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SEP 24 2014

BUREAU OF REAL ESTATE

By

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Application of PETER RAYMOND QUESADA, Respondent.	No. H-39429 LA OAH No. 2014051031

NOTICE

TO: PETER RAYMOND QUESADA, Respondent and David M. Philips, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated August 7, 2014, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated August 7, 2014, is attached 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 August 18, 2014, 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 August 18, 2014, at the

Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of Complainant to be considered by me must be submitted within 15 days after receipt of the argument of Respondent at the Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for good cause shown.

DATED: SEPTEMBER 17, 2014

REAL ESTATE COMMISSIONER

By: JEFFREY MASON
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:	Case No.: H-39429 LA
PETER RAYMOND QUESADA,	OAH No.: 2014051031
Respondent.	

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on August 7, 2014.

Diane Lee, Staff Counsel, represented the Complainant.

Respondent appeared in person and was represented by David M. Philips, Attorney at Law.

Evidence was presented and the matter thereafter submitted.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

Parties

1. Complainant Veronica Kilpatrick, a Deputy Real Estate Commissioner of the State of California, brought the Statement of Issues in her official capacity.

2. On March 21, 2013, Respondent made application to the Bureau of Real Estate of the State of California for a real estate salesperson license.

Procedure

3. The Department denied the application. Respondent timely requested a hearing. These proceedings are brought under the provisions of section 10100, Division 4 of the Business and Professions Code of the State of California and Government Code sections 11500 through 11528. All jurisdictional pre-hearing requirements have been met by the parties.

Criminal Convictions

4. During his teen years Respondent developed self-destructive habits of abusing legal but regulated substances (tobacco and alcohol) and abusing illegal and dangerous substances (marijuana and methamphetamine).[1] The self-destructive habits lead directly to the crimes set forth in Findings 6, 7 and 8 and indirectly to the misdemeanor set forth in Finding 5.

5. On October 2, 2008, in the Superior Court of California, County of Riverside, Case No. RIM516943, Respondent was convicted of violating Penal Code section 261.5 (sex with a minor not greater than three years older or younger), a misdemeanor. Respondent was then 19and the minor, his then girlfriend, was 16. The misdemeanor – as part of a pattern of criminal conduct that follows – bears a substantial relationship to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910.

6. On February 4, 2009, in the Superior Court of California, County of Riverside, Case No. RIF147098, Respondent was convicted of violating Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance, to wit: methamphetamine), a misdemeanor and Penal Code section 12020, subdivision (a)(1) (unlawful manufacture and possession of a dangerous weapon, to wit: butterfly knife), a felony. The crimes bear a substantial relationship to the qualifications, functions, or duties of a real estate license under California Code of Regulations, title 10, section 2910.

7. On April 21, 2009, in the Superior Court of California, County of Riverside, Case No. RIF149718, Respondent was convicted of violating Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance, to wit: methamphetamine), a felony, and Vehicle Code section 2800.1(a) (evading a peace officer), a misdemeanor. The crimes bear a substantial relationship to the qualifications, functions, or duties of a real estate license under California Code of Regulations, title 10, section 2910.

8. On November 18, 2010, in the Superior Court of California, County of Riverside, Case No. RIF10004517, Respondent was convicted of violating Penal Code section 496, subdivision (a) (receiving stolen property), a felony and 466 (possession of burglary tools), a felony, and Health and Safety Code section 11364 (possession of controlled substance paraphernalia), a felony. The crimes bear a substantial relationship to the qualifications, functions, or duties of a real estate license under California Code of Regulations, title 10, section 2910.

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[1] Marijuana and Methamphetamine are classified as dangerous drugs subject to high abuse by the Federal Government and by the State of California.

Mitigation

9. During the times of his crimes Respondent was a youth (aged 20 in 2008 and aged 22 in 2010). He was – because of his sociopathic conduct - alienated from friends and family and became – for a time – homeless. He sustained himself by searching for sustenance in dumpsters. His then youth and then desperation do not excuse his criminal conduct but do mitigate same.

Rehabilitation, Character and Fitness

10. As a part of his criminal sanctions Respondent was mandated by the Court to take and complete a six-month drug and substance abuse/treatment program under the aegis of the Riverside Substance Abuse Program (R-SAP) and submit to chemical tests of blood, saliva, breath and urine.

11. Respondent enrolled in R-SAP in January 2011 and successfully completed the program, ending in July 2011. Respondent tested negative on all chemical tests.

12. Respondent did complete all court ordered probation, jail time, and mandated sanctions with regard to all convictions. He has suffered no subsequent conviction and he is, presently, in conformity to the norms and rules of civil society.

13. Respondent is presently clean and sober and has been so since 2010, the time of his last conviction. To sustain his sobriety he attends 12-step meetings: two meetings of Narcotics Anonymous per week and one meeting of Alcoholics Anonymous per week. He has long since reunited with family and friends who now form a strong support group.

14. Significant change occurred in Respondent's life last year when he married Angela, his now wife, and he became a father to Noah, Respondent's and Angela's 10 month old infant son. Respondent, by virtue of his employment described in Finding 17 provides full financial support to the family unit. Respondent has stability of family life and fulfills all familial and parental duties. Both of Respondent's parents and Angela accompanied Respondent to the hearing for familial support.

15. Two Real Estate Brokers - his current employer Jared Jones and his former employer Guiseppi Cusumano - with knowledge of Respondent's present character and criminal past proffered credible testimony on Respondent's behalf. Both, credibly opined that Respondent is honest, ethical and trustworthy.

16. Respondent was employed by Mr. Cusumano, owner of Pro-One Investments subsequent to his last conviction, as a Personal Assistant for two years. His credible testimony included the following:

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Peter Quesada worked for me for two years, as a Personal Assistant to me, in my Real Estate / Mortgage Business, here in Riverside. His duties included: answering phones, doing research, telemarketing, preparation & mailing of marketing letters, flyers & promotional items and maintaining excel spread sheets. Along with these in office duties. He would accompany me on both listing/ buyer presentations, & other appointments required. During the process of buying or selling a home.

Peter also showed personal initiative by studying & passing his Real Estate principles course. This is a requirement that must be completed, prior to taking your Real Estate Agent licensing exam. He also passed his Real Estate licensing exam. In closing I would like to say I am in full support of the expungement of Peters prior record. He has become a positive member of society & I have no doubt, he will continue to grow and be active within the community.

To give you some background on myself. I have been in Real Estate business since the early 90's. During that time I have served as President of the Inland Valley Association Realtors, Director for California Association of Realtors, a Member of the Processional Standards Committee at the board, a Member of the Riverside County Real Estate Fraud Advisory Team and Chair for the last 3 years of California Regional Multiple Listing Service, the largest Multiple Listing Service in the country.

17. Respondent is presently employed by Mr. Jones, owner of Jones Investment Group. His credible testimony included the following:

My name is Jared Jones, I have known Peter Quesada for the last two years and he has been in my employ for the last nineteen months. . . .

Before I hired Peter he came to me and was upfront with me about his past life and disclosed his crimes and transgressions to me. I personally choose to give others the chance to prove themselves to me no matter their past

and in this instance I am pleased that I took that line of action. Peter has been a great addition to my company and has helped my business to grow. I consider Peter my most dependable employee and have grown to like and trust him very much. Peter's Responsibilities at my office include the following: finding and valuating property to purchase, inspecting property to estimate rehabilitation expenses, relationship management with our agents, managing property procurement specialist, reviewing our ability to purchase and resale property successfully. All of the tasks that Peter performs require great diligence and an extremely high level of trust. Peter manages property transactions that total millions of dollars and I am pleased to say that he has earned the trust required to have a high level of autonomy in these transactions.

In Summary Peter has earned my trust over the period of his employment by consistently making good decisions, being honest when he has made mistakes, consistently showing up on time, being honest on the smallest of details and treating everyone with a high level of respect. I have found Peter to have a high level of integrity and would recommend him based on his character to fulfill any responsibility requiring any sort of trust.

18. A number of family members and friends familiar with Respondent's convictions and with his subsequent and productive present proffered character testimony on Respondent's behalf. The following is a credible exemplar of the testimony:

My name is Raymond Valterria . . . I have known Peter's family for nearly 40 years and I am Peter's godfather. I have spent many hours, days and weekends with Peter and his family during birthday parties, barbeques and camping trips, and feel I have a fair knowledge of Peter's basic personality traits. Both his parents are hard-working and law-abiding people, and have taught Peter and his sibling to be God fearing, respectable, honest, trustworthy, and responsible. Apart from a recent, brief period in his life when he participated in substance abuse, ultimately resulting in his incarceration, Peter's fundamental character traits have remained persistent.

Due to Peter's determination, spirituality, and the support of his family, he has recovered from this setback. He has shown sincere remorse for his lack of good judgment and displays a desire to share his experience with others so that they may learn from his mistakes. He has reached out to the community by volunteering to speak twice a week at local alcoholic Anonymous and drug abuse programs. He has also shared his testimony with his church's youth groups. Peter has been involved in the real estate business for over two years (he has passed California's state exam), and has been continuously employed with "Jones and Company Realty" in the City of Riverside as a broker's assistant for the past year.

For your information, as of July 2012, I retired after 25 years of employment with the Riverside County Sheriff's Department, assigned to the Corrections Division. Having worked through the ranks of line-level staff to the position of management, all within Corrections, I believe I have an above average knowledge of the hardships and peer pressure many young adults experience that often result in incarceration and recidivism of many. Peter has met and overcome these challenges and obstacles, and continues to move forward in his life with a positive attitude and strong desire to succeed. I strongly believe Peter has learned from his mistakes and will continue to be productive and a positive influence on others.

19. Respondent's testimony on his own behalf was open, honest, candid and credible. As was demonstrated by his demeanor, he is remorseful for his past criminal conduct and that remorse persists. As part of his reformation he has returned to his Catholic Faith and embraced same. Along with members of his family he is a regular attendee of St. Catherine's Catholic Church in Riverside. Respondent's reformation (change in attitude) was evidenced by his testimony and the testimony of others (Findings 16, 17 and 18).

20. At present Respondent is professionally and socially responsible and he is, now, a person of good character.

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LEGAL CONCLUSIONS

Application of Law to Facts

1. Cause exists for denial of Respondent's application for a real estate license pursuant to Business and Professions Code section 475, subdivision (a)(2), 480, subdivision (a) and 10177, subdivision (b) by reason of Findings 5, 6, 7 and 8 separately and in combination.

Disposition

2. The objective of license application proceedings is to protect the public, the licensed profession, maintain integrity, high standards, and preserve public confidence in licensees of the Bureau.[2] The purpose of proceedings of this type is not to punish Respondent. In particular, the statutes relating to real estate licensees are designed to protect the public from any potential risk of harm. The law looks with favor upon those who have been properly rehabilitated.

3. The totality of Respondent's criminal conduct is severe, self-destructive and placed others at risk. However, Respondent's last such conduct occurred four years ago and Respondent is now a socially and professionally responsible person. He has a wife and infant son and the joy and responsibilities of a husband and father. He has returned to his parental family and returned to his faith. He is productively employed and he is an asset to his employer. In sum, over the past four years he has substantially met the criteria of rehabilitation as set forth in the Bureau's criteria of Rehabilitation[3] by reason of Findings 10 through 19. Accordingly, a restricted license under the supervision of his sponsoring broker is consistent with the public interest.

ORDER

Not Adopted

Respondent'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 10153.5 of the Business and Professions Code. The restricted license issued to the Respondent shall be subjected 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 be appropriate Order suspend the right to exercise any privileges granted under this restricted license in the event of:

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[2] *Camacho v. Youde* (1975) 95 Cal.App3rd, 165; *Clerical v. Department of Motor Vehicles* (1990) 224 Cal.App.3rd 1016, 1030-1031; *Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 816.
[3] CCR, title 10, section 2911.

(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 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 Bureau 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's restricted real estate salesperson's license is issued subject to the requirements of section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in section 10153.5, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to timely present to the Bureau satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.

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Not Adopted

Not Adopted

5. Pursuant to section 10154, if Respondent has not satisfied the requirements for an unqualified license under section 10153.5, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to section 10153.5 until four years after the date of the issuance of the preceding restricted license.

Dated: August 18, 2014

RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

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