

Flag - Sacto

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

AUG 16 2016

BUREAU OF REAL ESTATE

By [Signature]

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	BRE No. H-39693 LA
JOHN T. TRAN,)	OAH No. 2015040464
)	
Respondent.)	
_____)	

ORDER DENYING RECONSIDERATION

On June 23, 2016, a Decision After Rejection was rendered in the above-entitled matter. The Decision was to become effective on July 18, 2016 (and was stayed by separate Order to August 17, 2016).

On or about July 22, 2016, Respondent petitioned for reconsideration of the Decision.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision After Rejection, and reconsideration is hereby denied.

IT IS SO ORDERED 8/13/2016

WAYNE S. BELL
REAL ESTATE COMMISSIONER

[Signature]

File - Sect 10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

JUL 07 2016

BUREAU OF REAL ESTATE

By *Wayne S. Bell*

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	BRE No. H-39693 LA
JOHN T. TRAN,)	OAH No. 2015040464
)	
Respondent.)	
_____)	

ORDER STAYING EFFECTIVE DATE

On June 23, 2016, a Decision was rendered in the above-entitled matter to become effective at noon on July 18, 2016.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed, and the Decision of June 23, 2016, shall become effective at 12 o'clock noon on August 17, 2016.

DATED: June 30, 2016

WAYNE S. BELL
REAL ESTATE COMMISSIONER

Wayne S. Bell

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

JUN 28 2016

BUREAU OF REAL ESTATE

By Angela M. ...

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) Case No. H-39693 LA
JOHN T. TRAN,) OAH No. 2015040464
Respondent.)

DECISION AFTER REJECTION

This matter was heard by David B. Rosenman, Administrative Law Judge (“ALJ”), Office of Administrative Hearings, State of California, on December 29, 2015, in Los Angeles, California.

Diane Lee, Counsel for the Bureau of Real Estate, represented Complainant Brenda Smith (“Complainant”), a Deputy Real Estate Commissioner in the Bureau of Real Estate (“Bureau”).¹ Respondent JOHN T. TRAN (“Respondent”) appeared personally and was represented by Frank Buda, Attorney at Law.

Oral and documentary evidence was received, and argument was heard. The record was closed and the matter submitted for decision.

On January 27, 2016, the ALJ issued a Proposed Decision which I declined to

¹ On July 1, 2013, the Department of Real Estate became the Bureau of Real Estate. All further references to the agency in this decision will be to the Bureau.

1 adopt as my Decision herein.

2 Pursuant to California Government Code section 11517(c), Respondent was
3 served with notice of my determination not to adopt the Proposed Decision of the ALJ along
4 with a copy of said Proposed Decision. Respondent was notified that I would decide the case
5 upon the record, the transcript of proceedings held on December 29, 2015, and upon any
6 written argument offered by Respondent and Complainant. Respondent and Complainant
7 each submitted argument.

8 Pursuant to Government Code section 11521, the Bureau of Real Estate may
9 order reconsideration of this Decision on petition of any party. The Bureau's power to order
10 reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the
11 effective date of this Decision, whichever occurs first. The right to reinstatement of a
12 revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of
13 the Government Code. A copy of Sections 11521 and 11522 and a copy of the
14 Commissioner's Criteria of Rehabilitation are attached hereto for the information of
15 respondent.

16 I have given careful consideration to the record in this case, including the
17 transcript of proceedings of December 29, 2015. I have also considered the arguments
18 submitted by Respondent and by Complainant. The following shall constitute the Decision
19 of the Real Estate Commissioner ("Commissioner") in this proceeding:

20 FACTUAL FINDINGS

21 The Factual Findings in ALJ Rosenman's Proposed Decision dated January
22 27, 2016, are hereby adopted as a part of this Decision.

23 LEGAL CONCLUSIONS

24 1. Cause exists to suspend or revoke Respondent's real estate salesperson
25 license under California Business and Professions Code ("Code") sections 490, subdivision
26 (a) and 10177, subdivision (b), on the ground that Respondent was convicted of crimes
27

1 substantially related to the qualifications, functions or duties of a real estate licensee pursuant
2 to Title 10, Chapter 6 of the California Code of Regulations ("Regulations"), section 2910.

3 2. Respondent was convicted pursuant to a plea agreement of violating Title
4 18 United States Code ("U.S.C.") section 1512(b) [attempted witness tampering], and Title
5 18 U.S.C. section 1001(a)(2) [false statement to a government agency], both felonies.

6 3. Respondent's convictions are substantially related to the qualifications,
7 functions or duties of a real estate licensee pursuant to Section 2910 of the Regulations,
8 subdivision (a)(2) [the uttering of a false statement], and subdivision (a)(4) [bribery, fraud,
9 deceit, falsehood or misrepresentation to achieve an end].

10 4. The Real Estate Law and the disciplinary procedures provided for in the
11 Real Estate Law are designed to protect the public and to achieve the maximum protection
12 for those dealing with real estate licensees. Mere remorse does not demonstrate
13 rehabilitation. A truer indication of rehabilitation is demonstrated by sustained conduct over
14 an extended period of time. *In re Menna*, 11 Cal4th 975 (1995). "Since persons under the
15 direct supervision of correctional authorities are required to behave in exemplary fashion,
16 little weight is generally placed on the fact that a bar applicant did not commit additional
17 crimes or continued addictive behavior while in prison or while on probation or parole." *In re*
18 *Gossage*, 23 Cal.4th 1080, 1099 (2000). Fully acknowledging the wrongfulness of past
19 actions is an essential step towards rehabilitation. *Seide v. Committee of Bar Examiners*, 49
20 Cal.3d 933, 940 (1989).

21 5. As cause exists to suspend or revoke Respondent's real estate license,
22 Respondent bears the burden of establishing rehabilitation. *Martin v. Alcoholic Beverage*
23 *Control Appeals Bd.*, 52 Cal. 2d 259, 264-65 (1950).

24 6. The criteria used by the Bureau to evaluate a licensee's rehabilitation after a
25 conviction of a substantially related crime are set forth in section 2912 of the Regulations.
26 Application of the criteria to Respondent establishes the following:
27

1 (a) The rehabilitation criteria call for the passage of not less than two years
2 from the most recent substantially related conviction. (Section 2912(a) of the Regulations.)
3 Just short of two years have elapsed from Respondent's convictions.

4 (b) The rehabilitation criteria call for completion of restitution to any person
5 who has suffered monetary losses. (Section 2912(b) of the Regulations.) Respondent has
6 completed payment of the restitution ordered by the court.

7 (c) The rehabilitation criteria call for expungement of the conviction or
8 convictions. (Section 2912(c) of the Regulations.) Expungement is not available where the
9 underlying conviction is for violation of a federal crime.

10 (d) Section 2912(d), concerning registration pursuant to Penal Code section
11 290, is inapplicable to Respondent.

12 (e) The rehabilitation criteria call for successful completion or early discharge
13 from probation or parole. (Section 2912(e) of the Regulations.) After Respondent's release
14 from prison he was required to spend 121 days in a halfway house, which period was
15 completed on December 9, 2015. Respondent is scheduled to remain on supervised release
16 until 2018. Thus far Respondent has complied with the terms of his supervised release.
17 Respondent has either been incarcerated, a resident at a halfway house or on supervised
18 release since 2014. At no time since his conviction has Respondent been free of the
19 constraints of confinement and/or close supervision so as to permit the Bureau to determine
20 that he genuinely possesses the characteristics associated with the rehabilitation criteria.

21 (f) The rehabilitation criteria call for abstinence from the use of controlled
22 substances or alcohol if the criminal conviction was attributable in part to the use of a
23 controlled substance or alcohol. (Section 2912(f) of the Regulations.) Respondent testified
24 that his convictions stemmed in part from his abuse of alcohol and a gambling addiction, and
25 that he has not had alcohol in over three years. He also testified that he has completed two of
26 the three months of required attendance at Gamblers Anonymous, and has not gambled for
27 three years.

1 (g) Section 2912(g) relating to the payment of fines is inapplicable as
2 Respondent was not ordered to pay a fine.

3 (h) The rehabilitation criteria call for correction of business practices
4 responsible in some degree for the crimes of which the licensee was convicted, new and
5 different social and business relationships from those existing at the time of the commission
6 of the acts that lead to the conviction of a crime and stability of family life and fulfillment of
7 parental and familial responsibilities subsequent to the criminal conviction. (Section 2912,
8 subdivisions (h), (i) and (j) of the Regulations.) Respondent's crimes arose directly from his
9 deep involvement in local politics. The ALJ noted that Respondent described himself as an
10 ambitious politician who was "climbing the ladder at all means." Respondent testified that
11 his time in prison helped him redefine his priorities so that his present focus is on his family
12 and "living one day at a time."

13 (i) The rehabilitation criteria call for completion of, or sustained enrollment
14 in, formal educational or vocational training courses for economic self-improvement.
15 (Section 2912(k) of the Regulations.) While the ALJ noted that Respondent received an
16 advanced college degree in 2013, that accomplishment pre-dated Respondent's criminal
17 conviction which occurred on July 21, 2014. No further indication of Respondent's pursuit of
18 formal education or training was noted by the ALJ.

19 (j) The rehabilitation criteria call for significant and conscientious
20 involvement in community, church or privately-sponsored programs designed to provide
21 social benefits or to ameliorate social problems. (Section 2912(l) of the Regulations.) Other
22 than his regular attendance at church, Respondent described no community involvement
23 subsequent to his conviction and release from prison.

24 (k) The rehabilitation criteria call for a change in attitude from that which
25 existed at the time of the commission of the criminal acts in question. (Section 2912(m) of
26 the Regulations.) Respondent's supervising broker testified that Respondent frequently
27 expresses remorse for his criminal actions, which in and of itself is insufficient to establish

1 the requisite change in attitude. Further, Respondent demonstrated a troubling failure to
2 acknowledge the conduct to which he stipulated when he entered into the plea agreement
3 with the authorities. The factual basis for the charge of witness tampering set forth in the plea
4 agreement described Respondent as having "instructed T.W. to tell the grand jury that T.W.
5 had not met with defendant recently and had not given defendant money, both of which,
6 defendant knew to be false." Respondent, on the other hand, maintained that the witness
7 tampering charge arose simply from his agreement with the witness that she would say
8 nothing when she testified. This inconsistency suggests that Respondent has not yet come to
9 terms with the events underlying his convictions.

10 7. Honesty and truthfulness are among the attributes necessary for real estate
11 applicants. (*Business and Professions Code section 10152.*) The Legislature intended to
12 ensure that real estate licensees will be honest, truthful and worthy of the fiduciary
13 responsibilities of the license. *Ring v. Smith, 5 Cal.App3d 197, 205 (1970); Golde v. Fox, 98*
14 *Cal.App.3d 167, 177 (1976).*

15 Having been convicted of two substantially related felonies, as well as being
16 under the supervision of the probation authorities until 2018, Respondent has not established
17 that he is sufficiently rehabilitated to be entrusted with a real estate license at this time.

18 ORDER

19 WHEREFORE, THE FOLLOWING ORDER is hereby made:

20 All licenses and licensing rights of Respondent JOHN T. TRAN under the
21 Real Estate Law are revoked.

22 This Decision shall become effective at 12 o'clock noon on JUL 18 2016.

23 IT IS SO ORDERED June 23, 2016.

24 REAL ESTATE COMMISSIONER

25 
26 _____
27 Wayne S. Bell

Flag Facts

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

FEB 22 2016

BUREAU OF REAL ESTATE

By *[Signature]*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	CalBRE No. H-39693 LA
)	
JOHN T. TRAN,)	OAH No. 2015040464
)	
Respondent.)	

NOTICE

TO: JOHN T. TRAN, Respondent, and FRANK M. BUDA , his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated January 27, 2016, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated January 27, 2016, is attached hereto 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 December 29, 2015, and 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 December 29, 2015, at the Los Angeles

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JOHN T. TRAN,

Respondent.

DRE No. H-39693 LA

OAH No. 2015040464

PROPOSED DECISION

This matter was heard on December 29, 2015, in Los Angeles, California, by David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California. John T. Tran (respondent) was present and was represented by Frank M. Buda, Attorney at Law. Brenda Smith (complainant), Deputy Real Estate Commissioner, was represented by Diane Lee, Counsel for the Bureau of Real Estate (Bureau).

Oral and documentary evidence was received. The matter was submitted for decision on December 29, 2015.

ISSUE AND SUMMARY OF DECISION

Complainant contends that respondent's real estate salesperson license should be revoked based on conviction of crimes. Respondent contends that the appropriate outcome would be a probationary license. The issues are whether there are grounds to impose discipline on respondent's license and, if so, what discipline should be imposed. It is proposed that respondent's license be placed on probation.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity.
2. Respondent was originally licensed as a real estate salesperson on June 1, 1995. His license has been renewed through December 12, 2017. There was no evidence of any prior discipline imposed against the license.
3. On July 21, 2014, respondent was convicted on his plea of guilty to violating Title 18 United States Code (U.S.C.) section 1512(b), attempted witness tampering, and Title 18 U.S.C. section 1001(a)(2), false statement to a government agency, both felonies. (United

States District Court, Central District of California, case number CR 12-104(A) DSF.) The crimes bear a substantial relationship to the qualifications, functions or duties of a real estate salesperson under California Code of Regulations, title 10,¹ section 2910, subdivision (a)(2) and (4).

4. The convictions followed a plea agreement in which respondent admitted the following: with respect to attempted witness tampering in violation of Title 18 U.S.C. section 1512(b), he knowingly attempted to intimidate or corruptly persuade another person, and he acted with the intent to influence, delay, or prevent the testimony of any person, or cause that person to withhold testimony, in an official proceeding. With respect to giving a false statement to a government agency in violation of Title 18 U.S.C. section 1001(a)(2), respondent admitted he made a false statement in a matter within the jurisdiction of the Federal Bureau of Investigation (FBI), he acted willfully (that is, deliberately and with knowledge that the statement was untrue), and the statement was material to the decisions and activities of the FBI (that is, it had a natural tendency to influence the FBI's decisions or activities).

5. The plea agreement recites the following stipulated factual basis for the guilty pleas.

Defendant John Tran ("defendant") was elected to the Rosemead City Council in 2005 and was the mayor from 2007 to 2009. In or about 2005, "T.W." purchased a vacant lot located in Rosemead for approximately \$1.1 million, and formed a limited liability company for the purpose of developing the property. When T.W. went to City Hall to obtain permits to build an office building, T.W. encountered defendant. Defendant asked about the purpose of T.W.'s visit to City Hall, and T.W. explained it was to obtain permits. Defendant took T.W. into City Hall and introduced himself as a member of the City Council. Defendant also informed T.W. that he would soon be the Mayor of Rosemead. T.W. explained to defendant and two other City employees that T.W. intended to build an office building on the vacant lot. Defendant and the other two employees suggested that T.W. build a mixed-use building instead. They also recommended that T.W. purchase the lot adjacent to T.W.'s vacant lot and include it in the mixed-use project. Following this advice, T.W. purchased the adjacent lot for approximately \$700,000, with a 35% down-payment.

In or about 2005, defendant began making periodic visits to T.W.'s office to request money. Defendant initially requested to "borrow" \$3,000, and stated that he had assisted T.W. with T.W.'s project. Between then and 2007, T.W. made approximately four payments totaling approximately \$38,000 to defendant in exchange for defendant's promise to help T.W. obtain permits for

¹ All further references to the California Code of Regulations are to title 10, and are designated "Regulation."

the development project. In or about August 2007, T.W. told defendant that he/she was unwilling to pay him any additional monies. In 2009, after two recounts, defendant lost his City Council re-election bid by a single vote. The City had never approved T.W.'s project and defendant never returned any money to T.W.

In or about 2009, T.W. reported to the FBI the fact that T.W. had loaned money to defendant in exchange for his promise to assist T.W. in obtaining permits for T.W.'s construction project. On September 7, 2011, at approximately 1:30 p.m., T.W. met with defendant at a Starbucks in Pasadena, California. FBI surveilled the meeting, which was photographed and audio recorded. During the meeting, T.W. showed defendant several documents, including a document that appeared to be a grand jury subpoena, which had been provided to T.W. by the FBI, and told defendant that T.W. needed to go before the grand jury to testify. During the conversation, defendant instructed T.W. to tell the grand jury that T.W. had not met with defendant recently and had not given defendant money, both of which, defendant knew to be false. Defendant acted with corrupt intent in that he intended that T.W. provide false information to a federal grand jury.

On September 27, 2011, FBI agents interviewed defendant at defendant's home. The interview was audio recorded. During the interview, defendant falsely stated and represented that T.W. had not made any payments to him other than campaign contributions of probably a thousand to two-thousand dollars. Defendant acted willfully in that he knowingly and intentionally provided false information to the FBI. Moreover, the false statements were material to the FBI's investigation into whether defendant had accepted bribes from, or had extorted, T.W.

(Exhibit 5, pages 7-9.)

6. Respondent was sentenced to imprisonment for 21 months followed by supervised release for three years. Other terms include that he pay restitution of \$38,000, participate in an outpatient substance abuse treatment and counseling program, and participate in an outpatient gambling addiction program.

7. In his testimony, respondent acknowledged that he did the acts described in the plea agreement, quoted in Finding 5. He added that this was a dark time due to his marital problems and divorce, and problems with drinking and gambling. Respondent told T.G. (the same person as T.W. in Finding 5) he had gambling debts and she agreed to loan him money. According to respondent's testimony, and tapes and transcripts, he spoke by phone to T.G. on July 6 and 20, 2011. During these conversations, taped by the FBI, T.G. made several statements to the effect that she would have to respond to a subpoena and provide testimony to a grand jury. Respondent consistently acknowledged her statements. After several such statements, T.G. suggested that when she testified she would say nothing. Respondent agreed that she should say nothing. Respondent contends that this exchange was

the basis for his conviction of attempted witness tampering. He also contends that the basis for his conviction of giving a false statement to the FBI related to an FBI visit to his home on July 27, 2011, when he lied by saying he had received money from T.G. only in the form of a small campaign contribution, perhaps in the amount of \$1,000 or \$2,000.

8. Respondent reimbursed T.G. by a combination of repayments totaling \$38,000. He is not aware that the amount of money he received from T.G. was as much as \$38,000, but repaid that amount as ordered by the court. He was considering running for the state Assembly at the time and wanted to put the matter behind him. Respondent was released from prison five and one-half months early, completed a residential drug abuse program, and completed the required 121 days at a halfway house on December 9, 2015. The program included group and individual counseling focusing on alcohol abuse, sobriety and transitioning back into the community. Respondent has not had alcohol in over three years. He has completed two of the three months of required attendance at Gamblers Anonymous and has not gambled in over three years.

9. Respondent provided examples of his involvement in community activities and other factors relevant to evaluating his rehabilitation. Some occurred before the events leading to his conviction, and some after. He consistently attends services at his church. He became interested in public service in 1999 when his children became of school age. The available school had many problems and respondent lead the effort to pass a school bond measure. He became president of the Garvey School Board later that year and was re-elected in 2003. In 2005 respondent was elected to the Rosemead City Council and, in 2007, was selected as Mayor. He lost his re-election bid in 2009. In 2009 respondent was elected to the El Monte Unified High School Board of Education. He resigned from that board in 2012. Respondent was involved in obtaining grants for two school gyms to be built, in a grant for a city jogging trail, and in efforts to increase recycling. He helped streamline the permit process for development in the city. He advocated to increase the city's financial reserves and pursued name-brand retail stores to open shop there. Respondent revived the city's Fourth of July Parade and was involved in other programs and initiatives to benefit the residential, business and educational communities that he served.

10. As a real estate licensee for more than 20 years, respondent referenced his involvement in approximately 300 residential and commercial transactions, including over 100 transactions that closed. He is not aware of any complaints relating to his licensed activities and has had no prior license discipline. He disclosed his convictions to his supervising broker, Teresa Ting,

11. Teresa Ting provided support in the form of a letter and testimony at the hearing. She has known respondent since he was 19 years old. She described the notoriety that his conviction received in the community, and that respondent came to her for a job, which began in 2012. He has completed over 30 transactions to the present. He assists other licensees and office staff. Ting has received compliments of respondent from clients and other salespeople. Respondent frequently expresses remorse for his criminal actions, and Ting is aware that respondent suffered consequences in his relationship with his wife and

children. She closely supervises respondent in his activities as her employee. Ting believes that respondent has a good heart and does not take advantage of people.

12. Respondent earned a Master of Public Administration degree in August 2013 from California State University, Northridge. He presented many letters of support which were received in evidence as "administrative hearsay."² Respondent described himself as an ambitious politician who was "climbing the ladder at all means" but also suffering from alcohol and gambling addiction. His time in prison has helped him redefine his priorities, to slow down and focus more on his family and living life one day at a time. He appreciates the support he receives from family, friends, Ting and others in the community. Respondent vows to never again put himself in a position to jeopardize his freedom, and wants to be a positive role model for his children. He values his real estate license and the role he can play in helping others find a home--what he referred to as the American dream.

13. The Accusation includes a request for the Bureau to recover from respondent reasonable costs of investigation and enforcement of the case, citing Business and Professions Code section 10106. No evidence of any such costs was submitted in evidence. Therefore, no costs will be ordered.

LEGAL CONCLUSIONS AND DISCUSSION

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

1. The standard of proof for the complainant to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (*Borror v. Dept. of Real Estate* (1971) 15 Cal.App.3d 531; *Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

2. Under Business and Professions Code section 10177, subdivision (b), a real estate licensee may have his license suspended or revoked for conviction of a crime if it is substantially related to the qualifications, functions, or duties of a real estate licensee.

3. Under Business and Professions Code section 490, subdivision (a), the Bureau may "suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."

² The term "administrative hearsay" is a shorthand reference to the provisions of Government Code section 11513, subdivision (d), to the effect that hearsay evidence that is objected to, and is not otherwise admissible, may be used to supplement or explain other evidence but may not, by itself, support a factual finding. It may be combined with other evidence to provide substantial evidence sufficient to support a finding. (*Komizu v. Gourley* (2002) 103 Cal.App.4th 1001.)

4. Under Regulation section 2910, subdivision (a), a crime is substantially related to the qualifications, functions, or duties of a real estate licensee if it employs the "uttering of a false statement" or "bribery, fraud, deceit, falsehood or misrepresentation to achieve an end." (Subd. (a)(2) and (a)(4).)

5. There is cause to suspend or revoke respondent's real estate salesperson license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), because respondent was convicted of two crimes that are substantially related to the qualifications, functions and duties of his license, as set forth in Factual Findings 2 - 6.

