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DEPT. OF REAL ESTATE
By R. Postella

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

JOHN T. TRAN,

Respondent.

No. H-39693 LA

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

On August 13, 2016, in Case No. H-39693, a Decision was rendered revoking the real estate salesperson license of Respondent effective August 17, 2016.

On September 25, 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
5 ***2911. Criteria for Rehabilitation***

6 (a) (1) The time that has elapsed since commission of the acts(s) or offense(s):
7 (A) The passage of less than two years after the most recent criminal conviction
8 or act of the applicant that is a cause of action in the Bureau's Statement of Issues
9 against the applicant is inadequate to demonstrate rehabilitation.

10 (B) Notwithstanding subdivision (a)(1)(A), above, the two year period may be
11 increased based upon consideration of the following:

12 (i) The nature and severity of the crime(s) and/or act(s) committed by the
13 Applicant.

14 The nature and severity of Respondent's two federal felony convictions require a
15 greater time period to determine if Respondent is truly rehabilitated. The facts underlying the
16 convictions occurred over an extended period, between 2005 and 2011. Furthermore, these acts
17 involved dishonesty. Honesty and integrity are qualities which bear on the qualifications,
18 functions and duties of a real estate license. See *Golde v. Fox*, 98 C.A. 3d 167. Respondent
19 completed his supervised release relatively recently (March 20, 2018). Little weight should be
20 given to the fact that Respondent has not committed additional crimes while under supervised
21 release. See *In re Menna*, 11 Cal.4th 975 and *Seide v. Committee of Bar Examiners*, 49 Cal. 3d
22 933.

23 Respondent has failed to demonstrate to my satisfaction that Respondent has
24 undergone sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted real
25 estate salesperson license.

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

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

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

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

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

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

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

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

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

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

25 2. That the employing broker will exercise close supervision over the
26 performance by the restricted licensee relating to activities for which a real estate license is
27 required.

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

MAR 11 2019

8 This Order shall become effective at 12 o'clock noon on _____.

9 IT IS SO ORDERED February 14, 2019

10 DANIEL J. SANDRI
11 ACTING REAL ESTATE COMMISSIONER

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