

FILED

BEFORE THE BUREAU OF REAL ESTATE

JUN 13 2016

STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By B dew

In the Matter of the Application of)	CalBRE No. H-11909 SF
)	
CYRUS M. YAZDANI,)	OAH No. 2015120699
)	
Respondent.)	

DECISION

The Proposed Decision dated May 11, 2016, 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) of the Government Code, the following corrections are made to the Proposed Decision.

On page 9 of the Order, paragraphs 4 and 5 are deleted and paragraph 6 shall be renumbered to 4.

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

If and when a petition for removal of restrictions is filed, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

This Decision shall become effective at 12 o'clock noon on JUL 04 2016

IT IS SO ORDERED 6/8/2016

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:

CYRUS M. YAZDANI,

Respondent.

Case No. H-11909 SF

OAH No. 2015120699

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on April 25 and 28, 2016, in Oakland, California.

Jason D. Lazark, Counsel for the Bureau of Real Estate, represented complainant Robin S. Tanner, Supervising Special Investigator for the State of California Bureau of Real Estate.

Joseph F. Curran, Attorney at Law, represented respondent Cyrus M. Yazdani, who was present at the hearing.

The matter was submitted on April 28, 2016.

FACTUAL FINDINGS

1. In May 2014, respondent submitted an application to the Bureau of Real Estate (the Bureau) for licensure as a real estate salesperson. After investigation, the Bureau denied respondent's application, and respondent appealed. Acting in her official capacity, complainant served respondent on December 7, 2015, with a Statement of Issues alleging as grounds for denial that respondent had been convicted of crimes that are substantially related to the qualifications, functions, or duties of a real estate salesperson, and that respondent had failed to disclose some of those convictions on his application. Respondent requested a hearing.

Respondent's Background and Criminal History

2. Respondent was born in 1983 and grew up in San Jose. He became interested in graffiti in the late 1990's, when he was a teenager. He began painting graffiti himself and

socializing with other graffiti vandals, and developed his own distinctive signature (his "tag").

3. On February 4, 2005, respondent was convicted in Santa Clara County of a misdemeanor violation of Penal Code section 594, subdivisions (a) and (b)(1) (vandalism by graffiti, causing damage valued at more than \$400). On the same date, respondent also was convicted of a misdemeanor violation of Penal Code section 148, subdivision (a)(1) (resisting arrest).

Both crimes occurred in the early morning on January 25, 2004. Respondent and a friend painted graffiti on the roof of a commercial building in San Jose. The building was under police surveillance because vandals had painted it repeatedly, and the officers intercepted respondent and his friend as they climbed down from the roof. Respondent ran from the officers, but they arrested him about an hour later as he walked toward his home a few miles away.

The court sentenced respondent to two years' formal probation and 250 hours of community service. In addition, the court ordered respondent to pay various fees, and to pay \$1,425 in restitution to the building's owner. In August 2015 the court granted respondent's petition under Penal Code section 1203.4 to dismiss the complaint that led to these convictions.

4. Respondent graduated from San Jose State University in May 2006, with a degree in graphic design. He was 22. After graduating, respondent moved to Los Angeles. One reason he chose to move to Los Angeles was that he wanted to be part of the community creating prominent graffiti along the Los Angeles freeways and in the concrete channel of the Los Angeles River. At this time, despite the convictions described in Finding 3, respondent thought of graffiti primarily as large-scale public art, and not as criminal vandalism. He later stated that he had "lost touch with reality."

5. On July 10, 2007, respondent was convicted in Los Angeles County of three additional felony violations of Penal Code section 594, subdivisions (a) and (b)(1). These crimes occurred between August 1 and September 22, 2006, when respondent painted tags along freeways in Los Angeles. When he committed these crimes, respondent was on probation for the crimes described in Finding 3.

The court sentenced respondent to five years' formal probation and 80 hours of graffiti-removal community service. In pertinent part, the terms of respondent's probation required him to obey all laws, and allowed him to possess "graffiti tools at his place of work only."¹ The court also ordered respondent to pay various fees, and to pay \$24,000 in restitution to the owners of the property he had painted. As set forth in Findings 7 and 8, respondent did not complete this sentence as ordered.

¹ Respondent worked during this period as a commercial artist.

6. On July 12, 2007, respondent was convicted in Los Angeles County of a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol concentration of 0.08 percent or more). The crime occurred in the early morning on February 9, 2007, a few days after the end of respondent's two-year probation for the convictions described in Finding 3. Respondent had spent the night drinking and dancing with friends. After driving his friends home, respondent decided to get a snack, and fell asleep in the drive-through lane at a fast food restaurant. Responding police officers measured respondent's blood alcohol concentration at 0.09 percent.

The court sentenced respondent to 165 days in jail. Respondent served this sentence² and paid a court-ordered fine.

7. On December 22, 2008, respondent was convicted in Los Angeles County of 32 additional felony violations of Penal Code section 594, subdivisions (a) and (b)(1). These crimes occurred in 2006, 2007, and 2008, when respondent etched tags into city buses and painted tags along the Los Angeles River. Some of these crimes occurred before the crimes described in Finding 5, and while respondent was on probation for the crimes described in Finding 3. Others occurred while respondent was on probation for the crimes described in Finding 5.

Respondent was arrested on these charges on May 27, 2008. On May 28, 2008, the court preliminarily revoked respondent's probation for the crimes described in Finding 5. Respondent remained in custody until his conviction and sentencing on December 22, 2008.

For these crimes, as well as for violating his probation for the crimes described in Finding 5, the court sentenced respondent to three years in prison. The court gave respondent credit for 314 days in the Los Angeles County Jail (210 days actually in custody and 104 days for good conduct); suspended the prison sentence; and placed respondent on three years' formal probation. The court also ordered 256 hours of graffiti-removal community service. As before, key terms of respondent's probation required him to obey all laws and allowed him to possess "graffiti tools" only "as required for work or school." Finally, the court ordered respondent to pay certain fines, and to pay restitution "in a sum to be determined by probation" to the Los Angeles Metropolitan Transportation Authority, to the Army Corps of Engineers, and to the State of California. As set forth in Finding 8, respondent did not complete this sentence as ordered.

² When respondent reported to the courthouse on March 27, 2007, for arraignment on the drunk driving charge described in this Finding 6, he was arrested for the vandalism described in Finding 5. He remained in jail while the vandalism charges were pending. At his drunk driving sentencing on July 12, 2007, two days after disposition of the vandalism charges, he received credit for the 108 days he actually had served since March 27, 2007, and for 54 more days for good conduct.

8. On May 21, 2009, respondent was arrested in Los Angeles County on further felony graffiti vandalism charges. In addition, respondent was charged with violating his probation for the crimes described in Findings 5 and 7, by possessing graffiti tools (an etching tool and spray paint) outside of work or school. Respondent was jailed while awaiting disposition of these charges.

On August 4, 2009, respondent stipulated that he had violated his probation for the crimes described in Findings 5 and 7 by possessing the etching tool. On that same date, he was convicted, on a plea of nolo contendere, of a single felony violation of Penal Code section 594, subdivisions (a) and (b)(1). Respondent had painted a tag on the Cesar Chavez Bridge over the Los Angeles River.

On September 10, 2009, the court sentenced respondent to eight months in prison for the Cesar Chavez Bridge vandalism, with credit for 169 days already served (113 days actually in custody and 56 days for good conduct). The court ordered respondent to pay certain fines, and to pay restitution of \$14,674 to the City of Los Angeles.

Also on September 10, 2009, the court terminated respondent's probation for the crimes described in Finding 5. For violating his probation for the crimes described in Finding 7, the court sentenced respondent to three years in prison, to be served consecutively with the eight-month sentence for the crime described in this Finding 8. The court gave respondent 483 days' custody credit (323 days actually in custody and 160 days for good conduct). Finally, in addition to fines, the court ordered respondent to pay \$35,000 in restitution to the Los Angeles Metropolitan Transportation Authority and \$58,558 in restitution to the Army Corps of Engineers.