6. Criteria have been developed by the Bureau to evaluate the rehabilitation of a licensee who has committed a crime. These criteria, found at Regulation section 2912, are summarized as follows:

Subdivision (a), passage of at least two years since the conviction or the underlying acts;

Subdivision (b), restitution;

Subdivision (c), expungement of the conviction;

Subdivision (d), expungement of the requirement to register as a sex 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), correction of business practices causing injury;

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

Subdivision (j), stability of family life;

Subdivision (k), enrollment in or completion of educational or training courses;

Subdivision (l), significant involvement in community, church or private programs for social betterment; and

Subdivision (m), change in attitude from the time of conviction to the present, evidenced by: testimony of the licensee 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.

7. Rehabilitation is a qualitative determination, not quantitative. One cannot just add up those criteria that have been met and those that have not in order to determine whether or not a person has been rehabilitated. These criteria are merely indicators that a person has changed his or her ways and is, therefore, unlikely to reoffend. No one of them alone--in fact not all of them together--can guarantee that an individual is truly rehabilitated. Therefore, merely meeting these criteria does not excuse a person from responsibility for his or her prior criminal conduct nor entitle him or her to a license.

8. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and

regeneration.” (*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.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) 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.)

9. A recent appellate opinion focuses attention on the particular rehabilitation criterion concerning a change in attitude, to assess whether criminal conduct is likely to be repeated. The court in *Singh v. Davi* (2012) 211 Cal.App.4th 141, 149, determined that, of the many rehabilitation criteria, arguably the most important in predicting future conduct is the one related to change in attitude from that which existed at the time of the conduct in question. The ALJ in *Singh* erred in relying on the dishonest nature of the crime (grand theft by false pretenses for submitting false information to obtain government benefits) and Singh’s position as a police officer at the time, which were not listed in the rehabilitation criteria. Singh’s application for a real estate broker license was denied. The appellate court instead focused on the ALJ’s findings and conclusions that Singh had complied with the applicable rehabilitation criteria and, specifically as to a change in attitude, Singh had assumed responsibility, exhibited remorse, and submitted positive and supportive letters from friends and family. The appellate court determined it was an abuse of discretion to deny the license application.

10. It is troubling that respondent did not address the circumstances of his conviction as depicted in his plea agreement in federal court. Rather, he submitted evidence related to events a few months earlier. However, this discrepancy was not noted by counsel for complainant, respondent or his counsel, or the ALJ during the course of the hearing. Both parties pursued the case at the hearing as if the significant events were those that occurred in July 2011. Therefore, despite this discrepancy, both parties had the chance to develop a record that was sufficient to address the underlying criminal conduct.

11. It has been less than two years since respondent’s conviction. However, the underlying acts occurred in the period from 2005 to 2007 (loans from T.W.) and 2011 (respondent’s later interactions with T.W. and the FBI). Respondent completed his prison sentence early, and completed his halfway house commitment and alcohol treatment program. He remains on supervised release, for three years. Respondent paid the court ordered fines and restitution. The conviction has not been expunged. Respondent acknowledges that the conduct resulted from his bad judgment, and is remorseful for his conduct. Respondent has a stable family life and has taken courses and gained a Master’s degree. It appears that respondent’s poor judgment and illegal actions were related in part to his desire for political advancement as well as underlying issues of a divorce, alcohol abuse and a gambling habit. He has benefited from treatment and enjoys a more stable family life and has much support from his employer, co-employees and his community. He demonstrated a change in attitude from that which existed before. Among other things, he has consistently expressed remorse, accepted responsibility for his actions, and has the

support of friends, family; colleagues and other members of the community. (See Findings 8-12.) Under all of the circumstances, respondent's license should not be revoked outright; nor should he maintain an unrestricted license. Respondent has shown sufficient rehabilitation that the public interest would be adequately protected by the issuance of a restricted license for three years.

ORDER

All licenses and licensing rights of respondent, John R. Tran, under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5, if respondent makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to 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 Business and Professions Code section 10156.6:

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

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.

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

4. Respondent shall obtain from his present broker, or submit with any application for 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:

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

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

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. 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: January 27, 2016

DocuSigned by:
David B. Rosenman
DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings