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FILED

OCT 26 2021

DEPT. OF REAL ESTATE
By R. P. [Signature]

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

TOM SWE OO,

Respondent.

No. H-39918 LA

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

On May 4, 2016, in Case No. H-39918 LA, a Decision was rendered revoking the real estate broker license of Respondent effective June 1, 2016. The effective date was stayed by separate order to June 13, 2016.

On November 17, 2020, Respondent petitioned for reinstatement of said real estate broker 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

1 thereof.

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

5
6 **2911. Criteria for Rehabilitation**

7 *(a) (14) Change in attitude from that which existed at the time of the conduct in
8 question as evidenced by the following:*

9 *(A) Testimony and/or other evidence of rehabilitation submitted by the applicant.*

10 Respondent failed to appear for two interviews scheduled by the Department of
11 Real Estate. Therefore, he offered no testimony regarding rehabilitation.

12 *(B) Evidence from family members, friends and/or other persons familiar with
13 applicant's previous conduct and with his or her subsequent attitudes and/or
14 behavioral patterns.*

15 Respondent submitted six letters of recommendation. Only one of these letters
16 expressed knowledge of Respondent's previous criminal convictions. None of the
17 letters explained how his attitudes or behavioral patterns have changed since the
18 criminal convictions. All of the letters were addressed to Wayne Bell, who has
19 not been the Real Estate Commissioner since July, 2018. Many of the letters were
20 dated in a different font than the body of the letter. Two of the writers confirmed
21 that they wrote the letters two to three years prior to the dates listed on the letters.
22 In *Harrington vs. Dept. of Real Estate (1989)*, 214 Cal. App. 3d, 394, the court
23 stated that lack of candor in completing a license application is itself sufficient to
24 sustain a finding that the applicant does not yet appreciate the need to speak
25 honestly about and to accept responsibility for one's actions.

26 Respondent has failed to demonstrate to my satisfaction that Respondent has
27 undergone sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted real
estate broker license.

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

A restricted real estate broker license shall be issued to Respondent pursuant to
Section 10156.5 of the Business and Professions Code, if Respondent satisfies the following

1 conditions prior to and as a condition of obtaining a restricted real estate broker license within
2 twelve (12) months from the effective date of this Order:

3 1. Respondent shall qualify for, take and pass the real estate broker license
4 examination.

5 2. Submittal of a completed application and payment of the fee for a real
6 estate broker license.

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

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

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

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

23 D. Respondent shall notify the Commissioner in writing within 72 hours of
24 any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post
25 Office Box 137007, Sacramento, CA 95813-7007. The letter shall set forth the date of
26 Respondent's arrest, the crime for which Respondent was arrested and the name and address of
27 the arresting law enforcement agency. Respondent's failure to timely file written notice shall

1 constitute an independent violation of the terms of the restricted license and shall be grounds for
2 the suspension or revocation of that license.

3 If Respondent fails to meet the above requirements, and those of sections 10150.6, 10153
4 and 10153.2 of the California Business & Professions Code, to qualify for the issuance of a
5 restricted real estate broker license, Respondent may be issued a restricted real estate salesperson
6 license if Respondent qualifies for, takes and passes the examination for a real estate salesperson
7 license, submits a completed application and pays the required fee for a salesperson license within
8 the 12 month period following the date of this order, and meets all of the other requirements for
9 issuance of a restricted real estate salesperson license, including but not limited to section 10151
10 of the California Business & Professions Code.

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12 This Order shall become effective at 12 o'clock noon on NOV 25 2021.

13 IT IS SO ORDERED 10-11-21

14 DOUGLAS R. McCAULEY
15 REAL ESTATE COMMISSIONER

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