

FILED

NOV 08 2023

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-7231 SAC
)	
SAMMY ISABEL AYALA,)	OAH No. 2023070968
)	
Respondent.)	

DECISION

The Proposed Decision dated October 4, 2023, 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.

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 NOV 28 2023.

IT IS SO ORDERED 11/3/23

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER


for Doug McCauley

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

In the Matter of the Application of:

SAMUEL ISABEL AYALA, Respondent

Agency Case No. H-7231 SAC

OAH No. 2023070968

PROPOSED DECISION

Jeffrey U. Javinar, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on September 11, 2023, from Sacramento, California.

Richard Uno, Counsel III, represented Tricia D. Parkhurst (complainant), Supervising Special Investigator, Department of Real Estate (Department).

Samuel Isabel Ayala (respondent) represented himself.

Evidence was received, the record closed, and the matter submitted for decision on September 11, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

1. On March 16, 2022, respondent applied to the Department for a real estate salesperson license. On June 19, 2023, complainant, in her official capacity, signed and filed a Statement of Issues seeking to deny respondent's application based on his felony convictions. Respondent filed a timely Notice of Defense and requested a hearing. This hearing followed.

Respondent's Convictions

2. On November 22, 2010, in the Tehama County Superior Court, respondent was convicted of violating Penal Code sections 246.3, subdivision (a) (willful discharge of firearm); 245, subdivision (a)(2) (assault with firearm); 186.22, subdivision (a) (participation in a criminal street gang); and 67 (bribing an officer), all felonies. Also, respondent was convicted of Health and Safety Code section 11351 (possession of narcotics for sale), a felony. The court sentenced respondent to nine years in state prison. He served eight years with good behavior and was released on parole in July 2019. The convictions have not been expunged.

3. The circumstances underlying these convictions occurred on February 14, 2010, when respondent fired a handgun twice in the air during a fight in a parking lot. The gathered crowd dispersed, and respondent pointed the handgun at a person who was able to run away. Respondent was 22 years old and a Norteño gang member. He was present with another Norteño member who engaged in the fracas. Before police arrived, respondent tossed his handgun in the bushes. About an hour later, a witness informed the police that respondent retrieved his handgun and left. The police located

respondent's truck and conducted a traffic stop and a search. The police found contraband in the center console: a loaded handgun minus two bullets, ammunition, and six baggies each containing about 0.6 grams of cocaine.

Respondent's Evidence

4. Respondent's only evidence was his testimony. Respondent did not dispute his felony convictions or the accuracy of the information in the court records and reports. Respondent admitted he made poor choices. He testified that he was remorseful for his actions and learned from his mistakes.

5. Respondent is now 35 years old with two minor children. He explained that he is a changed individual with a different mindset. While incarcerated, he took classes in parenting and psychology and read several books. After serving his criminal sentence, he worked multiple jobs, saved money, and was able to acquire several rental properties. Respondent also enrolled in real estate courses, resulting in him successfully passing the real estate salesperson examination. He has cut ties with known gang members from his youth. He worked with the San Joaquin County District Attorney's office to help prosecute cases against gang members. Along with a local coach, respondent counsels troubled youth twice weekly through sports activities.

Analysis

6. The evidence established that on November 22, 2010, respondent was convicted of five felonies: willful discharge of a firearm; assault with a firearm; possession of narcotics for sale; participation in a criminal street gang; and bribery of an officer. A crime is substantially related to the qualifications, functions, or duties of a real estate licensee "if it involves . . . (4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end . . . (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. . . ." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Here, his convictions for willful discharge of a firearm and participation in criminal street gang fall under the definition of serious felony under Penal Code section 1192.7, subdivision (c).

7. Also, respondent's bribery conviction is substantially related to the qualifications, functions, or duties of a real estate licensee, as a matter of law. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(4).) His convictions for willful discharge of a firearm and assault with a firearm are substantially related to the qualifications, functions, or duties of a real estate licensee because the underlying circumstances constitute the "doing of [an] unlawful act . . . with the intent or threat of doing substantial injury to the person . . . of another." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Respondent's conviction for possession of narcotics for sale is substantially related to the qualifications, functions, or duties of a real estate licensee, as it shows an "intent of conferring a financial or economic benefit upon" respondent. (*Ibid.*) Respondent's substantially related convictions constitute grounds for denial pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(4) and (a)(8).

8. All of respondent's convictions did not occur within the preceding seven years from the date of the application (March 16, 2022). But because respondent was released from incarceration in July 2019, i.e., within the preceding seven years from his application, grounds for denial exist pursuant to Business and Profession Code section 480, subdivision (a)(1).

REHABILITATION CRITERIA

9. Respondent did not dispute his criminal convictions. His criminal history is concerning. However, rehabilitation is open to all who have erred. (*In re Andreani* (1939) 14 Cal.2d. 736, 749.) The law favors rehabilitation. (*Resner v. State Bar* (1967) 67 Cal.2d 799, 811.) The Department adopted criteria to consider when evaluating the rehabilitation of an applicant for a real estate license. Applicable criteria include: time elapsed since commission of the acts; passage of not less than two years since the act that is a cause of action in the Statement of Issues; nature and severity of acts; expungement of criminal convictions; successful discharge of probation or parole; completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement; and change in attitude from that which existed at time of conduct in question. (Cal. Code Regs., tit. 10, § 2911, subd. (a).)

10. Applying the rehabilitation criteria, respondent's most recent criminal conviction occurred over a decade ago. His crimes were serious and none of his convictions have been expunged. He satisfied the terms of his sentence, with early release for good behavior. He helps law enforcement prosecute members of his former gang and counsel troubled youth in the community. Respondent completed real estate training and passed the real estate salesperson examination, but did not present evidence of any additional courses completed for economic self-improvement. He has changed his social relationships and has a strong support group within his family unit.

11. Most significantly, respondent demonstrated a genuine change in attitude from when he was associated with gang activity and committing crimes. Respondent's sincere testimony and demeanor at hearing demonstrated genuine remorse, acceptance of responsibility, and insight into the issues that led to his prior misconduct. (*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."].)

12. 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 two (2) years is appropriate.

LEGAL CONCLUSIONS

1. An applicant for a license bears the burden to prove he should be granted a license. (*Martin v. Alcohol Beverage Control Appeals Bd.* (1959) 52 Cal.2d 259, 265.) The burden of proof is a preponderance of the evidence (Evid. Code, § 115), which means "more likely than not." (*Sandoval v. Bank of America* (2002) 94 Cal.App.4th 1378, 1388.) Rehabilitation is akin to an affirmative defense, which an applicant bears the burden of establishing. (*Whetstone v. Bd. of Dental Examiners* (1927) 87 Cal.App. 156, 164.)

2. Business and Professions Code section 480, subdivision (a), provides that an agency may deny a license on the grounds the applicant has been convicted of a crime only if the following conditions are met:

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or professions for which the application is made . . . or the applicant has been convicted of a crime that is substantially related to the qualifications,

functions, or duties of the business or profession for which the application is made and for which the applicant . . . was released from incarceration within the preceding seven years from the date of application. However, the preceding seven-year limitation shall not apply in either of the following situations:

(A) The applicant was convicted of a serious felony, as defined in Section 1192.7 of the Penal Code . . .

[¶] . . . [¶]

3. The Real Estate Commissioner may deny a license to an applicant who has been convicted of a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, § 10177, subd. (b)(1).)

Substantial Relationship

4. Respondent's convictions for willful discharge of a firearm, assault with a firearm, possession of narcotics for sale, and bribery of an officer are substantially related to the qualifications, functions, or duties of a real estate licensee. (Cal. Code Regs., tit. 10, § 2910, subds. (a)(4) and (a)(8).)

Cause for Denial

5. Cause exists to deny respondent's application pursuant to Business and Professions Code section 10177, subdivision (b)(1), and California Code of Regulations, title 10, section 2910, subdivisions (a)(4) and (a)(8), in that respondent was convicted of felonies that are substantially related to the qualifications, functions, and duties of a real estate salesperson, as set forth in the Factual Findings as a whole.

6. Cause exists to deny respondent's application pursuant to Business and Professions Code sections 480, subdivision (a)(1), 10177, subdivision (b)(1), and California Code of Regulations, title 10, section 2910, subdivisions (a)(4) and (a)(8), in that respondent was convicted of felonies that are substantially related to the qualifications, functions, and duties of a real estate salesperson, and respondent was released from incarceration within the preceding seven years from the date of his application, as set forth in the Factual Findings as a whole.

7. Cause exists to deny respondent's application pursuant to Business and Professions Code sections 480(a)(1)(A), and 10177, subdivision (b)(1), and Penal Code section 1192.7, subdivision (c), in that respondent was convicted of serious felonies, as set forth in the Factual Findings as a whole.

8. Cause exists to deny respondent's application pursuant to Business and Professions Code section 10177, subdivision (b)(1), in that respondent was convicted of felonies and his convictions are substantially related to the qualifications, functions, and duties of a real estate salesperson, as set forth in the Factual Findings as a whole.

9. Though respondent did not establish sufficient rehabilitation to justify issuing him an unrestricted license, he demonstrated his ability to perform the duties of a real estate salesperson in a manner consistent with public health, safety, and welfare, subject to restrictions. Thus, his application for an unrestricted salesperson license should be denied; provided, however, that he is issued a restricted license as set forth in the Order below.

ORDER

Respondent Samuel Isael Ayala's application for issuance of 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 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: (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 two (2) 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 approved by the Department of Real Estate, which shall certify as follows: (a) that the employing broker has read the Decision that

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, California, 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.

DATE: October 4, 2023

Jeffrey U. Javinar
Jeffrey U. Javinar (Oct 4, 2023 13:12 PDT)

JEFFREY U. JAVINAR

Administrative Law Judge

Office of Administrative Hearings