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**FILED**

MAY - 3 2016

**BUREAU OF REAL ESTATE**

By *[Signature]*

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of

MILTON DAVIS,

Respondent.

) CalBRE No. H-39965 LA

) OAH No. 2015110019

NOTICE

TO: MILTON DAVIS, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated March 22, 2016, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated March 22, 2016, is attached hereto for your information.

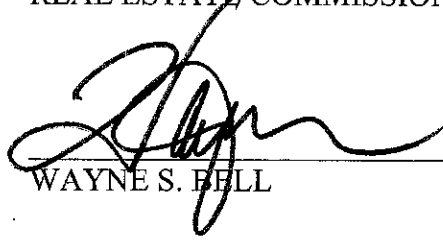
In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on February 11, 2016, and any written argument hereafter submitted on 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 February 11, 2016, at the Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for good cause shown.

1                   Written argument of complainant to be considered by me must be submitted within  
2 15 days after receipt of the argument of respondent at the Los Angeles Office of the Bureau of Real  
3 Estate unless an extension of the time is granted for good cause shown.

4                   DATED: 4/27/2016.

5                   REAL ESTATE COMMISSIONER

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9                   WAYNE S. BELL

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

In the Matter of the Accusation Against:

MILTON DAVIS,

Respondent.

No. H-39965 LA

OAH No. 2015110019

**PROPOSED DECISION**

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 11, 2016, in Los Angeles, California.

Maria Suarez, complainant, was represented at the hearing by Steve Chu, Staff Counsel.

Milton Davis, respondent, was self-represented.

Oral and documentary evidence was received. The record was left open until February 23, 2016, so that respondent could submit character reference letters, subject to Government Code section 11513, subdivision (d). Respondent timely submitted three letters which were marked collectively Exhibit C and admitted into evidence subject to the statute.

The record was closed, the hearing was deemed completed, and the matter was submitted for decision on February 23, 2016.

**FACTUAL FINDINGS**

1. Complainant brought the accusation in her official capacity as a Supervising Special Investigator of the State of California. Respondent filed a timely Request for Hearing.
2. On December 1, 2000, the Bureau of Real Estate (Bureau) issued respondent real estate salesperson license no. 01299996. The license expired on January 12, 2014. (Exhibit 2.) The Bureau retains jurisdiction over the license under Business and Professions Code section 10103.

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3. On January 15, 2013, respondent was convicted, on a plea of guilty, in the Superior Court of California, County of Los Angeles, case no. YA085214, of violating Health and Safety Code sections 11550, subdivision (e) (under the influence of cocaine or heroin while in possession of a loaded firearm), a felony, and 11370.1, subdivision (a) (possession of cocaine while armed), a felony. Respondent was placed on formal probation for three years, ordered to serve two days in county jail, with credit for two days served, to pay a fine and assessments totaling \$310, to serve 180 days in a residential drug treatment program, and to register as a convicted narcotics offender. (Exhibit 3.)

4. Respondent complied with all probation terms. On August 11, 2015, the court terminated respondent's probation early under Penal Code section 1203.3 and issued several orders, commonly known as expungement, setting aside the guilty plea, entering a plea of not guilty, and dismissing the case under Penal Code section 1203.4. (Exhibit B.)

5. The facts and circumstances underlying the conviction are that on the night of May 26, 2012, respondent was using cocaine. He had lived with his girlfriend for about eight years. When she returned home from work, he accused her of infidelity. He suspected the other man was in or near the house and armed himself with a handgun. Fearing violence, the girlfriend called the police, who arrested respondent, confiscated the gun, and discovered cocaine at the residence and in his car. (Exhibit 4.)

6. Respondent shares custody of his 15-year old daughter with her mother, but provides most of her financial support. She prefers to live with him for three to four months at a time, whereas with her mother she lives typically a week at a time. The daughter was away for the week, not with respondent the night of his arrest. He was always careful that she not witness his use of cocaine. He understands now that his precautions for her sake were far from adequate.

