

FILED

BEFORE THE BUREAU OF REAL ESTATE

FEB 08 2018

STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By B. Nicholas

In the Matter of the Application of)	CalBRE No. H-12137 SF
)	
PATRICIO TOMAS PANGA ONQUIT,)	OAH No. 2017101169
)	
Respondent.)	

DECISION

The Proposed Decision dated January 10, 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 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.

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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 MAR 01 2018.

IT IS SO ORDERED 2/6/18

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: DANIEL J. SANDRI
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

PATRICIO TOMAS PANGA ONQUIT,

Respondent.

Case No. H-12137 SF

OAH No. 2017101169

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter on November 16, 2017, in Oakland, California.

Kyle Jones, Counsel, represented complainant, Robin S. Tanner, a Supervising Special Investigator of the State of California.

Respondent Patricio Tomas Panga Onquit represented himself and was present throughout the administrative hearing.

Submission of the matter was deferred to December 27, 2017, for receipt of rehabilitation evidence, which was received, marked for the record as Exhibit "A", and considered as administrative hearsay to supplement and explain respondent's direct evidence. Complainant submitted a response and objected to the evidence as inadmissible hearsay. The objection is overruled. The matter was submitted for decision on December 27, 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. Patricio Tomas Panga Onquit (respondent) applied to the Bureau of Real Estate (bureau) for a real estate salesperson license on February 13, 2017.

Criminal History

3. Respondent's convictions include: On June 11, 2015, in the Municipal Court of the State of Arizona, County of Maricopa, respondent was convicted of violating Arizona

Revised Statutes, section 13-2904, subdivision (A)(1) (disorderly conduct), a misdemeanor. Respondent got into verbal confrontation outside a bar. All fines and fees were paid, and this matter is closed.

4. On June 9, 2015, in the Municipal Court of the State of Arizona, County of Pinal, respondent was convicted of violating Arizona Revised Statutes, section 28-3473, subdivision (A) (driving on a suspended license), a misdemeanor. Respondent's California license had been suspended. There was no probation ordered in this matter.

5. On July 29, 2011, in the Superior Court of California, County of Alameda, respondent was convicted of violating Vehicle Code section 23152, subdivision (b) (driving under the influence), a misdemeanor, which is substantially related to the duties, qualifications, and functions of a real estate licensee. Respondent successfully completed three years' probation.

6. On March 2, 2011, in the Superior Court of California, County of Santa Clara, respondent was convicted of violating Vehicle Code section 14601.5, subdivision (a) (driving on a suspended license), a misdemeanor.

7. On August 9, 2010, in the Superior Court of California, County of San Diego, respondent was convicted of violating Penal Code section 415, subdivision (3) (offensive words in a public place), a misdemeanor.

8. On April 27, 2010, in the Superior Court of California, County of San Diego, respondent was convicted of violating Vehicle Code section 23152, subdivision (b) (driving under the influence), a misdemeanor, which is substantially related to the duties, qualifications, and functions of a real estate licensee.

9. On July 11, 2006, in the Superior Court of California, County of Santa Clara, respondent was convicted of violating Vehicle Code section 14601.1, subdivision (a) (driving while license suspended), a misdemeanor.

10. On November 12, 2003, in the Superior Court, County of Santa Clara, respondent was convicted of violating Vehicle Code section 23109, subdivision (c) (exhibition of speed), a misdemeanor.

11. Question 28 of respondent's application asked: "Have you ever been convicted of any violation of the law at the misdemeanor or felony level? If yes, complete item 34 with information on each conviction." Respondent failed to disclose the convictions set forth in paragraphs 4, 6, 7, 9, and 10, in the statement of issues. Three of these omitted convictions are for driving on a suspended license, one is for offensive words in a public place and one is for exhibition of speed.

Respondent's Evidence

12. Respondent was in the U.S. Navy. He was granted a general discharge under honorable conditions and left on September 15, 2010. He was stationed in San Diego at the time. He participated in Operation Enduring Freedom.

13. Respondent has been diagnosed with Post Traumatic Stress Disorder as a result of his military service. He receives mental health treatment through the VA Hospital in Livermore, California. He is also a registered alumni warrior for the wounded warrior project.

14. Respondent had a problem with alcohol. He was using it to self-medicate. Now he is being treated with medication by the VA, and for the past three years he no longer uses alcohol. He attends support groups and sees a counselor through the VA, which was verified by Jenna Boyovich, RASCSW at the VA Mental Health Clinic.

15. Respondent has been attending the University of Phoenix, where he will receive a Bachelor of Science in Business on January 31, 2018. He is an active-full time student.

16. Respondent is presently employed as a server at INC 82 in Dublin, California. He has worked there about six months and his employer wrote a letter on his behalf stating that respondent is efficient, detail oriented, and extremely competent.

17. Respondent provided three character letters in support of his application for licensure.

- a) Alfredo Ledesma, Vice President/Sales Manager of Intero Real Estate in Pleasanton, California, wrote a letter on behalf of respondent. He has been mentoring respondent for about two years. Respondent shows responsibility and passion for the field of real estate. Respondent is professional and respectful. Mr. Ledesma believes respondent will be a valuable asset to the real estate community.
- b) Carlo Austria, Realtor, wrote a letter on behalf of respondent dated December 12, 2017. He has known respondent for over 20 years. He witnessed respondent's struggles after the military and the death of his father. He feels strongly that respondent can succeed in the real estate business.
- c) Shideh Taghani Onquit, the mother of respondent's daughter, wrote a letter dated December 11, 2017 on behalf of respondent. She states that he has been a responsible father. She has seen the problems respondent had after the military. She believes he is making an effort to change his life and be a good person.

18. Respondent's convictions as set forth in Factual Findings 7, and 8, occurred while he was in the military. As a result, he was not asked to reenlist. It took some time for him to receive his VA benefits. When he did receive his benefits, he was given the right care for his mental health issues.

19. Respondent believes he lost his driver's license because he failed to pay child support in 2015. He is now in compliance with his support obligations. One of the reasons he wants his real estate license is to make a better life for his daughter.

20. Respondent disclosed his most serious convictions. He was not trying to be deceitful. He forgot about the older, less serious convictions. Respondent's convictions related to his use of alcohol. He has confronted his problems, sought help, and changed his life. He is committed to living 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. Conduct that demonstrates a pattern of repeated and willful disregard of the law is deemed to be substantially related to the licensed activity. Respondent's eight 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) (false statement of fact), and 10177, subdivision (a) (attempted procurement of license by misrepresentation), authorize the bureau to deny a license to an applicant who has made misstatements on his application for licensure. Respondent only listed three of his eight convictions on his application. Cause to deny the application therefore exists pursuant to Business and Professions Code sections 480, subdivision (d), and 10177, subdivision (a).

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. Many of respondent's convictions occurred over six years ago. The most recent conviction is more than 2 years and six months 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 three 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 established new and different friends through his involvement in his education and work. (§ 2911, subd. (a)(13).) Respondent established through his testimony and the 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 questionable honesty. This argument is rejected. Respondent was candid and forthcoming about his past. He did not try to conceal the most serious of his convictions.

Respondent has established through his testimony and the letters of his family and friends that he is a changed individual. His service to the country must be respected and taken into consideration in determining his character and ability to be honest and responsible as a real estate licensee. Respondent expressed insight 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 Patricio Tomas Panga Onquit'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: January 10, 2018

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Ruth Astle
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RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings