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APR 23 2018

BUREAU OF REAL ESTATE

By B. Nicholas

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Application of TOMMY RAY TURNER, JR., Respondent.	CalBRE No. H-12164 SF OAH No. 2018010042

DECISION

The Proposed Decision dated March 13, 2018, 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.

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 MAY 14 2018.

IT IS SO ORDERED April 18, 2018

WAYNE S. BELL
REAL ESTATE COMMISSIONER

Daniel J. Sandri

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: TOMMY RAY TURNER, JR., Respondent.	Case No. H-12164 SF OAH No. 2018010042

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on February 14, 2018, in Oakland, California.

Counsel for the Bureau of Real Estate Kyle T. Jones represented complainant Robin S. Tanner, Supervising Special Investigator for the State of California Bureau of Real Estate.

Respondent Tommy Ray Turner, Jr., was present representing himself.

The matter was submitted on February 14, 2018.

FACTUAL FINDINGS

1. In April 2016, 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.

2. Acting in her official capacity as Supervising Special Investigator for the Bureau, complainant Robin S. Tanner served respondent on December 5, 2017, with a statement of issues. The statement of issues alleges as grounds for denial of respondent's application that respondent has been convicted of crimes that are substantially related to the qualifications, functions, or duties of a real estate salesperson, and that respondent failed to disclose some of those convictions on his application. Respondent requested a hearing.

Respondent's Criminal History

3. On September 28, 1993, respondent was convicted in Alameda County of a misdemeanor violation of Penal Code section 148.9 (giving false identification to a peace officer). The crime occurred on May 25, 1993, during a traffic stop. Respondent identified himself using a false name, but a search of his vehicle yielded a photo identification card with respondent's true name. Respondent spent four days in jail following his arrest for this offense, and the court placed him on probation for a year.

4. On June 15, 1995, respondent was convicted in Alameda County of a misdemeanor violation of Penal Code section 148.9. The crime occurred on June 12, 1995, under circumstances that the evidence did not otherwise establish. Respondent served four days in jail for this offense.

5. On July 13, 1995, respondent was convicted in Santa Cruz County of a misdemeanor violation of Penal Code section 245, subdivision (a)(1) (assault with a deadly 5weapon other than a firearm). The crime occurred on April 17, 1994, when respondent used a glass bottle as a weapon in a fight on a public beach. The court ordered respondent to serve 15 days in the county jail and to spend one year on probation.

6. On August 14, 1996, respondent was convicted in McLennan County, Texas, of a felony violation of Texas Penal Code section 30.02 (burglary of a habitation). The crime occurred on March 18, 1996. Respondent testified credibly that he had accompanied a friend to the friend's uncle's home thinking that his friend intended to retrieve a video game that belonged to him. They entered the friend's uncle's home while the uncle was away, and were still there when the uncle returned. The uncle called police, accusing respondent and his friend of having broken in with the intent to rob him. The court ordered respondent to spend seven years on probation.

7. On April 22, 2004, respondent was convicted in Alameda County of a misdemeanor violation of Health and Safety Code section 11350, subdivision (a) (possession of an unprescribed controlled substance). The evidence did not establish the date or the circumstances of this crime. The court ordered respondent to serve 12 days in the county jail and to spend three years on probation.

8. On March 27, 2007, respondent was convicted in Alameda County of a misdemeanor violation of Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol). The crime occurred on September 30, 2006. The court ordered respondent to spend two days in jail and three years on probation, and to attend "Driving Under the Influence of Intoxicants School."

9. On July 24, 2007, respondent was convicted in San Mateo County of a felony violation of Health and Safety Code section 11350, subdivision (a). The crime occurred on June 13, 2007. The court ordered respondent to spend 120 days in jail and three years on probation.

10. On November 30, 2009, respondent was convicted in Alameda County of a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol concentration greater than 0.08 percent). The crime occurred on February 2, 2009. The court ordered respondent to spend 10 days in jail and five years on probation, and to participate in an 18-month drinking driver program.

11. On March 19, 2010, respondent was convicted in Santa Clara County of a misdemeanor violation of Vehicle Code section 14601.2, subdivision (a) (driving on a suspended or revoked license). The crime occurred on January 18, 2009, while respondent's driving privileges had been suspended because of the crimes described in Findings 8 and 9. The court ordered respondent to spend 17 days on a weekend work program and two years on probation.

12. On June 9, 2010, respondent was convicted in San Mateo County of misdemeanor violations of Vehicle Code sections 23152, subdivision (a), and 14601.2, subdivision (a). The crimes occurred on February 11, 2010. The court ordered respondent to complete a six-month residential substance abuse treatment program in lieu of spending a year in jail. In addition, the court ordered respondent to spend five years on probation.

13. Respondent is no longer on probation or parole. He intends to seek orders under Penal Code section 1203.4 dismissing the complaints that led to his California convictions, but had not yet done so at the time of the hearing.

Respondent's Background

14. Respondent had a turbulent childhood. He estimates that he lived in 16 different homes as a child; ultimately, his aunt and uncle adopted him after his mother became unable to care for him due to her own substance abuse.

15. Respondent began drinking alcohol when he was about 12, and had his first experience with intoxicating drugs when he was 13. Throughout adolescence and young adulthood, respondent abused both alcohol and cocaine. His early criminal history (as described in Findings 3 through 6) reflects poor judgment resulting from alcohol and drug use; his later criminal history (as described in Findings 7 through 12) consists entirely of crimes directly involving alcohol or drug possession or use.

16. While driving under the influence of alcohol on the occasion described in Finding 12, respondent caused a serious traffic accident. The evidence did not establish that respondent injured any other people in this accident. The accident frightened respondent, however, and he decided to seek help for his substance use disorder.

17. Respondent has been fully abstinent from unprescribed drugs and from alcohol since May 12, 2010. Initially, he achieved and maintained sobriety through a 12-step program, but he described his first year of sobriety as "white-knuckling." He spent six months between June 2011 and November 2011 in a residential substance abuse treatment

program,[1] and he credits this program with having given him the psychological skills necessary to remain sober.

18. Respondent acknowledges that he always will have a substance use disorder, even while it remains in remission. He continues to attend 12-step meetings regularly, usually about weekly but more often during periods of high stress.[2] He does not serve formally as anyone's sponsor, but he has made himself available to help friends and close family members who also struggle or have struggled with substance abuse.

19. Respondent has taken advantage of sobriety to make other significant improvements in his life. Most notably, he learned a trade (welding) and has been steadily employed in construction since 2012. Respondent currently works as a quality control field manager for a manufacturer and installer of solid surface counter products.

20. Respondent is engaged to be married to a woman he met through his work in the construction industry. For the past several years, they have invested in real estate together, buying and renovating homes and then selling them at a profit. Respondent's fiancée is a real estate salesperson, as is respondent's uncle; both of these people encouraged respondent to seek his own real estate license.

Respondent's License Application

21. In addition to the convictions described in Findings 3 through 12, above, respondent was arrested without conviction several times between 1993 and 2010. On at least one occasion after an arrest, a court adjudicated respondent to be in violation of his probation for a previous conviction even though the court dismissed the new charges that had led to the arrest. Because respondent's criminal history was complex, and because he recalls these incidents poorly (in part due to the drug and alcohol use that prompted them), respondent did not wish to complete the conviction history portion of his application to the Bureau strictly from memory. In preparation for completing his application to the Bureau, he obtained a report of his conviction history, and reviewed it with a lawyer.

22. On his initial application in April 2016 for a real estate salesperson license, respondent disclosed the convictions described in Findings 3, 4, 7, 8, 9, 10, 11, and 12. He did not list the convictions described in Findings 5 and 6.

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[1] The court approved this program to fulfill the order described in Finding 12. The evidence did not establish why nearly a year passed between respondent's conviction and his enrollment in this program.

[2] During the two weeks preceding the hearing in this matter, respondent went to meetings daily.

23. In September 2016, the Bureau requested further information from respondent about his criminal history, and included for his reference a conviction list the Bureau had obtained through its own investigation. In response to this request, respondent provided a further document in October 2016 disclosing and describing all of the convictions summarized above in Findings 3 through 12.

