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BUREAU OF REAL ESTATE

By [signature]

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Application of JEFRE TOLBERT, Respondent.	CalBRE No. H-38435 LA OAH No. 2012110852

DECISION

The Proposed Decision dated September 20, 2013, 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.

Pursuant to Section 11517(c) (2) of the Government Code, the following corrections are made to the Proposed Decision.

Proposed Decision, Page 3, Paragraph 11, Line 2, "case number 7lC05177" is corrected to read "case number 7LC05177."

Proposed Decision, Page 4, Paragraph 17, Line 2, "case number KMSTR08-896" is corrected to read "YKMSTR08-896."

Proposed Decision, Page 4, Paragraph 19, Line 6, "Respondent testified that he had has a valid drivers license" is corrected to read " Respondent testified that he has had a valid drivers license."

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to respondent. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy of Section 11522 is enclosed hereto for the information of respondent.

If and when a petition for removal of restrictions is submitted, all competent evidence of rehabilitation presented by the respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is enclosed for respondent's information.

This Decision shall become effective at 12 o'clock noon on November 20, 2013.

IT IS SO ORDERED 10/25/2013.

REAL ESTATE COMMISSIONER

[signature]

WAYNE S. BELL

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: JEFRE LEE TOLBERT Respondent.	Case No. H-38435 LA OAH No. 2012110852

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on August 22, 2013, in Los Angeles, California. Julie To, Real Estate Counsel, represented Complainant. Frank M. Buda, Attorney at Law, represented Respondent Jefre Lee Tolbert (Respondent) who was also present. Oral and documentary evidence was received, and argument was heard. The record was closed and the matter submitted on August 22, 2013.

1. Robin Trujillo filed the Statement of Issues against Respondent in her official capacity as Deputy Real Estate Commissioner

2. On May 2, 2011, Respondent filed an application for a California Real Estate Salesperson license with the Bureau of Real Estate (BRE). Respondent appealed the denial of his application and this hearing ensued.

Convictions

3. On February 16, 1993, in the Superior Court of the State of California, Los Angeles County, case number 93M00937, Respondent was convicted of violating Penal Code section 12025, subdivision (a)(2) (Carrying a concealed weapon), a misdemeanor. Respondent was sentenced to one year of probation and 10 days in jail. The facts and circumstances of the conviction are that Respondent carried a handgun into a high school basketball game and was arrested at the security checkpoint.

4. On March 8, 1995, in the Superior Court of the State of California, Los Angeles County, case number X58477, Respondent pled guilty and was convicted of violating Penal code section 853.7 (failure to appear), a misdemeanor. The facts and

circumstances are that Respondent failed to appear for a regularly scheduled court appearance without excuse.

5. On January 24, 1996, in the Superior Court of the State of California, Los Angeles County, case number 95M09108, Respondent pled nolo contendere and was convicted of violating Vehicle Code section 14601.1, subdivision (a) (driving when privilege suspended or revoked for other reasons), a misdemeanor. Respondent was sentenced to one year of probation, 15 days in jail and ordered to pay fines. The facts and circumstances are that Respondent was found driving while his driver's license was suspended.

6. On March 15, 1996, in the Superior Court of the State of California, Los Angeles County, case number 6LM020301, Respondent pled nolo contendere and was convicted of violating Long Beach Municipal Code section 9.22.10 (public intoxication), a misdemeanor. Respondent was sentenced to one day in jail. The facts and circumstances are that Respondent was found intoxicated in a public place.

7. On July 12, 1996, in the Superior Court of the State of California, Los Angeles County, case number 6LM06017, Respondent pled nolo contendere and was convicted of violating Penal Code section 242 (battery), a misdemeanor. Respondent was sentenced to three years of probation, 10 days community service, and ordered to pay fines. He was also ordered not to molest, annoy, vex, harass, harm or strike the victim. The facts and circumstances are that Respondent "flicked" or "thumped" his ex-girlfriend on the side of the head with his thumb and forefinger in the midst of a verbal dispute about the inebriated condition that his ex-girlfriend was in when she came to pick up their child from his home.

8. On April 23, 1997, in the Superior Court of the State of California, Los Angeles County, case number 6LC03228, Respondent pled nolo contendere and was convicted of violating Vehicle Code section 14601.1, subdivision (a) (driving when privilege suspended or revoked for other reasons), a misdemeanor. Respondent was sentenced to three years of probation, 20 days of Cal Trans Community Service and ordered to pay fines. The facts and circumstances are that Respondent was found driving while his driver's license was suspended.

9. December 15, 1997, in the Superior Court of the State of California, Los Angeles County, case number 6LL08387, Respondent pled nolo contendere and was convicted of violating Vehicle Code section 14601.1, subdivision (a) (driving when privilege suspended or revoked for other reasons), a misdemeanor. Respondent was sentenced to one year of probation, 10 days in jail and ordered to pay fines. The facts and circumstances are that Respondent was found driving while his driver's license was suspended.

10. On December 16, 1997, in the Superior Court of the State of California, Los Angeles County, case number 7LC04090, Respondent pled nolo contendere and was convicted of violating Vehicle code section 12500, subdivision (a) (unlawful to drive unless licensed), a misdemeanor. Respondent was sentenced to three years of summary probation,

seven days in jail and to pay fines. The facts and circumstances of the conviction are that Respondent was found driving with a suspended license.

11. On May 5, 1998, in the Superior Court of the State of California, Los Angeles County, case number 7lC05177, Respondent pled guilty and was convicted of violating Vehicle Code section 14601.1, subdivision (a) (driving when privilege suspended or revoked), a misdemeanor. Respondent was sentenced to three years of probation, 22 days in jail and ordered to pay fines. The facts and circumstances of the conviction are that Respondent was found driving with a suspended driver's license.

12. On April 22, 1999, in the Superior Court of the State of California, Los Angeles County, case number 8LL07698, Respondent pled no lo contendere and was convicted of violating Vehicle Code section 14601, subdivision (a) (driving when privilege suspended or revoked), a misdemeanor. Respondent was sentenced to three years of probation and ordered to pay fines or serve 20 days in jail. The facts and circumstances of the conviction are that Respondent was found driving with a suspended driver's license.

13. On June 8, 1999, in the Superior Court of the State of California, Los Angeles County, case number 8LL07898, Respondent pled guilty and was convicted of violating Vehicle Code section 14601.1, subdivision (a) (driving when privilege suspended or revoked for other reasons), a misdemeanor, with an enhancement for violation of Vehicle Code section 23582 (speeding). Respondent was sentenced to one year of probation, 10 days in jail, and ordered to pay fines. The facts and circumstances of the conviction are that Respondent was found speeding and driving with a suspended driver's license.

14. On October 31, 2005, in the Superior Court of the State of California, Los Angeles County, case number 5LC05197, Respondent pled no lo contendere and was convicted of violating Vehicle Code section 12500, subdivision (a) (driving without a valid license). Respondent was sentenced to 12 months of probation and ordered to pay fines or perform five days of community service, and 10 days of Cal Trans community service. The facts and circumstances of the conviction are that Respondent was found driving while his license was suspended.

15. On August 15, 2008, in the Superior Court of the State of California, Orange County case number 08HM03808, Respondent pled guilty and was convicted of violating Vehicle Code section 23152, subdivision (a) (driving while under the influence of drugs or alcohol), a misdemeanor, with an enhancement for violation of Vehicle Code section 23582 (speeding). Respondent was sentenced to three years probation, 10 days of Cal Trans Community service, complete a three month First Offender Alcohol program, complete the Mothers Again Drunk Driving (MADD) program and pay fines. The facts and circumstances of the conviction are that Respondent was found under the influence of alcohol and speeding on a public roadway after having a drink at a pool tournament.

16. On November 7, 2008, in the Superior Court of the State of California, Orange County, case number 08WM10617, Respondent pled guilty and was convicted of violating

Vehicle Code section 14601.2, subdivision (a) (driving when privilege suspended or revoked), a misdemeanor. Respondent was sentenced to three years of probation, 10 days in jail and ordered to pay fines. The facts and circumstances of the conviction are that Respondent was found driving while his license was suspended.

17. On January 23, 2009, in the Superior Court of the State of California, Siskiyou County, case number KMSTR08-896, Respondent pled guilty and was convicted of violating Vehicle Code section 14601.5, subdivision (a) (driving when privilege suspended or revoked), a misdemeanor. Respondent was ordered to pay fines. The facts and circumstances of the convictions are that, in April of 2008, Respondent was found driving with a suspended license.

18. Respondent's crimes are substantially related to the qualifications, functions and duties of a real estate salesperson. To begin, Respondent's convictions show a pattern of disregard for his legal obligations, including requirements to obtain a valid license, and obey a court order. Respondent also was convicted of carrying a concealed weapon and battery, both of which are crimes involving the threat of substantial injury to another person.

Mitigation/Rehabilitation

19. Respondent testified on his own behalf at the administrative hearing. He was candid about the mistakes he had made and the facts and circumstances of his convictions. He was respectful of the administrative process and maintained a professional and courteous demeanor throughout the hearing. Respondent provided credible testimony about the changes he had made in his life and appeared genuinely remorseful. The majority of Respondent's crimes occurred when Respondent was in his twenties. Respondent is now a 40-year-old man and has matured. Respondent testified that he had has a valid driver's license and presented his license at the hearing for inspection. Respondent has completed probation for all of his convictions, and completed all requirements including attending court ordered classes and alcoholics anonymous meetings and has paid all fines.

20. Respondent is the father and stepfather to six girls. He has been married for two years and actively participates in the school and sports activities of all of his children. Respondent's two oldest daughters are in college. The other four daughters live with Respondent and his wife.

21. Respondent is an experienced salesperson having worked in both appliance and electronics sales for many years. Additionally, Respondent worked as a broker's assistant at Home Loans Unlimited for four years during the period of 2005 to 2009.

22. Respondent regularly attends Glory Christian Church and participates in the Men's Fellowship and Bible Study groups. Respondent attributes his past bad conduct to "a lack of faith." Respondent testified that he was able to make changes in his life and change his outlook once he engaged his faith and "found something bigger than myself."

Respondent also attributes as motivation to change his behavior and better himself to the birth of his youngest daughter in January of 2009.

23. Respondent volunteers his time coaching youth athletics and has participated in community charity events, including the Revlon Team Walk for Women's Cancer and the Valentine's Day Autism Walk.

24. Respondent has completed some Business classes at the University of Phoenix and statutory courses in Real Estate Principles, Real Estate Practice and Real Estate Finance with Premier Schools, Inc. since his last conviction.

25. Respondent has been sober since his last arrest in April of 2008.

26. Respondent's testimony was corroborated by his wife, his brother-in-law, two of his daughters, his friends, a lawyer and two real estate brokers through testimony and letters of support.

27. Respondent's wife provided candid testimony acknowledging her husband's criminal past and his current stable family life. She said that he has always been honest with her and works hard to support his family. She testified that she saw a marked change in his motivation to get his life in order when their daughter was born in 2009. She also sees his excitement about real estate and hopes that he will get a chance to become a real estate salesperson. She testified that he is kind and devoted. In a letter to the BRE, she wrote:

> I believe that Jefre has seen thru to the years what his past has held him back from. He is full of persistence, loyalty, and accountability...I fully believe that Jefre has learned form his mistakes in the past and wants that second chance to prove it. His passion is Real Estate, he wants to be able to provide a good life, as well as be able to be a part of helping other families like us, accomplish their dream of buying their first home.

28. Respondent's brother-in-law Trevon Limbrick, a county probation officer who has known Respondent for 15 years, testified that he has seen Respondent work very hard to overcome his past. In his testimony, he remarked that Respondent was "always welcome in my home." He further commented that he does not welcome everyone into his home "whether they are family or not." He believes that Respondent is honest, has changed his life and is not a danger to the public. In an August 20, 2013 letter to the BRE, Mr. Limbrick wrote:

> Jefre is a loving husband and devoted father to 6 girls. I am aware of Jefre's prior convictions dating back to 1993 and his current issue with the Department of Real Estate. Jefre has since changed his attitude and personally expressed to me both remorse and embarrassment for his actions that led to those convictions. I have never seen Jefre intoxicated or act in an aggressive

manner towards anyone....I feel that Jefre has matured significantly over the last several years and I support him in obtaining his real estate license.

29. Respondent's childhood friend, Trayvon Grant (Grant), an account manager with a large corporation, testified to Respondent's good character. Grant is a few years younger than Respondent. He testified that Respondent always warned him and other younger men not to get into trouble and to learn from the mistakes that Respondent had made. Grant testified that Respondent was excited about real estate and has a background in sales. Grant testified that Respondent has always been honest about his convictions, has tried to be helpful to others, and has made changes to his life, especially since the birth of his daughter in 2009. In a letter of reference that Grant submitted to the BRE, he acknowledged Respondent's conviction and stated:

> While I cannot condone any of his past mistakes, I can say that I have never seen someone so remorseful of his past... [Respondent] has a very strong work ethic and is a family man with integrity...I support him 100 percent and believe that if granted a real estate license he will be a strong asset to the department of real estate and most of all to families who...trust in him all their real estate needs.

30. Respondent also presented letters of reference and support from real estate brokers Richie Schimkus and Tanya M. Burns. Both brokers wrote to the BRE in support of Respondent's application. Mr. Schimkus and Respondent were colleagues and salespersons at Best Buy. Respondent encouraged Mr. Schimkus to consider a career in real estate and Mr. Schimkus eventually became a real estate broker and the owner of his own brokerage. Of Respondent, Mr. Schimkus wrote:

> ...Jefre has consistently displayed a high moral character while always placing the needs of the customer as the most important priority... Jefre's passion for real estate became palatable. It was his encouragement that persuaded me to acquire my Real Estate Broker's license and eventually establish my own brokerage. [T]here are few I would want to work with more than Jefre Tolbert. Any time a broker commits to a working relationship with a salesperson, the highest degree of trust must be placed that the salesperson will act in accordance with the laws. With Jefre, I have no doubts about his obedience to the law. More importantly, I know that Jefre has a moral and ethical code that is far stricter than any law. It is his character that should serve as a model for anyone eager to join the world of real estate.

31. In her letter of support for Respondent, Tanya Burns wrote that she was aware of Respondent's convictions, but nevertheless recommended his licensure. She wrote:

> There are several reasons I am writing this letter of recommendation. The first reason is because I have known Jefre Tolbert for over 25 years and I have seen him transform into a great man. I believe that Jefre will use all his life

experiences to be an agent that will work with all types of people and make home ownership their reality. I have spoken with Jefre regarding some of his past mistakes and I truly believe that he has changed his life for the better...I hope that you will consider issuing Jefre a real estate license so that he can truly be an asset to the real estate industry. We need more agents who are honest, hardworking and truly care about our customers. I believe that Jefre Tolbert can and will be that type of agent if given the opportunity.

32. Respondent provided an August 15, 2013 letter to the BRE from David Mitchell, Sr., a family friend of 30 years. Of Respondent, Mr. Mitchell writes:

> I realize that Mr. Tolbert has struggled in the past—his record shows what his struggles were. Over the past five years, however, I have observed many positive changes in Mr. Tolbert's lifestyle and behavior. He is dedicated to his family and has a strong desire to provide for them....I respect Mr. Tolbert for making the necessary changes and improvements in order to be a good provider. Mr. Tolbert is very passionate about his work in real estate. I believe that he has learned from his mistakes, and from the consequences of those mistakes. He has expressed to me that he is remorseful for using poor judgment in the past and putting others in harm's way. I believe that he is sincerely remorseful and that he intends to stay on the positive path that he is on.

33. Samyra Hicks, an attorney licensed in the state of Georgia, also wrote a letter in support of Respondent's application for a real estate license. Ms. Hicks wrote that she had discussed professional ethics and obligations with Respondent and was confident that he would conduct himself ethically and honestly.

34. Respondent's 16-year-old daughter also wrote a letter in his support. In part, she wrote:

> I know that if my dad was to get his Real Estate license he would do great and will prove everyone that doubted him and show everybody that he really can get the job done, no matter what his past mistakes are I know he has owned up to them and teaches me and my sisters to do the same thing. I think everyone makes mistakes but sometimes it's not what you did it's what you do after you made your mistake and what you do to better the situation. I learned that saying from him and I use it whenever I make a mistake.

35. His 14-year-old stepdaughter also wrote a letter of support and attesting to his kindness and support for her. In her letter, she wrote of Respondent's good character and his dedication to his real estate studies. Respondent's stepdaughter wrote that Respondent is "one of the most reliable, trustworthy, honest people I know."

LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to deny Respondent's application for a real estate salesperson license pursuant to Business and Professions Code sections 475 subdivision (a)(2), 480, subdivision (a), and 10177, subdivision (b), because Respondent has been convicted of multiple crimes (see Factual Findings 3-18). Further, Respondent has been convicted of crimes that are substantially related to the qualifications, functions, or duties of a real estate salesperson. (Factual Findings 3-18)

2. The Department has issued regulations that specify the types of crimes that are "substantially related" to the qualifications, functions, or duties of an applicant for a real estate salesperson license. Respondent's multiple convictions for driving with a suspended license are "substantially related" under California Code of Regulations, title 10 (CCR) section 2910, subdivision (a)(7) and(a)(10), for continually and willfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained before engaging in a course of conduct (i.e. driving). Respondent's conviction for failing to appear in court is "substantially related" under CCR section 2910, subdivision (9), as failure to obey a court order and Respondent's convictions for battery and carrying a concealed weapon are "substantially related" under CCR, section 2910, subdivision (a)(8), for doing an unlawful act with the threat of substantial injury to another person. Taken together Respondent's convictions are "substantially related" under CCR, section 2910, subdivision (10) as conduct which demonstrates a pattern of repeated and willful disregard of law. (Factual Findings 3-18)

3. Criteria have been developed by the Department to evaluate the rehabilitation of an applicant who has committed a crime. These criteria, found at CCR, section 2911, are summarized as follows:

Subdivision (a), passage of at least two years since the conviction or the underlying acts, or longer if there is a history of substantially related acts;
Subdivision (b), restitution;
Subdivision (c), expungement of the conviction;
Subdivision (d), expungement of the requirement to register as an offender;
Subdivision (e), completion of, or early discharge from, the criminal probation;
Subdivision (f), abstinence from drugs or alcohol that contributed to the crime;
Subdivision (g), payment of any criminal fines or penalties;
Subdivision (h), stability of family life;
Subdivision (i), enrollment in or completion of educational or training courses;
Subdivision (j), discharge of debts to others, or earnest efforts to do so;
Subdivision (k), correction of business practices causing injury;
Subdivision (l), significant involvement in community, church or private programs for social betterment;

Subdivision (m), new and different social and business relationships; and

Subdivision (n), change in attitude from the time of conviction to the present, evidenced by: testimony of the applicant and others, including family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns, or probation or parole officers or law enforcement officials; psychiatric or therapeutic evidence; and absence of subsequent convictions.

4. Applied here, Respondent meets many of the criteria set forth above. More than five years have elapsed since the underlying events of Respondent's last conviction (subd.(a)); respondent has been discharged from probation (subd. (e)); abstained from the use of alcohol (subd. (f)); paid all fines (subd. (g)); has a stable family life (subd. (h)); completed real estate and business courses since his last conviction (subd. (i)); has significant involvement in his church, youth athletics and community charities (subd. (l)); and has new and different social and business relationships (subd. (m)). Perhaps, most importantly, Respondent has displayed a dramatic change in attitude from the time of his last conviction to the present, evidenced by his testimony and testimony and letters from others, including family members, friends and others familiar with his previous conduct and subsequent attitudes and behavior patterns. Moreover, Respondent has had no additional convictions since 2009. The criteria set forth in subdivisions (b), (c), (d), (j) and (k) are not applicable here. (Factual Findings 19-35)

5. Rehabilitation is a state of mind and the law looks with favor upon one who has achieved reformation and regeneration with the reward of the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Here, Respondent has demonstrated great strides toward rehabilitation, but his journey is ongoing. (Factual Findings 19-35.)

6. Respondent's evidence of rehabilitation is insufficient to justify granting an unrestricted license at this time. However, there is sufficient evidence to issue a restricted license to Respondent and that issuing a restricted real estate salesperson license to Respondent is compatible with public protection and safety by reason of factual findings 19 through 35 and legal conclusions 1 through 5.

ORDER

The application of Respondent Jefre Lee Tolbert for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Business and Professions Code section 10156.5. The restricted license issued to the Respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 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.

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, 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.

DATED: September 20, 2013

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings