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JUN 02 2017

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

BUREAU OF REAL ESTATE
By M. Roberts

In the Matter of the Application of)	CalBRE No. H-12053 SF
JASON ISAAC LEVINE,)	OAH No. 2017021037
)	
)	
<u>Respondent.</u>)	

DECISION

The Proposed Decision dated April 28, 2017, 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.

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.

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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 JUN 23 2017.

IT IS SO ORDERED 5/31/17.

WAYNE S. BELL
REAL ESTATE COMMISSIONER



Daniel J. Sandri

By: DANIEL J. SANDRI
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JASON ISAAC LEVINE,

Respondent.

Case No. H-12053 SF

OAH No. 2017021037

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on April 17, 2017, in Oakland, California.

Adriana Z. Badilas, Counsel, represented complainant, Robin S. Tanner, a Supervising Special Investigator of the State of California.

Respondent Jason Isaac Levine represented himself and was present throughout the administrative hearing.

The matter was submitted for decision on April 17, 2017.

FACTUAL FINDINGS

1. Robin S. Tanner made the statement of issues in her official capacity as a Supervising Special Investigator of the State of California.
2. Jason Isaac Levine (respondent) applied to the Bureau of Real Estate (bureau) for a real estate salesperson license on May 23, 2016.

Criminal History

3. On February 22, 2013, in the Second Judicial District Court, County of Bernalillo, State of New Mexico, respondent was convicted of violating New Mexico Statutes Annotated sections 30-22-5 (tampering with evidence), and 30-31-23 (possession of a controlled substance), both misdemeanors. Respondent was placed on probation until February 20, 2015. The terms of probation included that respondent obey all laws, work or

attend an educational or treatment program, not possess a firearm and not use, possess, sell or distribute narcotics or other controlled substances.

The factual circumstances underlying the possession of controlled substances conviction occurred on December 29, 2011. Respondent was driving with a friend in his vehicle when he was pulled over by the police; during a search of the vehicle the officer discovered methamphetamine and marijuana in the center console. The factual circumstances involved in the tampering with evidence charge were not established. Respondent believes that the charge, which was added as part of a plea bargain, was based on him attempting to throw controlled substances out of the window of his vehicle while being pulled over.

Respondent's Evidence

4. In 2002, respondent graduated from the University of New Mexico with a bachelor's degree in business with an emphasis in marketing and a minor in finance.

5. Respondent was licensed and worked successfully as a real estate broker in New Mexico. He was licensed as a salesperson beginning in 2005, and became a broker in 2008. His New Mexico broker's license expired in 2014.

6. Following his arrest for possession of controlled substances on December 29, 2011, respondent realized that he had a serious drug problem and had become associated with a group of drug abusers that were involved in very serious criminal behavior.¹ Respondent's wife had a job opportunity in California and they decided to move to this state shortly after his arrest. Respondent and his wife have been married for nine years and have two children, ages six and three.

7. Respondent returned to New Mexico to answer his criminal charges. He completed his probation successfully in February 2015.

8. Upon moving to Northern California, respondent joined Narcotics Anonymous (NA) and Alcoholics Anonymous (AA). Respondent admits he was addicted to opiate pain medications. He justified his use of the medication because it was a prescription medication rather than an illegal street drug. Respondent has been clean and sober for over five years. He is deeply involved in NA and AA and has served in various positions, including secretary and treasurer.

¹ Respondent was charged with being a part of a conspiracy to commit robbery and other serious crimes, after he was arrested on December 29, 2011, with a member of the conspiracy in his vehicle. The conspiracy charges were later dismissed against respondent. No credible evidence in support of respondent's involvement in the conspiracy was established at hearing; nor were these charges included in the statement of issues.

9. Respondent provided numerous character letters in support of his application for licensure.

- a) Aaron Lieber, general manager and owner of Brickley's Property Solutions, wrote a letter dated March 3, 2017. He has known respondent for 14 years. Respondent helped Lieber with real estate transactions in New Mexico and they have remained in touch over the years. Lieber saw that respondent had developed a drug problem and encouraged him to get help. During the past five years, Lieber reports having observed dramatic changes in respondent. Lieber supports respondent's application and hopes to work with him on property management ventures in the future.
- b) Rabbi Philip Ohriner of Congregation Beth David in Saratoga, California, wrote a character letter dated March 10, 2017. Rabbi Ohriner has known respondent for two years and reports that respondent is a genuine, kind and thoughtful man of character, humility and respect.
- c) Josh Felder, an agent with Alain Pinel Realtors, wrote a character letter dated March 7, 2017. Felder has 25 years of experience in sales, marketing and management in technology and real estate. Felder considers respondent to be professional, honest, diligent and approachable, all qualities necessary for a successful real estate agent. Felder is aware that respondent has two misdemeanor convictions; however, he believes that respondent is remorseful and has learned from his missteps. Felder believes that respondent would be an asset to the industry and looks forward to working with him if he becomes licensed.
- d) Marc Wuischpard, Los Gatos Home Group, wrote a letter in support of respondent's licensure. Wuischpard met respondent in NA in January 2012. He reports that respondent has attended NA meetings in Los Gatos three times each week for five years. Wuischpard reports that respondent is friendly, caring, a good communicator and has good business skills.
- e) Ashley Christensen wrote a character letter for respondent dated March 13, 2017. Christensen has known respondent through AA meetings. He has attended AA diligently since January 2012. Christensen reports having witnessed respondent mature into a fine and responsible man. They have spent a lot of time together. Christensen reports that respondent is a man of fairness, honesty and integrity. She supports his application for licensure.
- f) Barbara Holst wrote a character letter dated March 12, 2017. Holst has known respondent through his attendance at NA meetings. Holst reports that respondent has attended meetings since January 5, 2012, and has rarely missed a meeting. Holst reports that based on her experience with respondent, she believes that he has the character and fitness to be a great agent, displaying honesty and concern

for his clients. Holst highly recommends that respondent receive a real estate license.

10. Respondent called numerous witnesses to testify to his involvement in NA and AA and his recovery progress. All of the witnesses are generally aware of respondent's conviction history and testified credibly.

- a) Elizabeth Hamm has been sober for 16 years. She met respondent five years ago when he joined AA. Hamm sees respondent often at AA meetings and has been impressed by his diligence toward his recovery and his commitment to his family. Hamm has observed respondent work with newcomers, his sponsor and his sponsees. Hamm believes that respondent desperately wants to live a law-abiding life and is committed to his recovery.
- b) Dale Rowe has been sober for 26 years. He is a pastor and works with a prison ministry. Rowe has known respondent for five years through his attendance at meetings. He sees respondent three to four times per week at AA or NA meetings. Rowe reports that respondent is doggedly hardworking and pursues his sobriety and law-abiding lifestyle with tenacity. Respondent has served as a secretary and as the treasurer for AA. Respondent handled money for the organization properly and was entirely trustworthy.
- c) Greg Gomez is respondent's sponsor in AA. They attend meetings together and speak often. Gomez has been sober for 26 years. Gomez graduated from U.C. Berkeley and works at Google as a Strategic Account Manager, where he has worked for nine years. Gomez and respondent have developed a close relationship over the past five years and reports that respondent has been clean and sober during those five years. Gomez's testimony was entirely credible. He considers himself to be a good judge of character. Based on his close observations of respondent, Gomez considers respondent to be a trustworthy, reliable and honest individual. Gomez considers respondent to be an excellent candidate for a real estate salesperson and wholeheartedly supports respondent's application for licensure.
- d) Margaret Truxsaw is employed as a chaplain at St. Louise Regional Hospital in Gilroy, California. She has been sober for over 10 years and first met respondent five years ago in NA meetings. She has observed respondent grow and accomplish a great deal in his rehabilitation. Truxsaw has observed respondent interact with his family members and admires his relationship with them. Respondent's recovery is his highest priority; he works with a sponsor and sponsors others. Truxsaw considers respondent to be stable in his recovery and to be an honest individual. Truxsaw is confident in respondent's continued sobriety and supports his application for licensure.

- e) Glen Vandenoorn is a software engineer. He has known respondent for five years and has witnessed respondent's recovery at meetings and through their membership in a hiking partner's recovery group. Respondent has not relapsed during their five-year relationship; recovery is respondent's top priority. Respondent has worked the 12 steps more than one time with his sponsor. In Vandenoorn's opinion, respondent is a person of integrity and he would not hesitate to hire respondent as his real estate agent.
- f) Arthur Greenberg is respondent's father-in-law. He is a retired attorney and resides in Marin County. Greenberg has known respondent for approximately 10 years, since respondent married his daughter. Respondent met his wife while he worked in real estate in New Mexico and his wife was attending the University of New Mexico. Greenberg recalls that respondent performed well as a real estate agent. Greenberg became aware of respondent's drug addiction and his criminal charges. Respondent demonstrated a desire to overcome his addiction and was very disturbed and remorseful about his misconduct. Respondent has successfully completed his probation and has been very conscientious in addressing his legal issues. Respondent has worked hard to maintain steady employment and support his family since moving to California. Greenberg sees respondent every six weeks or so. He has observed respondent to work very hard to overcome many hurdles. Greenberg is very supportive of respondent's application.
- g) Manuel Moreno has known respondent for five years through respondent's recovery program. Moreno worked as a drug and alcohol counselor at the Veteran's Administration Hospital in Menlo Park from 1990 to 1999. He is retired, but continues to volunteer in that capacity. Moreno has observed respondent make enormous changes through his work with his sponsor, attending meetings, being of service to others and spending time with sober individuals. Moreno fully supports respondent's application for licensure. He believes respondent is stable in his recovery, communicates well with others and has a business and employment background that would assist him in becoming successful.
- h) James Krause has worked for 13 years as a senior business office clerk with Gardner Family Health Network. Respondent became Krause's sponsor in NA one year ago. They met five years ago and he considers respondent to give great advice. They talk regularly, attend meetings together, take hikes and go on camping trips. Krause considers respondent's advice to be instrumental to his continued sobriety. Krause believes that respondent would make an excellent real estate agent.
- i) Stephen Mayer is a physician's assistant. He met respondent two and one-half years ago through NA. They take hikes and attend meetings together regularly. Mayer considers respondent to have integrity; in his experience, respondent has been forthright and honest. Mayer would hire respondent as a real estate agent

because he is honest and has integrity. He supports respondent's application for licensure.

- j) David Madeiros is respondent's NA sponsor. He has known respondent for over five years. Respondent has been clean and sober for over five years. Madeiros reports that respondent has attended NA meetings three to five times per week since January 2012. Respondent has been of service to the group as the secretary, treasurer, group service representative and coffee maker. Respondent has worked the 12 Steps and the 12 Traditions with Madeiros. In Madeiros's opinion, respondent is willing to do whatever it takes to stay clean and sober. Respondent has performed a lot of work on himself and in service to others. He is a loving and caring husband and father and has found a new way to live. Madeiros would trust respondent as a real estate licensee because he has integrity, and is knowledgeable, responsible, hardworking, honest and accountable.

11. Respondent's wife, Melisa Levine, accompanied him to hearing and wrote a letter in support of his licensure. Levine is an electrical engineer and is working as a sales engineer for Hamamatsu. She reports that respondent is a loving husband who has made huge progress in his rehabilitation over the past five years. Levine states that through his daily meetings and 12 Step activities, respondent has become a better husband and father. He actively participates in the family's daily needs and wants to better provide for his family. Levine wholeheartedly believes that respondent will provide excellent service as a real estate licensee.

Respondent's mother Denise Levine, his father Terry Levine and his sister Jessica Spengler, also submitted letters in support of respondent's application. Denise Levine reports having witnessed respondent making incredibly positive changes over the past five years; he has become a good, caring man who is intelligent, sensitive, creative, courageous and charming. Terry Miller, a real estate broker in New Mexico, worked with respondent for five years. He observed respondent to demonstrate natural talent for the work. Terry Miller is very proud of the man respondent has become. Spengler earned a degree in veterinary medicine at U.C. Davis. She works in Atlanta as a Veterinary Medical Officer in the Viral Special Pathogens Branch of the Centers for Disease Control. Spengler considers respondent to be a person of integrity and a great communicator. She recommends his licensure.

12. After moving to California, respondent worked in the warehouse at United Parcel Service for one year. From September 2013, until late 2016, respondent worked at 1-800 Courier, Inc., on the Google Shopping Express Project.

David Mai, Station Manager at 1-800 Courier Inc., wrote a letter in support of respondent's application. Mai reports that respondent first worked as a trainee on the Google Shopping Express Project, then advanced to become a trainer for other employees. After three years of employment, Jason was laid off because the project ended. Mai reports that despite respondent's two misdemeanor convictions, respondent demonstrated the dedication and character necessary to achieve his dreams.

13. Since being laid off, respondent has been taking care of his two young children. In 2016, respondent completed a course entitled Building Interpersonal Skills at Stanford University.

14. Respondent is anxious to become licensed as a real estate salesperson. Respondent has met with Matthew Johnston, a real estate broker with Keller Williams Silicon Valley. He advised Johnston that he had two misdemeanor convictions. Johnston certified on respondent's application for licensure that he had read the application, and that there is a written agreement on file in his office agreeing to employ and supervise respondent. Respondent expressed sincere remorse for his misconduct. He testified credibly that he is committed to his sobriety and to leading a law-abiding life. Respondent has demonstrated sufficient rehabilitation to receive a restricted real estate salesperson license.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a)(1), authorizes the bureau to deny a license to an applicant who has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed business or profession. Business and Professions Code section 10177, subdivision (b), which is specific to real estate licenses, authorizes the denial of a license if the applicant has been convicted of a crime that is substantially related to the qualifications, functions and duties of a real estate licensee.

2. California Code of Regulations, title 10, section 2910, sets forth criteria for determining whether a crime is substantially related to the qualifications, functions and duties of a real estate licensee. A crime is deemed to be substantially related to the licensed activity if it involves deceitful conduct. Respondent's conviction for tampering with evidence constitutes deceitful conduct and is therefore substantially related to the qualifications, functions and duties of a real estate salesperson. Conduct that demonstrates a pattern of repeated and willful disregard of the law is also deemed to be substantially related to the licensed activity. Respondent's two misdemeanor convictions constitute a pattern of repeated and willful disregard for the law.

Cause therefore exists to deny respondent's application for licensure pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b).

3. Business and Professions Code sections 480, subdivision (d), and 10177, subdivision (j), authorize the bureau to deny a license to an applicant who has committed dishonest dealing. Tampering with evidence can be construed as dishonest dealing. Cause to deny the application therefore exists pursuant to Business and Professions Code sections 480, subdivision (d), and 10177, subdivision (j).

4. California Code of Regulations, title 10, section 2911, sets forth criteria for evaluating whether an applicant has been sufficiently rehabilitated to warrant licensure.

Respondent has satisfied many of the criteria. Respondent's convictions took place on February 22, 2013, more than four years ago (passage of two years identified in section 2911, subdivision (a)(1)). Respondent has successfully completed probation (§ 2911, subd. (a)(5)). Respondent has abstained from controlled substances and alcohol for more than five years (§ 2911, subd. (a)(6)). Respondent has a stable family life. (§ 2911, subd. (a)(8)). Respondent pursued vocational education in 2016. (§ 2911, subd. (a)(9)). Respondent has performed community service by taking on numerous volunteer positions at AA and NA. (§ 2911, subd. (a)(12)). Respondent has moved his family from New Mexico to California and established new and different friends through his involvement in AA and NA. (§ 2911, subd. (a)(13)). Respondent established through his testimony and the testimony and letters of family members and friends, that he has made significant changes to his attitude and behavior since the time of his misconduct.

Complainant argued that respondent's application should be denied because of his alleged involvement in a conspiracy in New Mexico in 2011. The evidence did not establish that respondent was a member of a conspiracy; respondent denies the claim and the charges that had been filed against him were dismissed. Nor is involvement in a conspiracy alleged in the statement of issues. This argument is rejected.

Respondent has established through the convincing testimony of many individuals who know him well that he is stable in his sobriety. Respondent expressed insight and remorse during his testimony, and was very credible. Respondent has presented sufficient evidence of rehabilitation to justify the issuance of a restricted salesperson license.

ORDER

Respondent Jacob Isaac Levine'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 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:

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 the 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 the restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for removal of any of the conditions, limitations or restrictions of a 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.

4. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 137007, Sacramento, CA 95813-7007. 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 a 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.

DATED: April 28, 2016

DocuSigned by:

Jill Schlichtmann

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JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings