

**FILED**  
APR 09 2024  
DEPARTMENT OF REAL ESTATE  
By J. Taggar

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of	)	
	)	
SOULIGMA PHOTHONG,	)	No. H-7301 SAC
	)	
Respondent.	)	OAH No. 2023110272
	)	

STIPULATION AND WAIVER AND DECISION AFTER REJECTION

The California Department of Real Estate (Department) filed a Statement of Issues against SOULIGMA PHOTHONG (Respondent), on October 24, 2023. On January 8, 2024, a hearing was held and evidence was received, the record was closed, and the matter was submitted.

On January 16, 2024, the Proposed Decision of the Administrative Law Judge was issued.

On February 23, 2024, the Commissioner rejected the Proposed Decision of January 16, 2024.

The parties wish to settle this matter without further proceedings.

1 IT IS HEREBY STIPULATED by and between Respondent and the Complainant,  
2 acting by and through Richard K. Uno, Counsel for the Department, as follows for the purpose of  
3 settling and disposing of the Statement of Issues filed by Complainant.

4 1. It is understood by the parties that the Real Estate Commissioner may adopt  
5 the Stipulation and Agreement as her Decision in this matter, thereby imposing the penalty and  
6 sanctions on Respondent's application for a real estate license as set forth in the "Decision and  
7 Order". In the event the Commissioner in her discretion does not adopt the Stipulation and  
8 Agreement, the Stipulation shall be void and of no effect; the Commissioner will review the  
9 transcript and the evidence in the case, and will then issue his Decision after Rejection as his  
10 Decision in this matter.

11 2. The Order or any subsequent Order of the Commissioner made pursuant to  
12 this Stipulation shall not constitute an estoppel, merger or bar to any further administrative or  
13 civil proceedings by the Department with respect to any matters which were not specifically  
14 alleged to be cause for accusation in this proceeding.

#### 15 DETERMINATION OF ISSUES

16 By reason of the foregoing stipulations, admissions and waivers, and solely for  
17 the purpose of settlement of the pending Statement of Issues without a hearing, it is stipulated  
18 and agreed that the acts and/or omissions of Respondent, as described in the Statement of Issues,  
19 constitute grounds for the denial of Respondent's Application for a real estate license under the  
20 provisions of Sections 480(a) and 10177(b) of the Business and Professions Code (Code).

#### 21 ORDER

22 The application of Respondent SOULIGMA PHOTHONG for a real estate  
23 salesperson license is denied; provided, however, a restricted real estate salesperson  
24 license shall be issued to Respondent pursuant to Section 10156.5 of the Code. The  
25 restricted license issued to Respondent shall be subject to all of the provisions of Section  
26 10156.7 of the Code and to the following limitations, conditions and restrictions imposed  
27 under authority of Section 10156.6 of the Code:

1                   1. The license shall not confer any property right in the privileges to be  
2 exercised, and the Commissioner may by appropriate order suspend the right to exercise  
3 any privileges granted under this restricted license in the event of:

- 4                   (a) The conviction of Respondent (including a plea of nolo  
5                   contendere) of a crime that is substantially related to  
6                   Respondent's fitness or capacity as a real estate licensee; or  
7                   (b) The receipt of evidence that Respondent has violated  
8                   provisions of the California Real Estate Law, the subdivided  
9                   lands law, regulations of the Commissioner or conditions  
10                  attaching to this restricted license.

11                  2. Respondent shall not be eligible to apply for the issuance of an unrestricted  
12 real estate license nor the removal of any of the limitations, conditions, or restrictions of a  
13 restricted license until two (2) years have elapsed from the date of the issuance of the  
14 restricted license to Respondent.

15                  3. With the application for license, or with the application for transfer to a new  
16 employing broker, Respondent shall submit a statement signed by the prospective employing  
17 broker on a form approved by the Bureau wherein the employing broker shall certify as follows:

18                   a. That broker has read the Stipulation and Waiver which is the basis  
19 for the issuance of the restricted license; and

20                   b. That broker will carefully review all transaction documents  
21 prepared by the restricted licensee and otherwise exercise close supervision over the licensee's  
22 performance of acts for which a license is required.

