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OCT 30 2017

BUREAU OF REAL ESTATE

By B. Nicholas

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of)	CalBRE No. H-12074 SF
JUAN GABRIEL FLORES GALINDO,)	OAH No. 2017050156
Respondent.)	

DECISION

The Proposed Decision dated October 5, 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. The earliest date on which the applicant may reapply for a license is one year from the effective date of this Decision. If and when application is again made for this license, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. 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.

This Decision shall become effective at 12 o'clock noon on NOV 20 2017

IT IS SO ORDERED 10/25/17

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: DANIEL J. SANDRI
Chief Deputy Commissioner

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

In the Matter of the Application of:

JUAN GABRIEL FLORES GALINDO,

Respondent.

Case No. H-12074 SF

OAH No. 2017050156

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on September 14, 2017, in Oakland, California.

Counsel for the Bureau of Real Estate Kyle T. Jones represented complainant Robin S. Tanner, in her official capacity as Supervising Special Investigator for the Bureau of Real Estate.

Attorney Edgardo Gonzalez represented respondent Juan Gabriel Flores Galindo, who was present at the hearing.

The matter was submitted on September 14, 2017.

FACTUAL FINDINGS

1. In May 2016, respondent Juan Gabriel Flores Galindo 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.

2. Acting in her official capacity as Supervising Special Investigator for the Bureau, complainant Robin S. Tanner served respondent with a Statement of Issues alleging as grounds for denial that respondent had been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate salesperson; that he had lost an occupational license because of the actions that led to his conviction; that he later had applied unsuccessfully for a new occupational license; and that he had failed to disclose his complete occupational licensing history to the Bureau. Respondent requested a hearing.

Bases for Real Estate License Denial

3. Between 2005 and 2012, respondent held licenses from the Bureau of Automotive Repair (BAR) to operate smog check test only stations and to perform smog inspections. Effective February 21, 2012, BAR revoked these licenses.

4. BAR revoked these licenses because respondent had submitted fraudulent smog inspection results to BAR. Specifically, on six occasions between June 2009 and June 2010, respondent reported to BAR that he had inspected and passed a vehicle when he actually had inspected a different vehicle. These reports enabled the vehicles' owners to renew the vehicles' registrations without repairing defects in the vehicles' emissions control systems.

5. On March 16, 2012, respondent was convicted in Solano County of a violation of Vehicle Code section 4463, subdivision (a) (falsifying vehicle registration information).¹ This conviction resulted from the fraudulent smog inspections described in Finding 4, above. The Solano County Superior Court transferred the matter to the Marin County Superior Court for post-conviction case management.

6. Respondent completed fifteen days in the Solano County Sheriff's Work Alternative Program. In addition, the Marin County Superior Court placed respondent on supervised probation until March 16, 2015, which respondent completed successfully. On October 2, 2015, the court entered an order under Penal Code section 1203.4 dismissing the complaint that led to this conviction.

7. In March 2014, respondent applied to BAR for a new license as a smog inspector and repair technician. After a hearing, BAR denied this application effective March 12, 2015, on the ground that respondent had not demonstrated rehabilitation after his prior dishonesty in the smog inspection program.

8. Respondent's May 2016 application to the Bureau for a real estate salesperson's license disclosed his criminal conviction, and disclosed that he had suffered revocation in 2012 of his smog inspection license. Respondent's application to the Bureau did not disclose that he had applied to BAR in 2014 for re-licensure and that BAR had denied that application.

Additional Evidence Regarding Respondent's BAR License History

9. Respondent admitted to BAR representatives during their investigation that he had misrepresented six vehicles to BAR. He sought an administrative hearing on BAR's accusation seeking revocation of his smog inspection license, however; and at the hearing in

¹ At the time of conviction, the court designated respondent's crime as a felony. On July 13, 2016, the court entered an order under Penal Code section 17, subdivision (b)(3), redesignating respondent's crime as a misdemeanor.

December 2011, he denied responsibility for the fraudulent inspections. After BAR issued its decision, but before the decision's effective date, respondent confessed to BAR that he had lied at the administrative hearing.

10. Respondent had told almost no one before the December 2011 hearing that his smog inspection licenses were in jeopardy; he had not even told his wife. He sought a hearing as a last-ditch effort to maintain his smog inspection business, and lied at the hearing because he could think of no way he might keep his licenses other than to deny responsibility for the fraudulent inspections.

11. The six fraudulent inspections occurred over a period of about 12 months, during which respondent owned two smog check stations. Between them, these stations performed about 5,000 smog inspections during this period.

12. Respondent testified at the hearing in this matter that he had not worked for pay for anyone other than for himself and his wife since losing his smog inspection licenses in 2012. The evidence established, however, that respondent's sister became the licensed owner of one of respondent's smog check stations after respondent lost his licenses, and that respondent assisted her at least occasionally in that business.

13. Respondent and his wife considered opening another automotive-related business, sharing space with respondent's sister's (formerly respondent's) smog check station. To this end, respondent's wife sought and received BAR registration as an automotive repair dealer. Respondent testified that he considered seeking a brake or lamp license, but the evidence established only that he applied for the new smog inspection license described in Finding 7, above.

14. Respondent testified at the administrative hearing in this matter that he and his wife had intended to open a vehicle dealership, not an automotive repair business. No evidence established that either respondent or his wife ever had sought licensure as vehicle dealers or salespeople. Respondent did testify that he had bought and sold "a couple of cars" for profit since 2012, but no evidence established that these transactions were numerous or frequent enough to require professional licensure.

15. Respondent testified that his failure to disclose to the Bureau that BAR had denied his 2014 license application was an oversight: He realized that the real estate salesperson application sought information about licenses BAR had revoked, but he did not realize that it also sought information about licenses BAR had denied. This testimony was not credible; other evidence, and particularly the matters described in Findings 12, 13, and 14, suggested strongly that respondent's omission was part of an effort to deflect the Bureau's attention from respondent's ultimately unsuccessful efforts after 2012 to continue in an automotive business.

Respondent's Other Work Activities

16. After losing his smog inspection license in February 2012, respondent spent time supervising a major remodeling project on his and his wife's home. He also performed handyman services for residential rental property he and his wife own.

17. Respondent has volunteered on several Habitat for Humanity projects. He lent his construction skills to a Habitat housing development in Novato between 2014 and 2016, and also to a fundraising project involving building and selling dollhouses. During the several months before the hearing in this matter, respondent volunteered 15 to 25 hours per week at the Habitat for Humanity ReStore in Concord, a secondhand store that sells donated construction materials, furniture, and appliances to raise money for Habitat's other activities.

18. Respondent's wife, Trin Hong, has been a licensed real estate salesperson since 1996, and a licensed broker since 2006. Hong testified credibly that she takes her professional responsibilities as a real estate broker very seriously. She has no disciplinary history with the Bureau. Hong employs other licensed salespersons in her business.

19. Respondent assists Hong in her business by managing her office. He also provides translation and interpretation services for Spanish- and Portuguese-speaking clients. Respondent seeks licensure as a real estate salesperson so that he can increase his participation in this business. If respondent were to become a salesperson under the authority of Hong's broker's license, Hong would be willing to supervise respondent closely.

Respondent's Personal Rehabilitation Efforts

20. Respondent began and continued his volunteer work with Habitat for Humanity as a form of personal rehabilitation. He testified credibly that he views his volunteer service as atonement for the damage he did to the public through smog inspection fraud, and as a way to restore his own self-image.

21. BAR's order revoking respondent's smog inspection licenses ordered him to pay BAR almost \$11,000 to reimburse BAR for the costs it had incurred to investigate and prosecute the case against him. By August 1, 2017, however, respondent still owed BAR more than \$5,000. He requested a payment plan from BAR on that date, and began making monthly payments to BAR shortly thereafter.

22. Since late April or early May 2017, respondent has engaged in weekly counseling with William D. Dorn, M.P.H. Respondent began seeing Dorn because respondent wanted help gaining insight into his own dishonest behavior. Respondent testified, as did Dorn, that respondent has experienced great difficulty in the past refusing other people's pleas for assistance, even when that assistance requires respondent to be dishonest or to take personal risks. Dorn testified credibly that respondent has made progress in improving his personal boundaries and in developing skills to resist such pressure.

23. Dorn provided a letter stating his confidence that respondent would go “above and beyond to follow all of the rules and regulations that are necessary to hold a real estate license.” In his testimony, however, Dorn was more measured, stating that respondent’s candor had improved as their professional relationship progressed. In addition, although he did not elaborate, Dorn expressed surprise to learn that respondent’s wife would serve as respondent’s supervising broker if respondent were to obtain the license he seeks.

24. Respondent’s brother-in-law, Micah Pan, testified to support respondent’s application. Pan’s wife is Hong’s sister, and Pan and respondent have become close. They have discussed respondent’s disciplinary history with BAR, and the problems that respondent’s dishonesty caused in respondent’s professional life and in his marriage. Pan described respondent as remorseful for his dishonest conduct, and confirmed that respondent has made efforts to understand his former behavior so that he can change it.

25. Respondent also provided written character references from three people. One, Zahid Khan, met respondent during a smog technician training course that respondent took after losing his earlier smog licenses. Another, Alejandro Martinez, worked for respondent when respondent held smog check test only station licenses. The third, George Supica, was respondent’s commercial landlord at one of his smog check test only stations. Each of these witnesses knows about respondent’s BAR license discipline, and views respondent as a remorseful and changed man.

LEGAL CONCLUSIONS

1. The Bureau may deny a license application if the applicant knowingly makes a false statement of fact in his or her application, or attempts to use deceit to procure the license. (Bus. & Prof. Code, § 480, subd. (d); *id.*, § 10177, subd. (a).) The matters stated in Findings 8 and 15 constitute cause under these statutes to deny respondent’s application.

2. 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, subds. (a)(1), (a)(3)(B); *id.*, § 10177, subd. (b).) A crime is “substantially related to the qualifications, functions or duties of” a real estate salesperson if the crime involves using “bribery, fraud, deceit, falsehood or misrepresentation.” (Cal. Code Regs., tit. 10, § 2910, subd. (a)(4).) The matters stated in Finding 5 constitute cause under these statutes to deny respondent’s application.

3. Regardless of conviction, the Bureau may deny a license application if the applicant has committed dishonest acts. (Bus. & Prof. Code, § 480, subd. (a)(2); *id.*, § 10177, subd. (j).) The matters stated in Findings 4, 8, and 15 constitute cause under these statutes to deny respondent’s application.

4. The Bureau may deny a license application if the applicant has suffered discipline in another licensed profession on grounds that would have warranted discipline to a real estate license. (Bus. & Prof. Code, § 10177, subd. (f).) The matters stated in Findings 3 and 7 constitute cause under these statutes to deny respondent's application.

5. A real estate salesperson is a fiduciary who assists clients in following scrupulously all laws governing real estate transactions. In addition, a real estate salesperson assists clients in providing and obtaining complete and honest information regarding conditions potentially affecting real property's utility and value, even when that information is unfavorable to the salesperson or his clients.

6. Respondent's rehabilitation efforts, set forth in Findings 17, 20, 21, and 22, are sincere, but mostly recent. In addition, respondent continues to have difficulty, as demonstrated in Findings 8, 10, 12, 15, and 23, speaking candidly about matters that are not favorable to him. For these reasons, the public interest does not favor his licensure as a real estate salesperson at this time.

ORDER

The application of Juan Gabriel Flores Galindo for a real estate salesperson license is denied.

DATED: October 5, 2017

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