case Number SU17CR0431-N, such violation shall constitute a violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license. Respondent shall notify the Commissioner in writing within 72 hours of any violations of his criminal probation by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. 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.

6. Respondent shall notify the Commissioner in writing within 72 hours of the modification or termination of his criminal probation imposed by the Superior Court of Athens-Clarke County, State of Georgia, in Case Number SU17CR0431-N, by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. 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.

7. Respondent shall completely abstain from the consumption of alcohol.

DATE: June 15, 2022

COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings