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FILED

SEP 19 2018

DEPARTMENT OF REAL ESTATE

By R. [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

JOSHUA MICHAEL DEMAREST,

Respondent.

No. H-34657 LA

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

On July 10, 2008, in Case No. H-34657 LA, a Decision was rendered revoking the real estate salesperson license of Respondent effective August 7, 2008.

On March 21, 2018, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

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

I have considered Respondent's petition and the evidence submitted in support thereof.

1 The Department has developed criteria in Section 2911 of Title 10, California
2 Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for
3 reinstatement of a license. Among the criteria relevant in this proceeding are:

4 Regulation 2911(a)(12): Significant or conscientious involvement in community,
5 church or privately-sponsored programs designed to provide social benefits or to ameliorate
6 social problems.

7 In response to Question 12 on his Enforcement Petition Application, to wit:
8 “Are you or have you been active in social, civic, or community groups?” Respondent answered
9 “no”.

10 Regulation 2911(a)(14)(5): Absence of subsequent felony or misdemeanor
11 convictions that are reflective of an inability to conform to societal rules when considered in
12 light of the conduct in question.

13 Subsequent to his license discipline, on June 16, 2011, before the Superior Court
14 of California, County of Los Angeles, in Case No. 1LT00205-01, Respondent was convicted for
15 violating Vehicle Code section 23152(b) (driving with a blood alcohol level of .08% or higher), a
16 misdemeanor. Respondent had a prior conviction for driving under the influence during the time
17 of his licensure.

18 Respondent has failed to demonstrate to my satisfaction that Respondent has
19 undergone sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted real
20 estate salesperson license.

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

23 A restricted real estate salesperson license shall be issued to Respondent pursuant
24 to Section 10156.5 of the Business and Professions Code, if Respondent satisfies the following
25 conditions prior to and as a condition of obtaining a restricted real estate salesperson license
26 within twelve (12) months from the effective date of this Order:

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1 1. Respondent shall qualify for, take and pass the real estate salesperson
2 license examination.

3 2. Submittal of a completed application and payment of the fee for a real
4 estate salesperson license.

5 The restricted license issued to Respondent shall be subject to all of the provisions
6 of Section 10156.7 of the Business and Professions Code and to the following limitations,
7 conditions and restrictions imposed under authority of Section 10156.6 of that Code:

8 A. The restricted license issued to Respondent may be suspended prior to
9 hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or
10 plea of nolo contendere to a crime which is substantially related to Respondent's fitness or
11 capacity as a real estate licensee.

12 B. The restricted license issued to Respondent may be suspended prior to
13 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the
14 Commissioner that Respondent has violated provisions of the California Real Estate Law, the
15 Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to
16 the restricted license.

17 C. Respondent shall not be eligible to apply for the issuance of an
18 unrestricted real estate license nor the removal of any of the limitations, conditions or
19 restrictions of a restricted license until two (2) years have elapsed from the date of the issuance
20 of the restricted license to Respondent.

21 D. Respondent shall submit with any application for license under an
22 employing broker, or any application for transfer to a new employing broker, a statement signed
23 by the prospective employing real estate broker on a form approved by the Department of Real
24 Estate which shall certify:

25 1. That the employing broker has read the Decision of the Commissioner
26 which granted the right to a restricted license; and

27 2. That the employing broker will exercise close supervision over the

1 performance by the restricted licensee relating to activities for which a real estate license is
2 required.

3 E. Respondent shall notify the Commissioner in writing within 72 hours of
4 any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post
5 Office Box 137007, Sacramento, CA 95813-7007. The letter shall set forth the date of
6 Respondent's arrest, the crime for which Respondent was arrested and the name and address of
7 the arresting law enforcement agency. Respondent's failure to timely file written notice shall
8 constitute an independent violation of the terms of the restricted license and shall be grounds for
9 the suspension or revocation of that license.

10 This Order shall become effective at 12 o'clock noon on **OCT 09 2018**

11 IT IS SO ORDERED September 11, 2018

12 DANIEL J. SANDRI
13 ACTING REAL ESTATE COMMISSIONER

14 *Daniel J. Sandri*

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