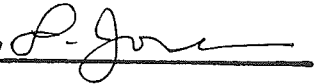


FILED

MAR 04 2014

BUREAU OF REAL ESTATE

By 

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	
)	NO. H-11575 SF
BRIAN DANIEL SANCHEZ,)	
)	OAH NO. 2013100101
Respondent.)	
_____)	

DECISION

The Proposed Decision dated January 29, 2014, 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.

Pursuant to Section 11517(c)(2)(C) of the Government Code, the following correction is made to Proposed Decision:

On page 6, continuing on to page 7, the first paragraph of the Order is amended to read:

“Respondent’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 the 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.....”

Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon on MAR 24 2014.

IT IS SO ORDERED 2/28/2014.

REAL ESTATE COMMISSIONER


Wayne S. Bell

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Application of:

BRIAN DANIEL SANCHEZ,

Respondent.

Case No. H-11575

OAH No. 2013100101

PROPOSED DECISION

Administrative Law Judge Kirk E. Miller, State of California, Office of Administrative Hearings, heard this matter on December 9, 2013, in Oakland, California.

Richard K. Uno, Counsel, represented Complainant Robin S. Tanner, Deputy Real Estate Commissioner.

Frank Buda, Attorney at Law, represented Respondent Brian Daniel Sanchez, who was present.

The record was left open until December 23, 2013 to permit Respondent to submit character letters and until December 31, 2013, for Complainant to respond. The character letters and the Complainant's response were timely received and marked as Exhibit L and Exhibit 10, respectively.

The record was closed and the matter submitted for decision on December 31, 2013.

FACTUAL FINDINGS

1. Complainant Robin S. Tanner filed the Statement of Issues in her official capacity as a Deputy Real Estate Commissioner of the State of California.
2. Brian Daniel Sanchez (Respondent) applied to the Department of Real Estate, (now the Bureau of Real Estate, and hereinafter the "Bureau") for a real estate salesperson license on October 4, 2012.¹ The Bureau denied Respondent's application and he appealed.

¹ Respondent first applied for a real estate salesperson license in 2008. The Department of Real Estate denied his application because of his criminal convictions.

Criminal Convictions

3. On June 3, 2008, in the Superior Court of California, County of Contra Costa, on a plea of nolo contendere, Respondent was convicted of violating Education Code section 3282, subdivision (b) (Purchase of a Diploma), a misdemeanor. Imposition of sentence was suspended and Respondent was sentenced to 30 days in the county jail, placed on two years of unsupervised probation, and ordered to pay various fines and fees.

The facts underlying the conviction occurred in 2005, when that Respondent paid another individual to change three grades on his transcript for classes he had taken at Diablo Valley College.

4. On August 15, 2007, in Superior Court of California, County of Alameda, Respondent was convicted on a plea of nolo contendere, of violating Penal Code section 415 (Fight/Noise/Offensive Words), a misdemeanor. Imposition of sentence was suspended and Respondent was placed on three years' probation, ordered to attend an anger management class, and to pay various fees and restitution.

The conviction was the result of an altercation at a bar between Respondent and another patron, in which Respondent struck the other customer.

5. On March 3, 2006, in Superior Court of California, County of Alameda, Respondent was convicted, on a plea of guilty, to a violation of Vehicle Code section 23152, subdivision (a) (Driving Under the Influence of Alcohol or a Drug), a misdemeanor. Imposition of sentence was suspended, and Respondent was placed on three years' court probation, ordered to pay fines and fees, and to attend a driving under the influence course.

The facts underlying the conviction were not presented in evidence.

6. On December 16, 1999, in Superior Court of California, County of Contra Costa, Respondent was convicted, on a plea of no contest, to a violation of Vehicle Code section 23103, subdivision (a) (reckless driving). Respondent was ordered to pay various fines and fees.

The facts underlying the conviction were not presented in evidence.

