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FEB 28 2014

BUREAU OF REAL ESTATE

By *J. Dumole*

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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

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In the Matter of the Accusation of
FRANK RICHARD MARTINEZ,
Respondent.

No. H-32078 LA

ORDER DENYING REINSTATEMENT OF LICENSE AND
GRANTING RIGHT TO A RESTRICTED LICENSE

On May 9, 2006, a Decision revoking Respondent's real estate salesperson license was rendered. Said Decision was based on two convictions in 2006.

On September 10, 2012, Respondent petitioned for reinstatement of Respondent's real estate license.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's real estate salesperson license, in that:

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1 The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State*
2 *Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and
3 integrity than an applicant for first time licensure. The proof must be sufficient to overcome the
4 prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

5 The Bureau has developed criteria in Section 2911, Title 10, California Code of
6 Regulations (Regulation) to assist in evaluating the rehabilitation of an applicant for
7 reinstatement of a license. Among the criteria relevant in this proceeding are:

8 Regulation 2911(k)-Correction of business practices resulting in injury to others
9 or with the potential to cause such injury

10 Respondent has not been licensed for eight years. Correction of past business
11 practices cannot be determined until after Respondent is properly licensed.

12 Given the violations found and the fact that Respondent has not established that
13 Respondent has complied with Regulation 2911(k) I am not satisfied that Respondent is
14 sufficiently rehabilitated to receive a real estate salesperson license license.

15 ' NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
16 reinstatement of Respondent's real estate salesperson license is denied.

17 I am satisfied, however, that it will not be against the public interest to issue a
18 restricted real estate salesperson license to Respondent.

19 A restricted real estate salesperson license shall be issued to Respondent pursuant
20 to Code Section 10156.5 if Respondent within twelve (12) months from the date hereof
21 providing Respondent:

22 (a) Qualifies for, takes and passes the written examination required to obtain a real
23 estate salesperson license;

24 (b) Makes application and pays the appropriate fee for said license;

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1 1. The restricted license issued to Respondent shall be subject to all of the
2 provisions of Code Section 10156.7 and to the following limitations, conditions and restrictions
3 imposed under authority of Code Section 10156.6. The restricted license issued to Respondent
4 may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of
5 Respondent's conviction or plea of nolo contendere to a crime which is substantially related to
6 Respondent's fitness or capacity as a real estate licensee.

7 2. The restricted license issued to Respondent may be suspended prior to hearing
8 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that
9 Respondent has violated provisions of the California Real Estate Law, Regulations of the Real
10 Estate Commissioner or conditions attaching to the restricted license.

11 3. Respondent shall not be eligible to apply for the issuance of an unrestricted
12 real estate license nor for the removal of any of the conditions, limitations or restrictions of a
13 restricted license until two (2) years have elapsed from the effective date of this Decision.

14 4. Respondent shall submit with any application for license under an employing
15 broker, or any application for transfer to a new employing broker, a statement signed by the
16 prospective employing real estate broker on a form approved by the Bureau of Real Estate which
17 shall certify:

18 (a) That the employing broker has read the Decision of the Commissioner which
19 granted the right to a restricted license; and

20 (b) That the employing broker will exercise close supervision over the
21 performance by the restricted licensee relating to activities for which a real estate license is
22 required.

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