

FILED

NOV 06 2014

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 Application of:

ROBERT SILVA AGUILERA, JR.,

Respondent.

) NO. H-11673 SF

) STIPULATION AND WAIVER

It is hereby stipulated by and between ROBERT SILVA AGUILERA, JR. ("Respondent"), and the Complainant, acting by and through Jason D. Lazark, Counsel for the Bureau of Real Estate ("the Bureau"), as follows for the purpose of settling and disposing of the Statement of Issues filed on April 11, 2014, in this matter:

1. On June 26, 2014 a formal hearing was held on the Statement of Issues in accordance with the provisions of the Administrative Procedure Act ("APA") before Administrative Law Judge ("ALJ") Kirk E. Miller ("ALJ Miller") where, after evidence and testimony were received, the record was closed and the matter was submitted for decision.
2. On July 14, 2014, ALJ Miller issued a Proposed Decision.
3. On August 14, 2014, the Commissioner rejected the Proposed Decision.
4. The parties wish to settle this matter without further proceedings.
5. Respondent, pursuant to the limitations set forth below, hereby admits that the factual allegations in the Statement of Issues filed in this proceeding are true and correct and the Commissioner shall not be required to provide further evidence to prove such allegations.

1 a. The conviction of Respondent (including a plea of nolo contendere) of a crime
2 which bears a substantial relationship to Respondent's fitness or capacity as a real
3 estate licensee; or

4 b. The receipt of evidence that Respondent has violated provisions of the California
5 Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate
6 Commissioner or conditions attaching to this restricted license.

7 2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate
8 license nor the removal of any of the conditions, limitations, or restrictions attaching to the
9 restricted license until three (3) years have elapsed from the date of issuance of the restricted
10 license to Respondent.

11 3. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by
12 sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box
13 137000, Sacramento, CA 95813-7007. The letter shall set forth the date of Respondent's arrest,
14 the crime for which Respondent was arrested and the name and address of the arresting law
15 enforcement agency. Respondent's failure to timely file written notice shall constitute an
16 independent violation of the terms of the restricted license and shall be grounds for the
17 suspension or revocation of that license.

18 4. With the application for license, or with the application for transfer to a new
19 employing broker, Respondent shall submit a statement signed by the prospective employing
20 broker on a form approved by the Bureau wherein the employing broker shall certify as follows:

21 a. That broker has read the Statement of Issues which is the basis for the issuance of
22 the restricted license; and

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

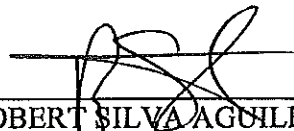
26 9-22-14
27 DATED

Jason Lazark
JASON D. LAZARK, Counsel

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I have read the Stipulation and Waiver. I understand that I am waiving rights given to me by the APA, (including but not limited to Sections 11521, and 11523 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right to seek reconsideration and the right to seek judicial review of the Commissioner's Decision and Order by way of a writ of mandate.

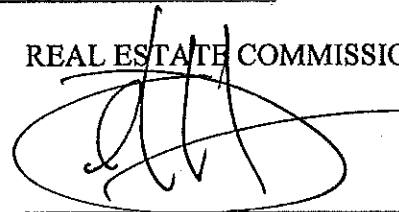
9/15/14
DATED


ROBERT SILVA AGUILERA, JR.
Respondent

The foregoing Stipulation and Waiver is hereby adopted as my Decision in this
matter and shall become effective at 12 o'clock noon on NOV 27 2014.

IT IS SO ORDERED OCT 29 2014.

REAL ESTATE COMMISSIONER



By: JEFFREY MASON
Chief Deputy Commissioner

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AUG 15 2014

BUREAU OF REAL ESTATE

By choime

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of

ROBERT SILVA AGUILERA, JR.,
Respondent.

No. H-11673 SF

OAH No. 2014050185

NOTICE

TO: ROBERT SILVA AGUILERA, JR, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated July 14, 2014, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated July 14, 2014, is attached 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 including the transcript of the proceedings held on June 26, 2014, 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 June 26, 2014, at the Sacramento

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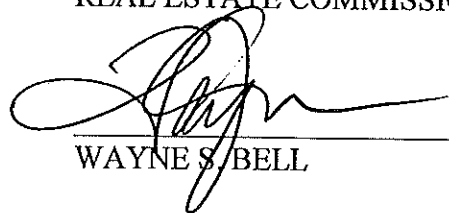
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office of the Bureau of Real Estate unless an extension of the time is granted for good cause shown.

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

DATED: 8/14/2014

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:

ROBERT SILVA AGUILERA, JR.,

Respondent.

Case No. H-11673 SF

OAH No. 2014050185

PROPOSED DECISION

Administrative Law Judge Kirk E. Miller, State of California, Office of Administrative Hearings, heard this matter on June 26, 2014, in Oakland, California.

Jason P. Lazark, Counsel, represented Complainant Robin S. Tanner, Deputy Real Estate Commissioner.

Respondent Robert Silva Aguilera, Jr. was present and represented himself.

The record was closed and the matter submitted for decision on June 26, 2014.

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. Robert Silva Aguilera, Jr. (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 May 24, 2013. The Bureau denied Respondent's application and he appealed.

Criminal Convictions

3. On October 15, 2007, in the Superior Court of California, County of Santa Clara, on a plea of nolo contendere, Respondent was convicted of a violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of .08 percent), a misdemeanor. Imposition of sentence was suspended, and Respondent was placed on three years' court probation, ordered to pay various fines and fees, and to complete a drinking driver program.

The facts underlying the conviction are that a Los Gatos police officer saw Respondent's car swerving, and signaled him to pull over. Respondent did not complete the field sobriety tests correctly and had a blood alcohol level of .13 percent.

4. On March 10, 2003, in the Superior Court of California, County of Santa Clara, Respondent was convicted on a plea of guilty, of violating Penal Code section 484/487, subdivision (b)(3) (grand theft by employee), a felony. Imposition of sentence was suspended and Respondent was placed on three years' formal probation, ordered to serve 20 days in the county jail, to complete a theft awareness program, to make restitution, and to pay other fines and fees.

The facts underlying the conviction are that Respondent, together with several other Home Depot cash register clerks, totaled each other's merchandise when paying in the check-out line, for less than the value of the merchandise in their respective shopping carts. In this manner, Respondent took a television set, vacuum cleaner, a can of bug spray, and possibly other similar items from Home Depot, where he was employed, without paying for them. This occurred in Gilroy over approximately a 10-day period in August 2002.

5. In Respondent's disclosure statement, he wrote that he was placed on "informal" probation, while the 2003 sentencing document states "formal" probation. The Bureau argues there are too many differences between the 2002 police report and Respondent's present explanation of the 12-year old events for Respondent to be trustworthy.

Respondent's Evidence

6. Respondent acknowledged his responsibility for the conduct that led to the theft conviction. In particular, he acknowledged there was an arrangement among the employees to permit each another to pay for some merchandise, while not paying for other items, resulting in a loss to the employer. He could not explain the reason why he participated in this arrangement. He now has only occasional contact on social media with one of the others who was involved with him in the improper arrangement. Respondent also took responsibility for his 2007 driving under the influence conviction. He testified he no longer drives after drinking. Respondent did not agree with every statement in the police reports prepared in connection with the convictions, but in his testimony, he made no effort to justify his conduct.

7. Respondent testified that he completed making restitution for the 2002 theft and completed probation. Respondent stated that during the term of probation, he met only one time with a probation officer, and for this reason told the department he thought the terms of probation were informal. This conviction has now been expunged under Penal Code section 1203.4. The driving under the influence conviction occurred when Respondent was driving home following a company party.

8. Respondent began working in the real estate business ten years ago, at age 20, as a receptionist at a Coldwell Banker office. In the years since, he has worked as a listing

and advertising coordinator, office administrator, transaction coordinator, and as a real estate agent's assistant. He would now like to that the next step in this career.

9. Raylene Kahn is a licensed realtor who first employed Respondent as a receptionist at Coldwell Banker 10 years ago. She was aware of Respondent's 2002 conviction when she hired him. He also informed her of his driving under the influence arrest the day after it occurred. When she left Coldwell Banker seven years ago, Kahn invited Respondent to move with her to Sereno Group Reality. Kahn is now a general partner at Sereno Group, and the firm's risk manager, with responsibility for reviewing files, coaching agents on contracts and deciding when to seek legal advice. When Respondent was the office administrator, he worked as "her right hand," assisting in "all aspects of branch management." Kahn has found Respondent to be "informed, prepared, professional and reliable." She would hire him as her personal relator.

10. Ryan Iwanaga has been a licensed realtor since 1997 and is the principal owner of Sereno Group. He worked with Respondent when both were at Caldwell Banker, he is aware on Respondent's convictions, and he has previously supervised agents who have a restricted license. He described the Sereno Group's growth from 40 to 240 agents, resident in seven offices, and stated that Respondent's contribution was an important part of its growth and success. Iwanaga stated he depended on Respondent to "oversee the books, including commission checks to agents" and he has "never doubted [Respondent's] capability or intentions."

11. Adena Anderson is a Sereno Group agent who has worked with Respondent for six years, and submitted a letter consistent with Kahn's and Iwanaga's testimony. She states:

When I started at Sereno Group [Respondent] was the transaction coordinator who took care of all files from the minute they were open until they closed. Shortly after he was promoted to office administrator, he handled all files, opening and closing, money transfers, and took very good care of the agents in his office. Throughout the years I have established a personal friendship with [Respondent] and I only have wonderful things to say about him. I have the utmost respect and trust in [Respondent]. He is not only a great person but he is honest, trustworthy, dedicated and hard working. As a real estate agent myself I would hire [Respondent] to be my agent in a heartbeat.

12. Mario Ramirez is a policeman and a field supervisor with the Morgan Hill Police Department. He has known Respondent for 15 years, and is aware of both his 2003 and 2007 convictions. Ramirez testified Respondent was 19-years old at the time of the theft, he has learned from it, and feels he should "not be judged by the mistake, but how [Respondent] reacted and moved forward." Ramirez has been in Respondent's company

when alcohol was consumed. He testified Respondent does not drink and drive and that alcohol is not a problem in his life. Ramirez trusts Respondent as a role model for and godfather to his son.

13. Joe Ramirez is a retired Gilroy Police Department sergeant who met Respondent 13 years ago when he was in the Department's cadet program. He became aware of Respondent's theft arrest very shortly after it occurred. He now writes:

Robert screwed up when he was still a teenager, and I was disappointed in him and the other kids involved. That being said, I truly believe he was even more disappointed in himself. Why he felt it necessary to come to me and apologize is reflective of his nature. He admitted his mistake and took full responsibility for his actions. Since then he has worked hard to get past his lack of judgment, not by talking but by deeds and action. I think he is a better man for it.

Right or wrong, I have a reputation of being hardnosed and do not give praise or recommendations easily. [Respondent] has gone above and beyond anything that I would expect in proving that he is a man to be trusted and respected.

Credibility

14. The Bureau focused on the details of the police reports when examining Respondent and his witnesses. All of the witnesses knew of Respondent's convictions, including the fact that the theft offense involved his employer. To the extent the witnesses lacked detailed knowledge of the investigations, or that Respondent disagreed with certain aspects of how the 12-year old police report was characterized, these differences did not compromise the fundamental credibility of the testimony, which is found to be persuasive. Respondent did not make excuses for his wrongful conduct.

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. The most relevant of these are: subdivision

(a)(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person; (a)(10) Conduct which demonstrates a pattern of repeated and willful disregard of law; and, (a)(11) Two or more convictions involving the consumption or use of alcohol or drugs when a least one of the convictions involve driving and the use or consumption of alcohol or drugs. Respondent's conviction for grand theft is substantially related to the qualifications, functions or duties of a licensee, because it involved the taking of property belonging to another. By reason of Finding 4, cause exists to deny Respondent's application.

Respondent's 2007 driving under the influence of alcohol conviction is not substantially related, because by definition the Regulation requires two or more alcohol related convictions to be deemed "substantially related." Respondent has only a single conviction. The grand theft conviction and the driving under the influence conviction are four years apart and they occurred 12 and seven years ago respectively; these convictions do not constitute a "pattern of willful misconduct."

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. A felony conviction is a serious matter that requires careful consideration when an applicant seeks a license that will place him in confidential relationships requiring trust. The guidelines recommend passage of not less than two years since the most recent conviction; in this case seven years have passed, and the conviction has been expunged. Respondent continues to drink socially, but there was no evidence that he ever had an alcohol addiction, and he no longer drinks and drives. Respondent has a completely different social and business life than he had in 2002, when the offense occurred. Respondent does not work or socialize with the individuals involved in the scheme; he now works many miles from Gilroy; and he is no longer in retail sales.

Demonstrating a change in attitude is at the heart of a prospective licensee being able to demonstrate that he can now be placed in a position of trust. This requires an applicant to accept responsibility for the offense for which he was convicted, and respondent did so in his testimony. In this case, however, there is considerably more evidence than just Respondent's admission to confirm he is not the same person who committed the offense 12 years ago. Two police officers who knew Respondent at the time of the offense, and have continued the relationship, are emphatic about his changed persona and confident he can be trusted with a

license. Perhaps most important, Respondent has now worked for 10 years for a large real estate brokerage supporting other agents, with regular access to customers and with their confidential information, and during this time he has been praised and promoted. Change in attitude is best demonstrated by deeds, and here that demonstration has taken place without interruption over a succession of many years.

Respondent has persisted in his desire to earn a real estate salesperson license, and the most senior agents who work with him, would like him to join them as a licensed colleague. The evidence 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 Robert Silva Aguilera, Jr.'s 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:

Not adopted

(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.

Not adopted

DATED: July 14, 2014



KIRK E. MILLER
Administrative Law Judge
Office of Administrative Hearings

FVA

1 JASON D. LAZARK, Counsel (SBN 263714)
2 Bureau of Real Estate
3 P. O. Box 137007
4 Sacramento, CA 95813-7007
5 Telephone: (916) 263-8684

FILED

APR 11 2014

BUREAU OF REAL ESTATE
By L. Frost

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of
12 ROBERT SILVA AGUILERA, JR.,
13 Respondent.

No. H-11673 SF
STATEMENT OF ISSUES

14
15 The Complainant, ROBIN S. TANNER, acting in her official capacity as a
16 Deputy Real Estate Commissioner of the State of California, for Statement of Issues against
17 ROBERT SILVA AGUILERA, JR. ("Respondent"), alleges as follows:

18 1.

19 On or about May 24, 2013, Respondent made application to the Bureau of Real
20 Estate of the State of California for a real estate salesperson license.

21 2.

22 On or about October 15, 2007, in the Superior Court of the State of California,
23 County of Santa Clara, Case Number CC782024, Respondent was convicted of violating section
24 23152(b) of the Vehicle Code (driving with a blood alcohol level at or above .08%), a
25 misdemeanor which bears a substantial relationship under section 2910, title 10, California
26 Code of Regulations ("Regulations") to the qualifications, functions or duties of a real estate
27 licensee.

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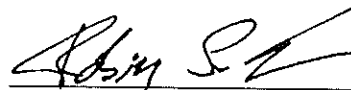
3.

On or about March 10, 2003, in the Superior Court of the State of California, County of Santa Clara, Case Number FF201295, Respondent was convicted of violating section 484/487(b)(3) of the Penal Code (grand theft by employee), a felony which bears a substantial relationship under section 2910, title 10 of the Regulations to the qualifications, functions or duties of a real estate licensee.

4.

Respondent's criminal convictions, as described above in Paragraphs 2 and 3 constitute grounds for denial of Respondent's application for a real estate license under sections 480(a) and 10177(b) of the Business and Professions Code.

WHEREFORE, Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of a real estate salesperson license to Respondent, and for such other and further relief as may be proper in the premises.



ROBIN S. TANNER,
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 9th day of April, 2014.

DISCOVERY DEMAND

Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the Bureau hereby makes demand for discovery pursuant to the guidelines set forth in the *Administrative Procedure Act*. Failure to provide Discovery to the Bureau may result in the exclusion of witnesses and documents at the hearing or other sanctions that the Office of Administrative Hearings deems appropriate.