7. Respondent now abstains from alcohol, as well as illegal drugs. He insists that his girlfriend abstain from alcohol and other drugs, at least in their house. Respondent acknowledged that he has not been successful in persuading his girlfriend to stop smoking marijuana when she is away from the house. His efforts to persuade her have included taking her to church, where he and others discussed the issue. Other than his girlfriend, respondent avoids contact with persons he used to know who used illegal drugs. Respondent considers his past illegal drug use cowardly, an attempt, by illegal means, to escape reality. He regrets that with his criminal conduct he greatly damaged his credibility and is determined not to cause further damage.

8. Fulfilling a requirement of his probation, respondent resided at a residential drug treatment program in Torrance, California for six months ending January 31, 2013. The program's Office Manager reported to the court that respondent attended all house and 12-step meetings, that his random tests were always negative for drugs and alcohol, that he volunteered many hours to help others in the program, and that, because he was "an exceptional role model . . . [w]e are very optimistic about his future progress." (Exhibit A.)

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9. As he has been for over a decade, respondent is employed as the representative of a local union, among those confederated as the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). Respondent represents approximately 3,600 union members who work for Southern California Gas Company. Respondent attended college for some three years, but his credits are not enough for a degree. He receives training, several sessions yearly, such as regarding family and medical leave laws and alternative dispute resolution, to hone his skills in representing the union.

10. A fellow real estate licensee aware of respondent's conviction, who has worked with him for over a decade, wrote in a character reference letter that respondent is a very knowledgeable and capable salesperson dedicated to making his clients happy. Others who have worked with him for years in the AFL-CIO stated in their character reference letters that, ethical, trustworthy, hard-working, and friendly, respondent has done a good job as a union officer representing over 3,000 union members with labor grievances, and has earned trust in oversight of the local union's financial health. (Exhibit C.)

11. In addition to his work for the union, until 2006 respondent worked part-time in the loan department at Century 21 in Monterey Park. He later worked part-time at LeaCrest Realty in Torrance, California, whose principal has offered respondent his old position if he becomes licensed again. Respondent listed and sold residences.

12. Respondent supports his youngest daughter, 15 years old. He is proud that she will be making a trip with her high school to Washington, D.C., where they will visit president Obama. Respondent has four adult daughters whom he does not support, except that they occasionally ask for, and he willingly provides, the occasional advance of funds or indirect financial backing.

13. Respondent attends bible study weekly at his church and volunteers at times for other church activities.

14. The Bureau incurred in this case reasonable investigation costs of \$1,429.30 (Exhibit 5), and reasonable prosecution costs of \$542.90 (Exhibit 6), a total of \$1,972.20.

#### LEGAL CONCLUSIONS

1. The Bureau has the burden of showing by "clear and convincing proof to a reasonable certainty" that license discipline is warranted. (*Ettinger v. Medical Board of Quality Assurance* (1982) 135 Cal.App.3d 853, 855.)

2. Under Business and Professions Code section 490, subdivision (a), the Bureau may discipline a license based on a criminal conviction so long as the crime is substantially related to the qualifications, functions, or duties of the licensed profession.

3. Under Business and Professions Code section 10177, subdivision (b), the Bureau may discipline the license of a real estate licensee who has "[e]ntered a plea of guilty

. . . , or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee . . . .”

4. Under section 2910, subdivision (a)(8) of title 10 of the California Code of Regulations, a crime is deemed substantially related to the qualifications, functions, or duties of a person licensed by the Bureau if it threatens substantial injury to another. Under subdivision (c) of Section 2910, “the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.”

5. Cause exists under Business and Professions Code section 490, subdivision (a), to discipline respondent’s license based on the criminal conviction. The crime was substantially related to the qualifications, functions, or duties of a real estate licensee, as a person in possession of cocaine and a firearm may use the weapon in a number of ways threatening substantial injury to others. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

6. Cause exists for discipline of respondent’s license under Business and Professions Code section 10177, subdivision (b). Respondent pleaded guilty, was found guilty, and was convicted of a felony. As already set out above, the crime was substantially related to the qualifications, functions, or duties of a real estate licensee.

7. If respondent is rehabilitated from the crime, however, he is entitled to keep his license rights. The burden of proof shifts to respondent to demonstrate his rehabilitation, by a preponderance of the evidence. *In re Glass* (2014) 58 Cal. 4th 500, 520. Respondent’s misconduct was serious. “[T]he more serious the misconduct and the bad character evidence, the stronger the . . . showing of rehabilitation must be.” (*In re Gossage* (2000) 23 Cal.4th 1080, 1096.)

8. The Bureau’s pertinent criteria for evaluating rehabilitation are set out in California Code of Regulations, title 10, section 2912:

(a) The passage of not less than two years from the most recent criminal conviction that is “substantially related” to the qualifications, functions or duties of a licensee of the Bureau. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the Bureau.)

(b) Restitution to any person who has suffered monetary losses through “substantially related” acts or omissions of the licensee.

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

- (e) Successful completion or early discharge from probation or parole.
- (f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.
- (g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.
- (h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.
- (i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.
- (j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.
- (k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.
- (l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- (m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:
  - (1) Testimony of applicant.
  - (2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.
  - (3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.
  - (4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

9. Respondent was articulate, his explanations were expansive, and his demeanor was sincere in describing how his attitude has changed since the conviction. He was remorseful for using cocaine and realizes now that he was setting a very bad example, particularly for his 15-year old daughter. Since the conviction he abstains from alcohol and does not use illegal drugs.

10. Rehabilitation is not a question of quantity or the number of rehabilitation criteria met. Respondent's internal change, as described above, is most important as a showing of true change in attitude. (Cal. Code Regs., tit. 10, § 2912, subd. (m); *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Respondent's testimony regarding his change in attitude was credible. He was honest in volunteering that he has been unsuccessful in persuading his girlfriend to reform and stop any use of marijuana. He was forthright in answering questions on cross-examination. His testimony appeared unrehearsed.

11. Respondent's internal change has other noteworthy evidentiary support. He meets several of the Bureau's rehabilitation criteria.

A. More than two years have passed since the conviction. (Cal. Code Regs., tit. 10, § 2912, subd. (a).)

B. Respondent successfully petitioned the criminal court for expungement. (Cal. Code Regs., tit. 10, § 2912, subd. (c).)

C. Respondent successfully completed probation. (Cal. Code Regs., tit. 10, § 2912, subd. (e).)

D. Respondent has abstained from alcohol and controlled substances since the conviction, over two years ago. (Cal. Code Regs., tit. 10, § 2912, subd. (f).)

E. Respondent paid the fines imposed by the criminal court. (Cal. Code Regs., tit. 10, § 2912, subd. (g).)

F. Apart from his girlfriend, respondent has new and different social relationships from those which existed at the time of his misconduct. (Cal. Code Regs., tit. 10, § 2912, subd. (i).)

G. In financially supporting his 15-year old daughter and having her at his home most of the time, respondent is fulfilling parental responsibilities. (Cal. Code Regs., tit. 10, § 2912, subd. (j).)



H. Respondent did not complete enough college courses for a degree, but receives vocational training from the union employing him to the economic benefit of the workers he represents. (Cal. Code Regs., tit. 10, § 2912, subd. (k).)

I. Respondent is conscientiously involved in church activities. (Cal. Code Regs., tit. 10, § 2912, subd. (l).)

J. Respondent's change in attitude is evidenced by an absence of subsequent felony or misdemeanor convictions. (Cal. Code Regs., tit. 10, § 2912, subd. (m)(5); *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

12. A mitigating factor is that no one was physically injured as a result of respondent's misconduct, so that restitution is not an issue. (Cal. Code Regs., tit. 10, § 2912, subd. (b).) In these circumstances, the public will be adequately protected if respondent, on applying for re-licensure, is issued a restricted license.

13. Business and Professions Code section 10106, subdivision (a), authorizes the Bureau's recovery of reasonable costs in circumstances like those here. The costs, in the amount of \$1,972.20, do not appear to be a burden on respondent and are reasonable, as set out in Finding 14.

#### ORDER

All licenses and licensing rights of respondent, Milton Davis, under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Bureau of Real Estate all appropriate fees 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 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 that Code:

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 two years have elapsed from the effective date of this Decision.

4. Respondent shall 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 Bureau 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. Under Business and Professions Code section 10106, subdivision (a), respondent shall reimburse the Bureau of Real Estate its costs in the amount of \$1,972.20, on such terms as the Bureau may direct.

Dated: March 22, 2016

DocuSigned by:  
*Thomas Y. Lucero*  
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THOMAS Y. LUCERO  
Administrative Law Judge  
Office of Administrative Hearings