

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 OCT 19 2023.

IT IS SO ORDERED 9/25/23

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER



for Doug McCauley

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Application Of:

MARVIN MILTON WARREN, Respondent.

Agency Case No. H-12629 SF

OAH No. 2023050866

PROPOSED DECISION

Administrative Law Judge Michelle Dylan, State of California, Office of Administrative Hearings, heard this matter on July 13, 2023, via telephone and videoconference.

Counsel Adriana Z. Badilas represented complainant Stephanie Yee, Supervising Special Investigator for the Department of Real Estate of the State of California.

Respondent Marvin Milton Warren was present at hearing, representing himself.

The record closed and the matter was submitted on July 13, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 19, 2021, the Department of Real Estate (Department) received respondent Marvin Milton Warren's application for a real estate salesperson license.

2. On April 20, 2023, complainant Stephanie Yee filed the statement of issues in her official capacity as Supervising Special Investigator for the Department. Complainant seeks to deny the application based on respondent's six criminal convictions.

Criminal Convictions

3. On February 2, 2018, respondent was convicted in the Superior Court of California, County of Alameda, on a plea of no contest, of a violation of Penal Code section 29800, subdivision (a)(1) (possession of a firearm by a prohibited person), a felony. Imposition of sentence was suspended, and respondent was placed on formal probation for five years with conditions including serving one day in county jail with credit for time served of one day, submitting to substance abuse counseling and testing as directed by the probation officer, obeying all laws, and paying fines and fees. On February 2, 2021, respondent's probation was terminated pursuant to Assembly Bill 1950 which reduced the terms of probation in most felony cases to two years.

4. The facts and circumstances underlying the conviction occurred on October 16, 2017. Respondent was at a lounge in Hayward. Police were dispatched to the lounge on a report from a patron that respondent was disturbing customers, and

exited the lounge and drove his vehicle into the parking lot of DDs Discounts. Police arrived at the scene and observed a light-colored pistol protruding from the space between the driver's seat and center console of respondent's vehicle. Officers were advised by the initial caller that respondent was inside of DDs Discounts. When respondent exited the store, he was detained by several officers.

5. Officers searched the vehicle and discovered a Smith & Wesson pistol with a fully loaded magazine in the driver's side area, two suspected methamphetamine pipes, heroin, suspected methamphetamine, and marijuana.

6. On April 4, 2014, respondent was convicted in the Superior Court of California, County of San Joaquin, on pleas of no contest, of a violation of Penal Code section 496d, subdivision (a) (possession of stolen property), and a violation of Penal Code section 10851, subdivision (a) (unlawful taking of a vehicle), both felonies. Respondent was placed on formal probation for five years, with conditions including serving 300 days in the county jail with credit for time served of 134 days, completing a six-month residential rehabilitation program at the Salvation Army, paying fines and fees, and obeying all laws and court orders. Respondent was also provided with a firearm prohibition notice. On August 20, 2015, respondent's probation was revoked, and he was sentenced to five years in state prison and ordered to pay fines and fees. Respondent received credit for time served of 582 days. Respondent was released on community supervision on March 22, 2017. Respondent's community supervision was modified on February 2, 2018, to include additional custody time with credit for time served based on the conviction described in Factual Findings 3 through 5.

7. The facts and circumstances of the offenses occurred on November 22, 2013. In his statement to the Department, respondent wrote that he rented a car from an acquaintance and when his acquaintance's wife found out, she called the police.

Respondent stated that he made a bad impulsive choice and was living a volatile lifestyle. At hearing, respondent did not contest the convictions and stated that at the time of the offenses he was committing crimes as a means of survival, and that he has since changed.

8. On May 15, 2009, respondent was convicted in the Superior Court of California, County of Fresno, on pleas of no contest, of a violation of Penal Code section 459/460, subdivision (b) (second degree burglary), and a violation of Penal Code section 470, subdivision (d) (check forgery), both felonies. Respondent was sentenced to four years in state prison, paying fines and fees, and providing a DNA sample. On October 23, 2017, the second-degree burglary conviction was designated by the court as a misdemeanor violation of Penal Code section 459.5, pursuant to Proposition 47.

9. The facts and circumstances of the offenses occurred on May 4, 2008. Respondent was at Gottschalk's in Fresno with a female friend and attempted to cash forged traveler's checks.

10. On March 29, 1995, respondent was convicted in the Superior Court of California, County of Alameda, on a plea of no contest, of a violation of Penal Code section 211 (robbery), a felony. Imposition of sentence was suspended, and respondent was placed on formal probation for three years with conditions including serving one year in county jail with credit for time served of 230 days in jail, paying restitution and a restitution fine, and complying with an order prohibiting him from threatening or annoying the victim.

11. The facts and circumstances of the offense are that on October 28, 1994, respondent and two other individuals robbed a man at gunpoint and took his money.

Respondent's Evidence

12. Respondent is not disputing any of the convictions. At the administrative hearing, and in his written explanation to the Department, respondent stated that at the time of the convictions, he was experiencing poverty, and had no opportunities, no education, and no hope. He was leading a reckless and harmful lifestyle and repeated the same mistakes while expecting different results. At the time, respondent felt that committing crimes was his only means of survival. Respondent now realizes there is a different way to live. He regrets his misconduct and apologized for it.

13. Respondent has not had any law enforcement contacts for over five years and has been working and attending school. Respondent testified credibly that he is not the same person he was five years ago, and that he will not repeat the mistakes of his past.

14. Respondent stated that the convictions listed in the statement of issues are all eligible for dismissal pursuant to California Penal Code section 1203.4, and that he is working with an attorney, Jess Temple, in petitioning for expungements of his convictions. Respondent has completed the terms of his sentences and probations in those cases, including paying the fines and restitution ordered, and has been given court dates for the upcoming dismissal hearings.

15. Respondent admitted that he had a drug problem in 2017 but testified that he stopped using drugs after his mother died while he was in custody in 2017. Respondent attended drug counseling while he was incarcerated, and as a requirement of his probation in 2018 and 2019. Respondent does not currently attend AA or NA meetings but has access to support groups if he feels that they are necessary.

16. Respondent testified that he is rehabilitated and would not risk all that he has accomplished by reverting to his old lifestyle. Since his most recent offense in 2017, he has changed his environment and he no longer associates with the same people. Respondent has two adult sons and two grandsons, and is now busy and engaged in family, school, work, and the community.

17. From approximately June 2017 to approximately 2019, respondent was employed by Caltrans in Oakland. Respondent worked for the public works department cleaning streets and highways.

18. In approximately April 2019, respondent became an apprentice boilermaker and member of the Local 549 Boilermakers Union. He performed seasonal work from then until approximately June or July 2021.

19. Respondent has been enrolled in Chabot College (Chabot) since Fall 2019. Respondent is currently studying business administration at Chabot and pursuing his associate degree. He plans to transfer to the University of California, Berkeley to pursue his bachelor's degree next year. Through his studies, respondent has earned real estate agent and broker certificates of proficiency, a welding technology certificate, a forklift operator's license, and hazardous materials certifications.

20. Respondent is a member of the Restorative Integrated Self-Education (RISE) Program at Chabot. RISE offers peer mentorship and guidance toward achieving educational goals. Through RISE, respondent was introduced to the Rubicon Education Partnership (Rubicon) in 2021, which is a community-based employment and education reentry program in East Oakland. Rubicon provides respondent with access

to financial coaching, career counseling and wellness resources. RISE and Rubicon have provided respondent with support and stability in moving forward with his life.

21. In 2021, respondent was hired through Chabot as an accounting business tutor and a RISE peer mentor. He currently works approximately 20 hours per week with the RISE program.

22. In December 2022, respondent was chosen to be a California Justice Leader (CJL) AmeriCorps peer mentor and reentry navigator. CJL offers assistance with education, employment and community building skills. In his role, respondent helps young adults from 18 to 35 years old who have been impacted by the criminal justice system transition back into their communities after their release. Respondent works approximately 20 hours per with CJL. Respondent is very proud that he is part of the effort to help others transform their lives through education and build up the communities around him.

23. Respondent has worked hard and made significant progress since 2018. Respondent testified that he has reached goals that he once thought were unattainable. Respondent testified that passing the California real estate exam was one of his proudest accomplishments.

24. Respondent has always liked to build, and most of the jobs he has held have been related to construction, including roofing, carpentry, plumbing and electrical. Respondent testified that he knows what it takes to build and repair a home and appreciates the value of a home. Respondent is seeking a real estate license because he believes he has the expertise to connect people to homes and wishes to one day pursue his dream of developing affordable housing to address the housing

crisis. Respondent also believes that obtaining his license will increase his financial stability and create generational wealth for his children and grandchildren.

25. Respondent believes that he has demonstrated his ability to perform the duties of a real estate agent by obtaining education pertaining to real estate and passing the real estate exam.

26. Respondent testified that he understands the fiduciary obligations of a real estate licensee, including the duties to act honestly, fairly and with integrity, and he is committed to adhering to those duties and obligations.

27. Respondent wrote in his letter to the Department that if granted the license, he "will leverage his ability to meet people where they are, provide opportunity to others, to be an advocate and to counsel clients to make the best decisions for their futures."

28. Respondent testified that there are real estate brokers who would be willing to work with him if he obtains his license.

29. Jess Temple, an attorney with Rubicon, wrote a letter dated May 2, 2023, and testified credibly at hearing in support of respondent's application for a salesperson license. Temple has worked with respondent since he enrolled in Rubicon Programs on August 5, 2021. Temple testified that of all the individuals that she has worked with in her decade of working in direct services, respondent is one of the most motivated to transform his life. She has observed that respondent takes responsibility for his mistakes and is committed to changing and improving his life, his family's lives and his community.

30. Temple testified that the convictions listed in the statement of issues are eligible for dismissal under Penal Code section 1203.4, that respondent is pursuing expungements in Alameda County, Fresno County, and San Joaquin County, and that there are significant wait times for processing expungement petitions. According to Temple, the hearing dates have been set by the courts for August, October, and November 2023. Temple confirmed that respondent has completed the terms of his sentences and meaningfully addressed the circumstances that led to his criminal background to avoid future issues. Temple is confident that the expungements will be granted. Temple testified that respondent is passionate about real estate and that she believes he is qualified to work in the field. Temple confirmed that respondent's sobriety date is October 2017, and that he has access to substance abuse services.

31. Debbie A. Green, M.A., one of the assigned counselors for the RISE program, wrote a letter dated April 26, 2023, in support of respondent working in the real estate field. Green has worked with respondent as his academic counselor since Fall 2019. Green wrote that respondent is motivated and dependable, currently has a grade point average of 3.54, is an active participant in RISE, has immersed himself in the academic community, and tutors and supports other students. Green wrote that respondent "has been so effective as a role model to our students, that the college hired him as a student assistant where he works with our current and new students assisting them in matriculating into the college system." Green wrote that the most important indicator of respondent's rehabilitation is his ability to take responsibility for himself, whether it be in the workforce, as a student or as a role model.

32. Jamal Cooks, Ph.D., Interim Vice President of Academic Services at Chabot at the time, wrote a letter dated April 27, 2023, in support of respondent. Cooks wrote that respondent is a "shining example of being a scholar" at Chabot,

having earned multiple certificates and preparing to graduate with an associate degree in business and transfer to a four-year college. Cooks described respondent as competent, confident, energetic, charismatic, self-confident, and possessing leadership abilities. Cooks also wrote that respondent has overcome many personal issues, and that "his life experiences allow him to relate to a diverse group, to accept people for who they are, and to look at situations from an optimistic perspective." Cooks provides his "highest recommendation" for respondent.

33. Mel Flanagan, a senior program manager at CJL, wrote a letter dated May 1, 2023, in support of respondent. Flanagan has worked with respondent since he started his position with CJL earlier this year. In his role, respondent is providing coaching and reentry navigation to individuals who are or were incarcerated as juveniles. Flanagan writes that respondent is attentive, responsible, supportive, and collaborative, and that his "work ethic is driven by his passion for equity and a desire to improve life for others in his community." Flanagan wrote that he would recommend respondent without question.

34. Rudolph Howell, the lead impact coach for Rubicon, wrote a letter dated May 2, 2023, highly recommending that respondent be issued a California real estate license. Howell wrote that Rubicon's mission is to transform East Bay communities by equipping people to break the cycle of poverty. Howell wrote that since respondent enrolled in August 2021, he has remained engaged with their program and in his college courses along with attending job readiness training and working full time. Howell wrote that "[respondent] has dedicated his life to change. His actions show that he [is] determined to succeed to be an example to others who have faced barriers to success from the challenges that affect those experiencing poverty." Howell believes that obtaining a real estate license will afford respondent the opportunity to work with

organizations focusing on affordable housing and developing solutions to the housing crisis in California.

35. Victor Camarena, a student assistant with RISE, wrote a letter dated April 26, 2023, in support of respondent. Camarena has worked with respondent for two years. Camarena wrote that respondent is nurturing, organized, has good judgement, and shows great determination whenever faced with a difficult task, and will be a great asset to any job or organization he joins.

36. Eric Gentry, the program manager of RISE, wrote a letter dated May 3, 2023, in support of respondent. Gentry wrote that "RISE is extremely grateful for [respondent's] strong leadership in the program, leading the way by exemplary service to underprivileged populations while being the example of redemption to his peers. I could not think of a more selfless individual doing extraordinary work, excelling in all his endeavors while also healing from his own past."

LEGAL CONCLUSIONS

1. Respondent bears the burden of proof to establish, by a preponderance of the evidence, that he is qualified for the license he seeks to obtain, including rehabilitation from his criminal offenses. (*Martin v. Alcoholic Beverage Control Appeals Bd.* (1959) 52 Cal.2d 259, 265; Evid. Code, §§ 115, 500.)

2. The Real Estate Commissioner (Commissioner) may deny an application for a real estate license if the applicant has been convicted of a crime or released from incarceration within the preceding seven years from the date of the application that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 480, subd. (a)(1), 10177, subd. (b) [all further statutory references

are to the Business and Professions Code unless stated otherwise].) The preceding seven-year limitation shall not apply if the applicant was convicted of a serious felony, as defined in Penal Code section 1192.7 (§ 480, subd. (a)(1)(A)), or a substantially related financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of the license (§ 480, subd. (a)(1)(B)).)

Respondent's 1995 robbery conviction set forth in Factual Findings 10 and 11 (a serious felony pursuant to Penal Code section 1192.7), and his 2014 convictions for possession of stolen property and unlawful possession of a vehicle set forth in Factual Findings 6 and 7 (which are within seven years of the date of respondent's application), are substantially related because they involved the doing of an unlawful act with the intent of conferring a financial benefit upon the perpetrator. (§ 480, subd. (a)(1), Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Respondent's 2009 conviction for check forgery set forth in Factual Findings 8 and 9 (a financial crime currently classified as a felony that is directly related to the fiduciary qualifications, functions, or duties of a real estate license), is substantially related because it involved the employment of fraud or deceit to achieve an end. (§ 480, subd. (a)(1), Cal. Code Regs., tit. 10, § 2910, subd. (a)(4).) Respondent's 2018 conviction for possession of a firearm by a prohibited individual set forth in Factual Findings 3 through 5 is substantially related because it involved a willful failure to comply with a court order. (§ 480, subd. (a)(1), Cal. Code Regs., tit. 10, § 2910, subd. (a)(9).) Furthermore, these convictions taken together demonstrate a pattern of repeated and willful disregard for the law. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10).) Accordingly, cause exists under sections 480, subdivision (a)(1), and 10177, subdivision (b), to deny respondent's license application, based on these five convictions.

Respondent's 2009 misdemeanor conviction for second degree burglary set forth in Factual Findings 8 and 9 does not constitute cause for denial because it occurred more than seven years before respondent's application, and there is insufficient evidence to demonstrate that the conviction qualifies under any of the other section 480 criteria.

3. The Commissioner may deny an application for a real estate license if the applicant has engaged in conduct that constitutes fraud or dishonest dealing (§ 10177, subd. (j)). Respondent's conviction for check forgery set forth in Factual Findings 8 and 9 constitutes cause to deny his license application under section 10177, subdivision (j).

4. "Notwithstanding any other provision of this code, a person shall not be denied a license on the basis of any conviction, or on the basis of acts underlying the conviction, that has been dismissed pursuant to section 1203.4 . . . or a comparable dismissal or expungement." (§ 480, subd. (c).) Although respondent has petitioned for expungements of his convictions, the convictions have not yet been expunged, therefore subdivision (c) of section 480 does not apply.

Determination of Discipline

5. Cause for denial having been established, the remaining issue is whether granting respondent a license is consistent with public protection. (§ 10050.1.) The purpose of administrative proceedings regarding professional licenses is not to punish the applicant or licensee, but to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786; *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 768.)

6. In California Code of Regulations, title 10, section 2911, the Commissioner has established criteria to be used in evaluating the rehabilitation of an

applicant. The relevant criteria to be considered in this case include: the passage of more than two years since the most recent conviction, the time elapsed since commission of the offense (subd. (a)(1)); restitution to any person who has suffered monetary losses related to respondent's acts (subd. (a)(2)); successful completion of probation (subd. (a)(5)); abstinence from the use of controlled substances for not less than two years if the conduct which is the basis to deny licensure is attributable in part to the use of controlled substances (subd. (a)(6)); payment of fines and monetary penalties (subd. (a)(7)); stability of family life and fulfillment of familial responsibilities subsequent to the criminal convictions (subd. (a)(8)); completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement (subd. (a)(9)); significant or conscientious involvement in community programs designed to provide social benefits or ameliorate social problems (subd. (a)(12)); new and different social relationships from those which existed at the time of the criminal offenses (subd. (a)(13)); and change in attitude from that which existed at the time of the commission of the criminal offenses, including testimony and/or other evidence of rehabilitation submitted by the applicant (subd. (a)(14)).

7. Respondent's record of convictions spans a number of years and is serious. Nevertheless, respondent has met the above rehabilitation criteria. It has been approximately five and a half years since his last conviction, and over nine years or more since the theft-related offenses. Respondent also demonstrated a positive attitude about his past. Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933. Respondent completed his probation requirements including paying restitution and fines and is in the process of seeking expungements of the convictions. Although respondent's good behavior while on probation is accorded less weight (see

In re Gossage (2000) 23 Cal.4th 1080, 1099), respondent has now been off of probation for two and a half years.

8. Respondent has made excellent progress in turning his life around since 2018. Respondent has engaged in substance abuse counseling and is currently sober. He has a relationship with his family and is successfully pursuing his associate degree at Chabot with a plan to attend a four-year university. He has excelled in his studies and obtained educational certificates in real estate, as well as passed the real estate exam. Respondent has gained insight, formed new and different social relationships, and is working to lead a better life. Respondent is doing meaningful work as a peer mentor in the RISE program and a reentry navigator for Rubicon, where he uses his own experience to provide support and guidance to others impacted by the criminal justice system. Respondent has the support of those that have worked with him at Chabot, RISE, and Rubicon. Respondent has clearly shown a change in attitude since the time of his offenses, which of the many rehabilitation criteria is "arguably the most important in predicting future conduct." (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.)

9. Respondent has demonstrated sufficient rehabilitation from his criminal offenses to establish that he is unlikely to engage in criminal conduct in the future and that he can be trusted to discharge the duties of a real estate salesperson in a manner consistent with public safety. The public will be adequately protected by the following order, which allows respondent to obtain a real estate salesperson license on a restricted basis.

ORDER

The application of respondent Marvin Milton Warren 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. Respondent shall submit with any application for a license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form 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 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. 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 suspension or revocation of that license.

DATE: 07/25/2023

Michelle Dylan

MICHELLE DYLAN

Administrative Law Judge

Office of Administrative Hearings