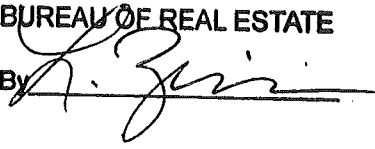


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BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

MICHAEL SCOTT SMITH,

Respondent.

No. H-10770 SF

ORDER DENYING REINSTATEMENT OF BROKER LICENSE
BUT GRANTING RIGHT TO A RESTRICTED BROKER LICENSE

On August 24, 2010, in Case No. H-10770 SF, a Decision was rendered revoking the real estate broker license of Respondent effective September 15, 2010, but granting Respondent the right to the issuance of a restricted salesperson license. Respondent did not apply for a restricted real estate salesperson license, and his real estate broker license has been revoked since September 15, 2010.

On November 10, 2012, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

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1 The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State*
2 *Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and
3 integrity than an applicant for first time licensure. The proof must be sufficient to overcome the
4 prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

5 I have considered Respondent's petition and the evidence and arguments in
6 support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has
7 undergone sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted real
8 estate broker license.

9 The Bureau has developed criteria in Section 2911 of Title 10, California Code of
10 Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for
11 reinstatement of a license. Among the criteria relevant in this proceeding are:

12 Regulation 2911(k) Correction of business practices resulting in injury to others
13 or with the potential to cause such injury.

14 Respondent's real estate broker license was revoked in 2010 primarily because he
15 failed to supervise the licensed activity of a real estate corporation owned by Respondent's
16 cousin. Respondent was not aware that the corporation maintained a trust account which was not
17 in compliance with applicable law and regulations, which led to trust funds in the account being
18 attached by one or more creditors who had obtained a civil judgment against the corporation.
19 Although Respondent was granted the right to apply for and obtain a restricted real estate
20 salesperson license, he never did so. Respondent has not worked as a real estate licensee since
21 the revocation of his real estate broker license, and has not demonstrated that he has been in a
22 position to correct his business practices which led to the revocation of his license.

23 I am satisfied, however, that it will not be against the public interest to issue a
24 restricted real estate broker license to Respondent.

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1 A restricted real estate broker license shall be issued to Respondent pursuant to
2 Section 10156.5 of the Business and Professions Code, if Respondent satisfies the following
3 conditions prior to and as a condition of obtaining a restricted real estate broker license within
4 twelve (12) months from the date of this Order:

5 1. Submits a completed application and pays the fee for a restricted real
6 estate broker license within the 12 month period following the date of this Order; and

7 2. Submits proof that Respondent has completed the continuing education
8 requirements for renewal of the license sought. The continuing education courses must be
9 completed either (i) within the 12 month period preceding the filing of the completed
10 application, or (ii) within the 12 month period following the date of this Order.

11 The restricted license issued to Respondent shall be subject to all of the provisions
12 of Section 10156.7 of the Business and Professions Code and to the following limitations,
13 conditions and restrictions imposed under authority of Section 10156.6 of that Code:

14 A. The restricted license issued to Respondent may be suspended prior to
15 hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or
16 plea of nolo contendere to a crime which is substantially related to Respondent's fitness or
17 capacity as a real estate licensee.

18 B. The restricted license issued to Respondent may be suspended prior to
19 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner
20 that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
21 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
22 license.

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

5 This Order shall become effective at 12 o'clock noon on DEC 16 2013.

6 IT IS SO ORDERED NOV 22 2013

7 Real Estate Commissioner

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11 By: JEFFREY MASON
12 Chief Deputy Commissioner
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