9. The May 2009 criminal complaint described in Finding 8 alleged that respondent's vandalism of the Cesar Chavez Bridge had occurred between December 22, 2008, and March 31, 2009, while respondent was on probation for the crimes described in Findings 5 and 7. Respondent confirmed at the administrative hearing on his license application that he did paint the graffiti in question on the Cesar Chavez Bridge, but stated that he had painted it before his arrest in May 2008 for the crimes described in Finding 7. He explained that he had pled nolo contendere to this vandalism charge, without contesting the date of the offense, because he expected to be sentenced to prison for a probation violation (possessing the etching tool) regardless of whether he had tagged the Cesar Chavez Bridge before or after his arrest and conviction for the graffiti described in Finding 7.

This testimony was credible, and was not inconsistent with the Los Angeles County Superior Court records regarding respondent's conviction. The evidence established that respondent was a prolific and notorious graffiti vandal, who etched or painted not only all the graffiti for which he was convicted criminally but also considerably more that did not result in his conviction for any crime.³ The evidence established as well that respondent violated

³ Although all of respondent's convictions related to graffiti featuring his tag, he also had painted more decorative or symbolic graffiti.

his probation on multiple occasions between 2006 and 2009. The evidence did not establish that respondent has etched or painted any graffiti since May 27, 2008.

10. Respondent served his prison sentence in the Modified Community Correctional Facility in Shafter. While respondent was in prison, he took college-level business courses. He was paroled in July 2010, when he was 27, and his parole terminated in July 2011.

Respondent's Activities Since His Release From Prison

11. Respondent makes payments of \$100 per month toward his court-ordered restitution. He has been making those payments for several years; as of the date of the hearing, his outstanding balance was approximately \$62,500. Respondent has no funds other than his regular income from which to pay restitution, and he intends to increase his monthly payments if he increases his income by working as a real estate salesperson.

12. Respondent's family, and in particular his late father, disapproved of his vandalism and believed that respondent brought shame to his family. This disapproval, in combination with the serious criminal sentence respondent received in 2009 for his repeated vandalism and probation violations, persuaded respondent that he should stop creating graffiti.

13. Respondent testified that painting or etching graffiti was never a compulsive activity for him, and that he had no difficulty giving it up once he decided that he should. His motivation for criminal activity was chiefly social: He moved to Los Angeles to be a graffiti vandal, and while he lived there graffiti was his chief social activity and mode of personal expression.

14. When respondent was paroled from the Modified Community Correctional Facility, he did not return to Los Angeles. Instead, he moved back to his family home in San Jose. At the time of the hearing, respondent lived in San Jose with his mother. He moved back to San Jose from Los Angeles in part because he wanted to leave his life in Los Angeles behind and restart his adult life outside the graffiti vandalism community. In San Jose, he has sought out new adult friends and does not create graffiti or socialize with graffiti vandals.

15. Respondent has worked for approximately three years at CSR Real Estate Services, a commercial and residential real estate brokerage in San Jose with more than 70 agents. Respondent manages the firm's marketing activities. He designs and produces printed and electronic materials to advertise the firm's properties and agents, and takes photographs and videos for promotional purposes. If respondent received a license to act as a real estate salesperson, he would become a salesperson for CSR.

16. About 20 CSR agents provided written character references praising respondent's professionalism and integrity. Four agents, including the person who would serve as respondent's supervising broker, testified on respondent's behalf, each confirming

that he would trust respondent as a real estate agent. Although all of these witnesses and letter writers stated that they were familiar with respondent's criminal history, none of them knew respondent before he began working at CSR.

17. In 2013, respondent volunteered more than 160 hours in the organized search for Sierra LaMar, a Morgan Hill high school student who disappeared on her way to school. Since he started working for CSR Real Estate Services, respondent has volunteered time and commercial art skills to CSR's affiliated charity, CSR Cares.

18. Respondent testified credibly that while he was creating graffiti, he enjoyed being well known both for his boldness and for his artistic skills. Now, however, he feels shame rather than pride about his graffiti career. He regrets having caused financial harm to private property owners and to public agencies, and having embarrassed his family.

19. Respondent also regrets having influenced other vandals through his own notoriety. He has considered participating in community service activities to discourage youths from becoming, or continuing as, graffiti vandals. He has not done so because he is uncomfortable with the prospect that youths would listen to or respect him only because of his own criminal history. He does not want to do anything that might have the perverse effect of "glorifying graffiti."

Respondent's License Application

20. On his initial application for a real estate salesperson license, respondent disclosed the misdemeanor conviction described in Finding 6 and the felony convictions described in Findings 5, 7, and 8. He did not list the misdemeanor convictions described in Finding 3. Respondent testified that he did not intend to conceal these convictions from the Bureau, and that his failure to list them was an oversight. Respondent's application did list all of respondent's felony convictions, and also stated that his graffiti career had begun in high school. His explanation for omitting reference to his 2005 convictions from his license application was credible; and in light of all information in the application, the omission was not misleading.

LEGAL CONCLUSIONS

1. The Bureau may deny a license application if the applicant has been convicted of a crime that "is substantially related to the qualifications, functions, or duties" of a real estate salesperson. (Bus. & Prof. Code, § 480, subs. (a)(1), (a)(3)(B); § 10177, subd. (b).) A crime is "substantially related to the qualifications, functions or duties of" a real estate salesperson if the crime involves "substantial injury to the person or property of another" (Cal. Code Regs., tit.10, § 2910, subd. (a)(8)); if it involves "willful failure to comply with a court order" (subd. (a)(9)); or if it is part of "a pattern of repeated and willful disregard of law" (subd. (a)(10)).

2. The vandalism convictions set forth in Finding 3, in Finding 5, and in Findings 7 through 9 constitute cause under these statutes and regulations for the Bureau to deny respondent's application for a real estate salesperson license.

3. The Bureau also may deny a license application if "the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license" (Bus. & Prof. Code, § 480, subd. (d)), or if the application includes a "material misstatement of fact" (*id.*, § 10177, subd. (a)). As set forth in Finding 20, cause does not exist under these statutes to deny respondent's application for a real estate salesperson license.

4. The Bureau has adopted a regulation identifying circumstances that may show rehabilitation sufficient to justify issuing a license despite the applicant's criminal history. (Cal. Code Regs., tit. 10, § 2911.) Respondent meets the Bureau's most important tests.

As set forth in Findings 9 and 14, respondent's last criminal conduct occurred nearly eight years ago.

As set forth in Finding 11, respondent is paying fines and making restitution for his crimes in accordance with court orders and with his current financial ability.

As set forth in Finding 10, respondent has completed parole.

As set forth in Findings 17 and 19, respondent participates in appropriate community service activities.

As set forth in Finding 14, respondent has made a deliberate effort to make "[n]ew and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought." (Cal. Code Regs., tit. 10, § 2911, subd. (m).) Given the social motivation for respondent's crimes, as set forth in Findings 4 and 13, this factor is especially important for respondent.

As shown by respondent's testimony, by his law-abiding behavior since his release from prison, and by his references, respondent has changed his attitude toward graffiti vandalism.

5. Respondent's vandalism crimes were serious, and he received appropriate punishment. All evidence suggested, however, that respondent's crimes arose from a profoundly misguided artistic impulse than from an intentional disregard for others' welfare. The Bureau's concern that respondent's criminal history may show his inability to fulfill the fiduciary duties of a real estate agent is not unreasonable, but respondent has demonstrated since his release from prison that he can respect private property rights and conduct himself in a socially responsible manner. A restricted real estate salesperson license will allow the Bureau to monitor respondent's activities closely in his first years of practice, while at the

same time permitting respondent to confirm that he deserves the public trust that a real estate salesperson license represents.

ORDER

The application of Cyrus M. Yazdani for a real estate salesperson license is denied; provided, however, that 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 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:

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 nolo contendere) of 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 notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.
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 Department 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.
4. Respondent's restricted real estate salesperson license is issued subject to the requirements of Business and Professions Code section 10153.4, to wit: Respondent shall, within 18 months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance, or advanced real estate appraisal. If respondent fails to present timely to the Bureau satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective 18 months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, respondent has submitted the required evidence of course completion and the Commissioner has given written notice to respondent of lifting of the suspension.
5. Pursuant to Business and Professions Code section 10154, if respondent has not satisfied the requirements for an unqualified license under section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to issuance of another license which is subject to section 10153.4 until four years after the date of issuance of the preceding restricted license.
6. 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 two years have elapsed from the date of issuance of the restricted license to respondent.

DATED: May 11, 2016

DocuSigned by:
Juliet E. Cox
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JULIET E. COX
Administrative Law Judge
Office of Administrative Hearings