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FILED

SEP 14 2015

BUREAU OF REAL ESTATE

By S. Black

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

JOHN MARCO NEWCOMER,

Respondent.

No. H-10837 SF

ORDER DENYING REINSTATEMENT OF BROKER LICENSE
BUT GRANTING RIGHT TO AN UNRESTRICTED SALESPERSON LICENSE

On March 15, 2011, in Case No.H-10837 SF, a Decision was rendered revoking the real estate broker license of Respondent, but granting Respondent the right to issuance of a restricted real estate salesperson license, effective April 7, 2011. A restricted real estate salesperson license was issued to Respondent on April 7, 2011, and Respondent has operated as a restricted licensee since that time. On April 6, 2015, Respondent's restricted real estate salesperson license expired.

On January 21, 2015, 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 submitted in support
6 thereof.

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

10 Regulation 2911(i) Completion of, or sustained enrollment in, formal educational
11 or vocational training courses for economic self-improvement.

12 Respondent has provided no evidence of having completed any continuing
13 education courses related to real estate, or other formal educational or vocational training courses
14 since the issuance of his restricted real estate salesperson license.

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

17 Respondent has provided no persuasive evidence that he has made any
18 substantive corrections to his business practices relating to broker supervision. Respondent's
19 evidence consists solely of his assurances that he will check credit reports during transactions in
20 the future, ask other licensed brokers for assistance, and inquire with the Bureau of Real Estate in
21 the event that he has questions. Respondent's assurances, without anything more are insufficient
22 to establish that he has taken corrective action.

23 Regulation 2911(n) Change in attitude from that which existed at the time of the
24 conduct in question as evidenced by any or all of the following:

25 (1) Testimony of applicant.

26 Respondent has failed to demonstrate that he has had a change in attitude
27 concerning broker supervision responsibilities from that which existed at the

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time of his conduct that gave rise to his broker license revocation. Respondent continues to focus on his need to check credit reports in transactions, but fails to address any other broker supervision responsibilities. Respondent's assertion that he wants to work for a large brokerage as a broker-associate to ensure he learns what is required of a supervising broker underlines his lack of understanding or change in attitude towards such responsibilities. Respondent has not been employed in real estate since the revocation of his broker license which demonstrates he has not acquired any relevant real estate experience or training by employing brokers that would support a finding of Respondent's change in attitude.

Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted real estate broker license.

I am satisfied, however, that it will not be against the public interest to issue an unrestricted real estate salesperson license to Respondent. As a real estate salesperson, he must affiliate with a real estate broker in order to provide services for which a license is required and must be supervised by that broker.

NOW, THEREFORE, IT IS ORDERED that Respondent's petition for reinstatement of Respondent's broker license is denied; however, an unrestricted real estate salesperson license shall be issued to Respondent if Respondent satisfies the following requirements:

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1. Submits a completed application and pays the fee for a real estate salesperson license within the 12 month period following the effective date of this Order; and
2. Submits proof that Respondent has completed the continuing education requirements for renewal of the license sought. The continuing education courses must be completed either (i) within the 12 month period preceding the filing of the completed application, or (ii) within the 12 month period following the effective date of this Order.

This Order shall become effective at 12 o'clock noon on OCT 05 2015.

IT IS SO ORDERED 9/10/2015

REAL ESTATE COMMISSIONER



Wayne S. Bell