23                  4. Respondent shall notify the Commissioner in writing within 72 hours of any  
24 arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post  
25 Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of  
26 Respondent's arrest, the crime for which Respondent was arrested and the name and address  
27 of the arresting law enforcement agency. Respondent's failure to timely file written notice

1 shall constitute an independent violation of the terms of the restricted license and shall be  
2 grounds for the suspension or revocation of that license.

3  
4 3/18/24

5 DATED

6 

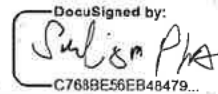
RICHARD K. UNO, Counsel III  
DEPARTMENT OF REAL ESTATE

7 \* \* \*

8 I have read the Stipulation and Agreement and Decision After Rejection; and its  
9 terms are understood by me and are agreeable and acceptable to me. I willingly and voluntarily  
10 agree to enter into this Stipulation.

11 3/6/2024

12 DATED

13 DocuSigned by:  
  
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SOULIGMA PHOTHONG  
Respondent

14 \* \* \*


15 DECISION AND ORDER

16 The foregoing Stipulation and Agreement and Decision After Rejection is hereby  
17 adopted by the Real Estate Commissioner as his Decision and Order.

18 This Decision and Order shall become effective at 12 o'clock noon on

19 4/8/2024

20  
21 CHIKA SUNQUIST  
22 REAL ESTATE COMMISSIONER

23  
24 IT IS SO ORDERED 

25 By: Marcus L. McCarther, Chief Deputy Real Estate  
26 Commissioner  
27

**FILED**  
FEB 27 2024  
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-7301 SAC
	)	
SOULIGMA PHOTHONG,	)	OAH No. 2023110272
	)	
Respondent.	)	

NOTICE

TO: SOULIGMA PHOTHONG, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision, herein dated January 16, 2024, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated January 16, 2024, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein, which may include the transcript of the proceedings held on Monday, January 08, 2024, and any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Monday, January 08, 2024, at the


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1 Sacramento Office of the Department of Real Estate unless an extension of the time is granted for  
2 good cause shown.

3 Written argument of Complainant to be considered by me must be submitted within  
4 15 days after receipt of the argument of Respondent at the Sacramento Office of the Department of  
5 Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 2/23/24.

7 CHIKA SUNQUIST  
8 REAL ESTATE COMMISSIONER

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11 By: Marcus L. McCarther  
12 Chief Deputy Real Estate Commissioner  
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**BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

**FILED**  
FEB 15 2024  
DEPARTMENT OF REAL ESTATE  
By J. Taggart

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

**SOULIGMA PHOTHONG, Respondent**

**Case No. H-7301 SAC**

**OAH No. 2023110272**

**PROPOSED DECISION**

Marcie Larson, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, conducted a videoconference hearing in this matter on January 8, 2024, from Sacramento, California.

Richard Uno, Counsel III, represented complainant Tricia Parkhurst, Supervising Special Investigator of the State of California.

Respondent Souligma Phothong represented himself.

Evidence was received, the record closed, and the matter submitted for decision on January 8, 2024.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On or about November 15, 2022, respondent filed with the Department of Real Estate (Department) an application for a real estate salesperson license (application). No license has been issued.

2. On October 20, 2023, complainant signed and thereafter filed the Statement of Issues in her official capacity. Complainant seeks to deny respondent's application based on his July 27, 2001 felony conviction for voluntary manslaughter, with enhancements for use of a firearm and gang activity. In aggravation, respondent also has a 2016 conviction for driving under the influence of alcohol (DUI). At hearing, complainant amended the Statement of Issues to reflect the correct conviction date for respondent's felony conviction.

3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

### **Respondent's Criminal Convictions**

4. On July 27, 2001, in the Superior Court of California, County of Sacramento, respondent was convicted, on his nolo contendere plea, of voluntary manslaughter, a violation of Penal Code section 192 subdivision (a), a felony, with felony enhancements for use of a firearm, a violation of Penal Code section 12022, subdivision (a)(1), and gang activity, a violation of Penal Code section 186.22, subdivision (b)(1). Voluntary manslaughter is listed as a serious felony pursuant to



Penal Code Section 1192.7, subdivision (c). Respondent was sentenced to nine years in prison and ordered to pay restitution. Respondent completed his prison time and was released on parole.

In April 2006, respondent was convicted of DUI, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor, which was a violation of his parole. As a result, he returned to prison for four months and was placed on three years of probation. Respondent complied with the terms of his probation, which he completed in 2009.

5. The circumstances underlying respondent's felony conviction occurred on November 28, 1997. Deputies from the Sacramento County Sheriff's Department were dispatched to an area in Sacramento where gunshots were fired. When the deputies arrived, they observed a gunshot victim. Witnesses told the deputies gunshots were fired from a vehicle. The witnesses explained the victim and his friends had an argument with the vehicle occupants. The deputies identified the victim and his friends as gang members.

The deputies later identified four occupants of the vehicle involved in the shooting, which included respondent. However, respondent did not shoot the gun or drive the vehicle. He was a passenger in the vehicle and a gang member.

### **Matter in Aggravation**

6. On or about December 19, 2016, in the Superior Court of California, County of Sacramento, respondent was convicted, on his nolo contendere plea, of DUI, a violation of Vehicle Code 23152, subdivision (b), a misdemeanor. Respondent was ordered to serve 30 days in jail. Respondent was placed on three years of informal probation, ordered to complete a first offender nine-month DUI program, and ordered

to pay fines and fees. Respondent complied with the terms of his sentence. The parties did not present evidence regarding the underlying circumstances of the conviction.

### **Respondent's Evidence**

7. Respondent is 44 years old. He was 18 years old and a gang member when he was involved in the shooting. Respondent did not know the shooting was going to occur and he did not know the victim. There was an argument between one of the gang members in his vehicle and the member of another gang. One of the occupants in the vehicle pulled out a gun and shot the victim. Respondent accepted a plea agreement and took responsibility for being part of the crime.

Respondent explained he was young and impressionable, but there is no excuse for his behavior and gang involvement. He deeply regrets being a part of the death of the victim. Respondent completed his prison sentence and was released on parole. Shortly thereafter, he was convicted of DUI and returned to prison for a short time. After his release he entered a six-year electrical apprenticeship program, which he completed. He focused on creating a new life. He moved to a new neighborhood so that he was not involved with gangs or people from his past.

8. On October 1, 2016, respondent was arrested for DUI. He realized that alcohol was causing problems in his life. He needed to grow up and become more mature. He stopped drinking alcohol the day of his arrest and has not had a drink since. Through the nine-month DUI program, respondent also realized his decisions to drink alcohol and drive were irresponsible and put others at risk. He never wants to be responsible for hurting someone.

9. From 2017 until 2021, respondent worked as an electrician for Vasquez Construction. Since 2021, respondent has been caring for his elderly father full time.

Respondent still occasionally performs jobs for Vasquez Construction. In addition, respondent and his wife have three children ages 15, 12 and two months. Respondent's wife is an assistant real estate broker with Keller Williams Realty. She has been licensed by the Department for nine years.

10. Respondent understands the Department's concerns about his past. He assures the Department he is a different person and will never make the same mistakes. He would like a license so he can better provide for his family. He wants his children to be proud of his accomplishments and see that it is possible for him to move past his mistakes. Respondent hopes to work for Keller Williams if he is granted a license.

## **Analysis**

11. The Department has adopted criteria for determining whether an applicant has been rehabilitated since committing the acts for which denial of licensure is sought. (Cal. Code Regs., tit. 10, § 2911.) The criteria relevant to respondent are:

(1) The time that has elapsed since commission of the acts(s) or offense(s):

(A) The passage of less than two years after the most recent criminal conviction or act of the applicant that is a cause of action in the Bureau's Statement of Issues against the applicant is inadequate to demonstrate rehabilitation.

(B) Notwithstanding subdivision (a)(1)(A), above, the two year period may be increased based upon consideration of the following:

(i) The nature and severity of the crime(s) and/or act(s) committed by the applicant.

(ii) The applicant's history of criminal convictions and/or license discipline that are "substantially related" to the qualifications, functions, or duties of a real estate licensee. However, no rehabilitation shall be required where the sole proven basis or bases for denial of an application is an expunged conviction as described in Business and Professions Code Section 480(c).

(2) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant, or escheat to the State of these monies or other properties if the victim(s) cannot be located.

(3) Expungement of criminal convictions.

(4) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(5) Successful completion or early discharge from probation or parole.

[¶] . . . [¶]

(7) Payment of the fine and/or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(8) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the Bureau action sought.

[¶] . . . [¶]

(14) Change in attitude from that which existed at the time of the conduct in question as evidenced by the following:

(A) Testimony and/or other evidence of rehabilitation submitted by the applicant.

[¶] . . . [¶]

(E) Absence of subsequent felony convictions, misdemeanor convictions, or other conduct that provides grounds to discipline a real estate licensee, which reflect an inability to conform to societal rules when considered in light of the conduct in question.

12. Applying the Department's criteria, respondent was convicted of a serious felony involving the death of another. He violated his parole and was sent back to prison. In 2016, he was convicted of a second DUI. His conduct was very serious and demonstrated lack of good judgment and disregard for the law. However, respondent is now 44 years old. The events that gave rise to his felony conviction occurred over 26

years ago, when he was 18 years old. Since that time, he has raised a family, completed a six-year apprenticeship program, worked as an electrician for many years, and served as a caregiver. He has not been convicted of any other felonies and he is not involved with gangs.

It is also evident that respondent's 2016 DUI conviction was another important turning point in his life. He stopped drinking alcohol and focused on improving his life so he can be a positive role model for his children. He has matured and understands the gravity of his conduct. He has taken action to move past his convictions. Respondent's testimony was sincere and candid. He would like an opportunity to prove to the Department he can be a responsible and trustworthy real estate salesperson. Respondent should be allowed to move past his mistakes and create a better life for his family.

13. The objective of an administrative licensing proceeding is to protect the public. Such proceedings are not for the primary purpose of punishment. (*See Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) The Department must be assured that its licensees possess good judgment. The totality of the evidence demonstrates that it would be consistent with the public interest, safety, or welfare to issue respondent a restricted real estate salesperson license.

## **LEGAL CONCLUSIONS**

### **Burden of Proof**

1. The burden of proof is on the applicant for a license. (*Martin v. Alcohol Beverage Control Appeals Bd.* (1959) 52 Cal.2d 265.) In addition, rehabilitation is akin to an affirmative defense; the burden of proof of establishing an affirmative defense is

on the proponent of that defense. (*Whetstone v. Bd. of Dental Examiners* (1927) 87 Cal.App. 156, 164.)

## **Applicable Law**

2. Business and Professions Code section 480, subdivision (a), provides in pertinent part that the Department may deny an application on the grounds that:

(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 profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, 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 is presently incarcerated or 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 or a crime for which registration is required pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.

3. Business and Professions Code section 10177, subdivision (b), provides that an application for a real estate license may be denied if the applicant has "entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee . . . ."

4. In California Code of Regulations, title 10, section 2910, the Department has set forth criteria for determining whether a conviction is substantially related to the qualifications, functions, or duties of a licensee. Subdivision (a)(8) of section 2910, in relevant part, provides that a conviction will be deemed substantially related if it evidences:

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.

### **Cause for Denial**

5. Respondent was convicted of voluntary manslaughter, a violation of Penal Code section 192 subdivision (a), a felony, with enhancements for use of a firearm a violation of Penal Code section 12022, subdivision (a)(1) and gang activity, a violation of Penal Code section 186.22, subdivision (b)(1). Voluntary manslaughter is listed as a serious felony pursuant to Penal Code Section 1192.7, subdivision (c). His crimes are substantially related to the qualifications, functions, and duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(8). Therefore, cause exists to deny respondent's application for a real estate



salesperson license under Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b).

6. Respondent's 2016 DUI is pled as a matter in aggravation, not as a basis for denial of his application. Therefore, there is no cause to deny respondent's application for a real estate salesperson license based on his DUI conviction.

7. When all of the evidence is considered, respondent produced sufficient evidence of rehabilitation to justify granting him a restricted real estate salesperson license.

## **ORDER**

Respondent Souligma Phothong'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:

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.

DATE: January 16, 2024

Marcie Larson  
Marcie Larson (Jan 16, 2024 14:06 PST)

MARCIE LARSON

Administrative Law Judge

Office of Administrative Hearings