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MAR 10 2022

DEPARTMENT OF REAL ESTATE

By S. Black

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of

COLIN GRAEME MACKENZIE,

No. H-11889 SF

Respondent.

ORDER DENYING REINSTATEMENT OF LICENSE

BUT GRANTING RIGHT TO A RESTRICTED LICENSE

On May 9, 2016, in Case No. H-11889 SF, a Decision was rendered revoking the real estate broker license of Respondent, but granting Respondents the right to a restricted real estate salesperson license effective June 14, 2016. Respondent failed to timely apply for the restricted salesperson license per the order for the Stipulation and Agreement, as a result Respondent's license is revoked.

On July 31, 2020, 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.

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

1 I have considered Respondent's petition and the evidence submitted in support  
2 thereof.

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

6 Regulation 2911(10) Discharge of, or bona fide efforts toward discharging,  
7 adjudicated debts or monetary obligations to others.

8 Respondent has 6 outstanding tax and/or judgment liens and 2 civil judgments  
9 which collectively total \$201,466.00 and has made no efforts to repay or show that they have  
10 been paid.

11 Regulation 2911(14) Change in attitude from that which existed at the time of the  
12 conduct in question as evidenced by any or all of the following:

13 (a) Testimony of applicant.

14 Respondent fails to take responsibility for his actions that led to the revocation  
15 of his license and to produce all required documents through the petition process.

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

19 I am satisfied, however, that it will not be against the public interest to issue a  
20 restricted real estate salesperson license to Respondent.

21 A restricted real estate salesperson license shall be issued to Respondent pursuant  
22 to Section 10156.5 of the Business and Professions Code, if Respondent satisfies the following  
23 conditions prior to and as a condition of obtaining a restricted real estate salesperson license  
24 within twelve (12) months from the effective date of this Order:

25 1. Submits a completed application and pays the fee for a real estate  
26 salesperson license within the 12 month period following the effective date of this Order; and  
27

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

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

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

12                   B.       The restricted license issued to Respondent may be suspended prior to  
13 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner  
14 that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands  
15 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted  
16 license.

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

21                   D.       Respondent shall submit with any application for license under an  
22 employing broker, or any application for transfer to a new employing broker, a statement signed  
23 by the prospective employing real estate broker on a form approved by the Department of Real  
24 Estate which shall certify:

25                   1.       That the employing broker has read the Decision of the Commissioner  
26 which granted the right to a restricted license; and

27                   2.       That the employing broker will exercise close supervision over the

1 performance by the restricted licensee relating to activities for which a real estate license is  
2 required.

3 E. Respondent shall notify the Commissioner in writing within 72 hours of  
4 any arrest by sending a certified letter to the Commissioner at the Department of Real Estate,  
5 Post Office Box 137007, Sacramento, CA 95813-7007. The letter shall set forth the date of  
6 Respondent's arrest, the crime for which Respondent was arrested and the name and address of  
7 the arresting law enforcement agency. Respondent's failure to timely file written notice shall  
8 constitute an independent violation of the terms of the restricted license and shall be grounds for  
9 the suspension or revocation of that license.

10 This Order shall become effective at 12 o'clock noon on MAR 31 2022.

11 IT IS SO ORDERED 2.25.22

12 DOUGLAS R. McCAULEY  
13 REAL ESTATE COMMISSIONER

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15 Douglas R. McCauley  
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