

SEP 09 2019

DEPARTMENT OF REAL ESTATE

By           P. dew          

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Application of	)	DRE No. H-12375 SF
	)	
ERIC F. BRODRICK,	)	OAH No. <b>2019040841</b>
	)	
Respondent.	)	

NOTICE

TO: ERIC F. BRODRICK, Respondent, and ANDREW CANTOR, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated July 15, 2019, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated July 15, 2019, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on Thursday, June 13, 2019, and any written argument hereafter submitted on behalf of respondent and complainant.

Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Thursday, June 13, 2019, at the Sacramento

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1 office of the Department of Real Estate unless an extension of the time is granted for good cause  
2 shown.

3 Written argument of complainant to be considered by me must be submitted within  
4 15 days after receipt of the argument of respondent at the Sacramento Office of the Department of  
5 Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: September 9, 2019.

7 DANIEL J. SANDRI  
8 ACTING REAL ESTATE COMMISSIONER

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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED

AUG 28 2019

DEPARTMENT OF REAL ESTATE  
By B. Nicholas

In the Matter of the Application of:

ERIC F. BRODRICK,

Respondent.

Case No. H-12375 SF

OAH No. 2019040841

**PROPOSED DECISION**

Administrative Law Judge Michael A. Scarlett, State of California, Office of Administrative Hearings, heard this matter on June 13, 2019, in Oakland, California.

Kyle T. Jones, Real Estate Counsel, represented Robin S. Tanner (complainant), Supervising Special Investigator, Department of Real Estate, State of California.

Andrew Cantor, Attorney at Law, represented respondent Eric F. Brodrick (respondent).

Oral and documentary evidence was received and the matter was submitted for decision on June 13, 2019.

**FACTUAL FINDINGS**

1. On April 5, 2019, complainant filed the Statement of Issues in her official capacity on behalf of the Department of Real Estate (Department) of the State of California. On April 15, 2019, respondent filed a Notice of Defense and this hearing ensued.

2. On June 8, 2018, respondent submitted an application to the Department for a real estate salesperson license (Application). The Department received the Application on June 14, 2018. Although respondent disclosed that he had been convicted of six offenses, he failed to disclose three convictions. Based on respondent's criminal conviction record and his failure to fully disclose all of his criminal convictions, the Department denied respondent's Application.

### *Conviction Record*

3. Respondent incurred nine criminal convictions from 1995 to 2015. The following is a list of convictions incurred by respondent:

- (a) January 21, 2015 – Vehicle Code section 14601.2, subdivision (a), knowingly driving with a suspended license, a misdemeanor;
- (b) January 20, 2012 – Vehicle Code section 14601.2, subdivision (a), knowingly driving with a suspended license, a misdemeanor;
- (c) May 27, 2010 – Penal Code section 530.5, subdivision (a), unauthorized use of another's personal identifying information, a misdemeanor;
- (d) January 21, 2003 – Penal Code section 529, subdivision (3), personate to make other liable, a misdemeanor;
- (e) December 21, 2001 – Vehicle Code section 14601.2, subdivision (a), knowingly driving with a suspended license, a misdemeanor;
- (f) July 16, 2001 – Vehicle Code section 14601.2, subdivision (a), knowingly driving with a suspended license, a misdemeanor;
- (g) March 19, 1998 – Vehicle Code sections 14601.2, subdivision (a), knowingly driving with a suspended license, and 23152, subdivision (a), driving under the influence (DUI), both misdemeanors;
- (h) August 8, 1996 – Vehicle Code section 23152, subdivision (b), DUI with blood alcohol content over .08%, a misdemeanor; and
- (i) July 11, 1995 – Penal Code section 242, battery, a misdemeanor.

4. Respondent was placed on probation for two years in January 2015 for driving with a suspended license. His probation terminated in January 2017. As of September 2018, conviction records indicated that respondent had not fully paid fines and fees ordered by the court for his 2015 and 2012 convictions. Respondent testified that he has paid all of his fines and fees, in accordance with the payment plan approved by the court, except \$110.

5. Respondent incurred DUI convictions in 1996 and 1998. The five suspended driving license convictions in 1998, 2001, 2012, and 2015 resulted from the driver's license suspension orders in those cases. The suspension orders had been extended because respondent failed to install an interlock device on his vehicle as ordered by the courts. In 2016, respondent was issued a valid driver's license. The July 11, 1995, battery conviction resulted after respondent became involved in a fight at a high school basketball game. Respondent was 18 years old at the time. The May 27, 2010, conviction resulted when respondent purchased clothes from his roommate who had purchased the merchandise with a stolen credit card. The January 21, 2003, conviction resulted when respondent used his brother's driver's license during a traffic stop to avoid being cited for driving without a license.

6. Respondent failed to disclose three of his nine convictions in his Application. However, he credibly testified that his omissions were not intentional. Respondent believed that he had disclosed all of his criminal convictions in the Application. He recalled the 1995 battery conviction and thought it was listed in the Application. Respondent thought the

January 2003 conviction was charged as a driving with a suspended license violation and that he disclosed the conviction as one of the four suspended driver's license convictions he included in the Application. He also believed he disclosed the second 1998 DUI conviction, which included a suspended driver's license offense, in the four driver's license suspension convictions he disclosed. Respondent made a good faith attempt to fully disclose his criminal record in his Application. He disclosed six of nine convictions and inadvertently omitted three offenses. These omissions did not constitute an intentional attempt to make a false statement in the Application, or to procure a real estate license by fraud or misrepresentation.

#### *Respondent's Evidence*

7. Respondent is 43 years old and was recently married 18 months ago. Respondent took full responsibility for his conduct and criminal offenses and expressed sincere remorse for his actions. He presented as an honest and forthright witness in explaining his criminal offenses. Respondent expressed a sincere interest in the real estate profession and he testified that several relatives and friends have expressed that they would utilize his services if he is able to obtain his real estate salesperson license.

8. Respondent graduated from San Mateo High School in 1994. He attended Texas Tech University for two years, where he played baseball, and then transferred to University of California, Santa Barbara. Respondent graduated UC Santa Barbara with a degree in Political Science in 1999. Respondent attended Golden Gate University Law School for two years from 2001 to 2004, but did not complete his degree due to academic disqualification. From 2004 to 2018, respondent was gainfully employed as a paralegal with various law firms and law offices in the San Francisco bay area. He became a senior paralegal in 2011 and worked in that capacity until June 2018.

9. In June 2018, respondent began working with Alain Pinel Realtors (APR) in San Francisco shadowing and assisting agents with open houses. The position is not a paid position but it affords respondent an opportunity to be mentored by experienced real estate agents at APR. Respondent does not perform any duties with APR that require a real estate salesperson license. If allowed to obtain his real estate salesperson license, respondent would be hired as a salesperson with APR. He passed the Department's real estate examination in May 2018.

10. Rick Turley, Vice President/Managing Broker at APR, wrote a letter of recommendation on respondent's behalf. Turley described respondent as a "remarkable candidate for a good respectable licensee" and is very much looking forward to hiring respondent at APR if he is granted a license. Turley stated that respondent completed APR's two-week New Agent Training Program and has been participating in a weekly mentoring program with APR for the last year. Turley reiterated that respondent has not been performing any duties with APR that require licensure. However, he believes that due to APR's mentoring program, respondent is more prepared, and more aware of licensee duties and responsibilities than any new agent has ever worked with.

11. Christi Willits, the Director of Career Development at APR, also wrote a letter on respondent's behalf. Willits is extremely impressed with respondent and is confident that he will become an asset to the APR team. She expressed that respondent has been attentive in handling many non-licensee tasks at APR and has the utmost confidence that respondent would perform all professional matters with care and consideration. Denise L. Paulson, a licensed real estate agent, wrote a letter on respondent's behalf stating that respondent has worked under Paulson's supervision for a few months assisting with open houses. She described respondent as an important member of her team and Paulson would highly recommend that respondent be granted a real estate license.

12. Finally, Kevin McCormack, respondent's friend and former roommate, wrote a letter on respondent's behalf. McCormack spoke to the 2010 incident that resulted in respondent's conviction for the unauthorized use of another's personal identifying information. McCormack corroborated respondent's testimony that he was the friend that obtained the clothes that had been purchased with a stolen credit card and that he sold the clothes to respondent. McCormack asserted that respondent was unaware that the clothes had been purchased with a stolen credit card when respondent purchased the merchandise from McCormack. McCormack stated he did not come forward with the truth in 2010 because he was afraid of being arrested. He regrets that the incident ruined his friendship with respondent but notes that over time respondent forgave him and that they are still friends today in spite of the 2010 incident.

## LEGAL CONCLUSIONS

1. A real estate license may be denied on the grounds that the applicant has been convicted of a crime. (Bus. & Prof. Code, §§ 480, subd. (a)(1); 10177, subd. (b).) A board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made. (Bus. & Prof. Code, § 480, subd. (a)(3)(B).) Section 480, subdivision (a)(2), provides that a license may be denied if the applicant has done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or substantially injure another. A license may also be denied if the applicant has engaged in conduct that constitutes fraud or dishonest dealing. (Bus. & Prof. Code, § 10177, subd. (j).)

2. The issuance of a license may be denied if an applicant has knowingly made a false statement of fact required to be revealed in a license application, (Bus. & Prof. Code, § 480, subd. (d).) or if the applicant attempts to procure the real estate license by means of fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application, (Bus. & Prof. Code, § 10177, subd. (a).)

3. Cause exists to deny respondent's application for a real estate salesperson license pursuant to sections 480, subdivision (a)(1), and 10177, subdivision (b), in that respondent has been convicted of crimes that are substantially related to the qualifications, functions, or duties of a real estate licensee, by reason of Factual Findings 3 through 5.



4. Cause exists to deny respondent's application for a real estate salesperson license pursuant to section 480, subdivision (a)(2), and 10177, subdivision (j), in that respondent engaged in acts involving fraud and dishonesty, by reason of Factual Findings 3(c), 3(d), 4, and 5.

5. Cause does not exist to deny respondent's application for a real estate salesperson license pursuant to sections 480, subdivision (d), and 10177, subdivision (a), in that respondent did not knowingly and intentionally make a false statement of fact in the license application, or attempt to procure a license by fraud, misrepresentation or deceit, when he did not fully disclose his criminal record in his Application, by reason of Factual Findings 2 through 6.

#### *Rehabilitation*

6. The Department has developed criteria in California Code of Regulations, title 10, section 2911, to be considered for purposes of evaluating the rehabilitation of an applicant who has incurred criminal convictions. The rehabilitation criteria were considered in relation to the facts in this case. Respondent established that he has been sufficiently rehabilitated such that the issuance of a real estate salesperson license would not pose a significant risk of harm to the health, safety and welfare of the public. (Factual Findings 7 through 12.)

7. It has been over two years since respondent's last criminal conviction in January 2015. His most serious offenses for battery and using personal information of another occurred in 1995 and 2010 respectively, over nine years ago. Respondent's most recent criminal offenses, although serious, were not of a severe nature that caused direct harm or injury. He successfully completed probation in January 2017, and has paid all fines ordered by the court except for \$110. Respondent has not incurred a DUI offense since 1998 and obtained his driver's license in 2016. He has been diligent in the pursuit of education to further his professional career and has maintained gainful employment as a paralegal since 2004. Respondent was recently married and seeks a career in real estate to support his family. He has sincere interest in becoming a real estate salesperson and by all accounts, has conscientiously pursued this new profession with a vigor and seriousness that is admired by his mentors. APR intends to hire respondent if he is granted a real estate salesperson license. By all accounts, respondent has overcome his poor judgment and has shown a genuine change in his attitude that existed at the time of his criminal conduct.

8. On this record, respondent has established that he is sufficiently rehabilitated to warrant the issuance of a restricted real estate salesperson license. Accordingly, respondent's application for a real estate license is granted with the appropriate terms and conditions for a restricted real estate salesperson license.

## ORDER

Respondent Eric F. Brodrick'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 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 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.

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.

DATED: July 15, 2019

DocuSigned by:

*Michael A. Scarlett*

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MICHAEL A. SCARLETT

Administrative Law Judge

Office of Administrative Hearings