Respondent's Evidence

7. Respondent testified credibly regarding the circumstances of, and took full responsibility for, each of his criminal convictions:

a. With respect to Respondent's 2008 conviction for paying to change grades on his college transcript, he credibly testified that it was a "terrible choice" and that he is "ashamed of himself, and for his family and friends." Respondent has paid the associated fines and fees, and the conviction has been expunged pursuant to Penal Code section 1203.4.

b. With respect to respondent's 2007 conviction for violating Penal Code section 415, Respondent explained that the altercation took place in a bar after Respondent had consumed alcohol and he became involved in an argument over a spilled drink. He felt the event was "a wake-up call" which caused him to stop drinking for several years. He completed probation, including attendance at an anger management class, in 2010. He has not completed payment of all of his fines, fees and restitution, but is making monthly payments.

c. With respect to respondent's 2006 conviction for driving under the influence, Respondent is making monthly payments against his remaining fines and fees. As a result of the case he no longer drinks when he is going to drive, stating he could not live with himself if doing so caused him to injure another.

d. With respect to respondent's 1999 arrest for reckless driving, the police also found marijuana in the car, and respondent acknowledged having smoked marijuana prior to driving. He was 19-years old at the time. Respondent again takes responsibility for this act. Between the time of this conviction, and his final conviction in 2008, Respondent acknowledged he was irresponsible and stated he simply "did not care." He has completed payment of the required fines and fees for this offense. He no longer associates with the people he was with at the time of the arrest.

8. In 2008, Respondent took real estate courses at Sacramento City College and at Kaplan University. He passed the examination for a real estate salesperson license, but due to his criminal convictions, the license was denied.

9. Respondent moved to New York and in 2009 he was certified by the New York State Department of Health as a nursing home nurse aide. Respondent worked for a long term care facility providing personal care to patients. He next worked in the intensive care unit at Saint Luke's Hospital. While in New York he also enrolled in community college.

10. In 2012, Respondent was certified to work as a Nurse Assistant in California and he began work as a nurse's aide at California Pacific Medical Center, where he is well regarded by the professional staff. In April 2013, he recognized symptoms of a stroke occurring with a patient, notified the attending nurse, and prompt treatment saved the patient from harm. Respondent was awarded an Achieving Continuous Excellence award as a result.

11. Respondent is presently pursuing a Bachelor of Science degree in Diagnostic Imaging at Lincoln University in Oakland.

12. Respondent enjoys the support of family members and employers who are aware of his convictions, but also believe he is now trustworthy and deserving of an opportunity to be licensed. The following examples reflect the views and experiences of all those who submitted letters:

Cindy Quirarte, Respondent's mother writes:

[Respondent] has worked very hard to change his life and attitude since his convictions. I've seen the changes in [Respondent] and I'm proud of the strides he has made towards a decent and honest future. He has expressed regret and embarrassment for the poor choices he's made. [Respondent] has become a responsible person and dedicated student and I believe if given another chance, there is no doubt in my mind that he will be an ethical, honest and professional individual.

Nicole Sanchez-Rargalikis, Respondent's sister writes:

I can honestly say that [Respondent] hasn't always made the best decisions, but I can truthfully tell you that he is learned from his past mistakes and continues to grow into the responsible and caring man our family has always expected him to be. Through the years, Brian has caused stress and disappointment with his convictions that put a strain on my mother, sister and me. I've seen [Respondent] make decisions that have derailed his dreams and aspirations, but that was then. Over the past five years, I've witnessed a change and transformation in [Respondent's] decision making and overall character. I am now proud of my brother; something I cannot attest to in the past. He is a great uncle to my three boys and our relationship is strong.

Garmen Z. Woo, MD, a physician who works with Respondent at California Pacific Medical Center writes:

I am aware of [Respondent's] past convictions. . . . Despite his past, I believe that [Respondent] is a smart and hard-working individual. I have seen firsthand how [Respondent] is courteous, respectful, and empathetic to the patients and in his work with colleagues. He never hesitates when he is asked to do things and he often and graciously volunteers himself where help is needed.

I also believe that [Respondent] is an honest and professional individual. He has a strong fund of real-world knowledge that is both applicable to his current work setting as well as other professional environments. I have never seen [Respondent] under the influence of drugs or alcohol in a business or working situation. I also have never seen [Respondent] act unethically in the business or working situation.

13. Respondent has for several years known a real estate broker who is willing to supervise him if given a restricted license. Lynn Fogelman, a broker at New Decade Reality, states as follows:

[Respondent] has been very upfront with me about his past troubling convictions. I am aware that he was unable to obtain a real estate license in 2008 and has since concentrated on his career in the medical field.

In the past few years, [Respondent] has continually applied himself to his work and to move forward in the right direction. We've had several conversations about his "experiences" and I believe he has much remorse and guilt over them. [Respondent] is a young man that has learned "the errors of his ways" so to speak and I truly believe that he will be an asset and an honest professional in the real estate industry.

I have spent much time with [Respondent] in this last year teaching him about real estate and have never seen him under the influence of anything and would be happy to closely supervise him with licensed activities.

LEGAL CONCLUSIONS

Criminal Convictions

1. Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), together provide that a real estate license may be denied if the Respondent has been convicted of a crime that is substantially related to the qualifications, functions or duties of a real estate licensee.

In California Code of Regulations, title 10, section 2910, the Bureau has established criteria to be considered when evaluating whether a crime or act is substantially related to the qualifications, functions or duties of a licensee. Respondent's convictions set forth in Findings 3 through 6 are substantially related to the qualifications, functions or duties of a licensee, in that they involved altering an instrument (section 2910, subdivision (a)(2)), and involved two convictions involving the consumption of alcohol (section 2910, subdivision (a)(11)). Taken together, Respondent's convictions establish a pattern of disregard for the law (section (a)(10)).

The matters described in Factual Findings 3 through 6 establish cause for denial of Respondent's application for a salesperson's license under Business and Professions Code section 480, subdivision (a), and section 10177, subdivision (b).

Analysis

2. In California Code of Regulations, title 10, section 2911, the Bureau has established criteria to guide the analysis of whether a Respondent with a criminal conviction is sufficiently rehabilitated to be safe to practice as a real estate licensee. The most relevant of these are the passage of not less than two years from the most recent criminal conviction; expungement of the conviction or convictions; abstinence from the use of controlled substances or alcohol; new and different social and business relationships; stability of family life; sustained enrollment in educational or vocational training courses; and change in attitude from that which existed at the time of the commission of the criminal acts in question.

3. Respondent's post-high school behavior, starting at age 19, was at best immature and imprudent, and resulted in numerous convictions between 1999 and 2008. This conduct makes this a difficult case. While each act was different, together they confirmed Respondent's testimony that during this period of time "I didn't care." Immediately following his final conviction, however, Respondent began a much more responsible pattern of life and learning. While Respondent's last conviction was in 2008, the conduct underlying the conviction actually occurred in 2005. It has been nearly eight years since Respondent has been involved with any improper activity, and during the same period, he has emerged at age 33 as a far more responsible adult. The question then becomes how much time must pass and what change is required to demonstrate that Respondent has adequately complied with the Bureau's rehabilitation criteria.

Since becoming certified as a nurse's aide in 2009, Respondent has worked closely with patients in a confidential and personal relationship, and he has enjoyed the respect of a physician with whom he works. He is enrolled in college and is pursuing a degree. There is no evidence that respondent is presently abusing alcohol, and his last alcohol related conviction was in 2006. Although all of his fines have not yet been paid, he is making monthly payments pursuant to a payroll deduction, and his most recent conviction, in 2008, has been expunged. Respondent has a stable family life, having now won the praise of his mother and sister. Importantly, a broker familiar with Respondent's prior convictions is willing to supervise his work if Respondent is granted a restricted license. Respondent has persisted in his desire to earn a real estate salesperson license since the time of his first application in 2008, and he has used the years since then to mature, learn new skills, and work in positions of trust. The totality of this conduct persuasively supports Respondent's representation that he is a new man with a changed attitude. Accordingly, the public will be adequately protected, if a restricted license is issued.

ORDER

Respondent Brian Daniel Sanchez' application for a real estate salesperson's license is denied; however, a restricted real estate salesperson's license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes

application therefore and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. 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 that 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 no low contendere) if 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.

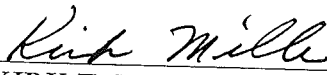
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until three years have elapsed from the date of issuance of the restricted license to Respondent.

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 Bureau 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.

DATED: January 29, 2014


KIRK E. MILLER
Administrative Law Judge
Office of Administrative Hearings