24. With respect to the conviction described above in Finding 5, respondent stated in his October 2016 submission to the Bureau and in his testimony at the hearing that he had neglected to list it on his initial application because he had overlooked it in preparing the application. Respondent recalled the incident and the arrest, and described them in his October 2016 submission. He did not recall that he had been convicted, and the list he reviewed before preparing his initial application was complex enough regarding his California criminal history that it did not refresh his memory.[3] This testimony is credible.

25. With respect to the conviction described above in Finding 6, respondent stated in his October 2016 submission to the Bureau that he had not listed it on his initial application because he did not understand that he needed to list convictions that had occurred outside California. He explained at the hearing that he had drawn this conclusion because the list he had reviewed with the lawyer before completing his application did not include this conviction, and because pre-employment criminal background checks he had undergone in recent years had not listed this conviction either. Respondent explained further that he had queried the lawyer about this issue, and that the lawyer had advised him that he need not list the Texas matter as a conviction on his application.

26. Respondent's testimony on this issue is credible. Furthermore, upon inquiry by the Bureau respondent readily described the events that led to his conviction in Texas. Although respondent's failure to disclose the conviction described in Finding 6 on his application made the application factually incomplete, respondent did not omit this information despite knowing that he needed to reveal it, or omit it with the intention of procuring his license through deceit or misrepresentation.

27. Respondent's application states that he intends, if licensed, to work for broker Amir Cackovic. The application establishes that Cackovic is aware of respondent's California conviction history. Respondent testified credibly that Cackovic has told respondent that he would employ respondent even if respondent initially obtains a restricted real estate salesperson's license.

28. Respondent received notice from the Bureau in September 2016 that he had passed the licensing examination.

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[3] The list was in evidence; it is cryptic.

Character References

29. Respondent provided written references from his uncle, Kent Turner; his aunt and adoptive mother, Monica Kitchiner-Davis; his cousin and adoptive brother, Mark Carter; a friend, Tiwana Sanders; and his fiancée, Alma Hodzic.

30. These references praised respondent uniformly for his success in using introspection and service to reform his life. Turner noted as well that respondent has demonstrated his willingness to listen to criticism and to learn from others.

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, subds. (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" (*id.*, subd. (a)(9)); or if it is part of "a pattern of repeated and willful disregard of law" (*id.*, subd. (a)(10)).

2. The criminal history described in Findings 3 through 12 constitutes cause to deny respondent's application.

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 applicant has "attempted to procure" a license "by making a material misstatement of fact" (*id.*, § 10177, subd. (a)).

4. Because of the matters stated in Findings 21 through 26, complainant did not establish cause to deny respondent's application due to false statements.

5. 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, subd. (a).) Respondent addressed many of these criteria, and demonstrated overall his substantial rehabilitation from the conduct that led to his criminal convictions. In particular:

a. As stated in Finding 12, more than eight years have passed since respondent's last criminal offense; and as stated in Finding 13, he is no longer under judicial supervision (*id.*, subds. (a)(1), (a)(5));

b. As stated in Findings 14 through 18, although substance abuse contributed strongly to respondent's criminal activity, he is in long-term recovery (*id.*, subd. (a)(6));

c. As stated in Findings 19 and 28, respondent has completed further education and is steadily employed (*id.*, subd. (a)(9));

d. As stated in Findings 18, 20, 29, and 30, respondent has reformed his personal relationships and has a stable, rewarding family network (*id.*, subds. (a)(8), (a)(13));

e. The matters stated in Findings 17 through 20, 29, and 30 show respondent's preference for integrity and self-improvement over substance abuse and crime (*id.*, subd. (a)(14)).

6. Respondent's criminal history appears to be well in his past, but it was serious and spanned more than 15 years. An initial period of license restriction will permit the Bureau to ensure that respondent can carry out the responsibilities of a licensed real estate salesperson.

ORDER

The application of Tommy Ray Turner, Jr., 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 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: March 13, 2018

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