

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

FILED

JUN 03 2016

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BUREAU OF REAL ESTATE

In the Matter of the Application of  
JULIO ISRAEL GONZALEZ,  
  
Respondent.

) CalBRE No. H-40033 LA  
)  
) OAH No. 2015120364  
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)  
)

BY *[Signature]*

DECISION

The Proposed Decision dated April 27, 2016, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(c) (2) of the Government Code, the following corrections are made to the Proposed Decision.

Factual Findings, page 4, paragraph No. 15, line 4, "...crumble while morning" is amended to read "...crumble while mourning".

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent.

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

If and when a petition for removal of restrictions is filed, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

This Decision shall become effective at 12 o'clock noon on 5/30/2016.

IT IS SO ORDERED 5/30/2016

WAYNE S. BELL  
REAL ESTATE COMMISSIONER



A handwritten signature in cursive script, appearing to read 'Wayne S. Bell', is written over a horizontal line.

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

In the Matter of the Application of:

JULIO ISRAEL GONZALEZ,

Respondent.

Case No. H-40033 LA

OAH No. 2015120364

**PROPOSED DECISION**

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 4, 2016, in Los Angeles.

Diane Lee, Counsel, represented Maria Suarez (complainant).

Julio Israel Gonzalez (respondent) was present and represented himself.

The record was closed and the matter submitted for decision at the conclusion of the hearing.

**FACTUAL FINDINGS**

*Parties and Jurisdiction*

1. On October 15, 2014, respondent applied to the Bureau of Real Estate (Bureau) for a real estate salesperson license. In his application, respondent disclosed he had suffered convictions and had a contractor license revoked in 2010 for failure to comply with an arbitration award. No license was issued.

2. Complainant brought the Statement of Issues in her official capacity with the Bureau as a Supervising Special Investigator, alleging respondent's convictions and the actions underlying the revocation of his contractor license were grounds to deny his application.<sup>1</sup> Respondent timely submitted a Notice of Defense, which contained a request for a hearing.

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<sup>1</sup> During the hearing, the Statement of Issues was amended, without objection, to add "and 10177, subdivision (f)" at page 3, line 25.

### *Respondent's Convictions*

3. On April 23, 1997, in the Municipal Court of Los Angeles County, State of California, respondent was convicted of driving with a suspended license in violation of Vehicle Code section 14601.1, subdivision (a), a misdemeanor. Respondent was placed on two years' summary probation, under conditions including he pay \$946 in fines and fees, as well as complete four days of community service.

4. On October 17, 2000, in the Municipal Court of Los Angeles County, State of California, respondent was convicted of driving with a blood alcohol level of 0.08 percent or more in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. Respondent was placed on three years' summary probation, under terms including he serve 10 days in county jail, pay fines and fees totaling \$1,519, and complete a First Offender Program. By respondent's admission during the hearing, he was driving under the influence of alcohol at the time in question.

5. On January 10, 2006, in the Superior Court of the State of California, County of Los Angeles, respondent was convicted of driving with a blood alcohol level of 0.08 percent or more in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. Respondent was placed on four years' summary probation, under terms including he serve seven days in county jail, complete an 18-month Second Offender Alcohol and Drug Program, attend a victim impact program of Mothers Against Drunk Driving (MADD), and pay fines and fees totaling \$1,864. By respondent's admission during the hearing, he was driving under the influence of alcohol at the time in question.

6. Respondent's convictions are substantially related to the qualifications, functions or duties of a licensed real estate salesperson, within the meaning of California Code of Regulations, title 10, section (or Reg.) 2910. Specifically, respondent's 1997 conviction for driving with a suspended license demonstrated he willfully violated and/or failed to comply with a statutory requirement that a license be obtained or maintained before engaging in a course of conduct (Reg. 2910, subd. (a)(7)); all three convictions, taken together, demonstrate a pattern of repeated and willful disregard of the law (Reg. 2910, subd. (a)(10)); and the last two convictions show a pattern of consumption and use of alcohol in a dangerous manner leading to violations of the law (Reg. 2910, subd. (a)(11)).

### *Discipline of a Prior License*

7. In 1978, the Registrar of Contractors (Registrar), Contractors State License Board (CSLB), issued to respondent contractor license number 361687, in classification B (general contractor), in the name of Pinnacle Building Structure.

8. In 2007, respondent entered into a written contract with several investors to build a home in a residential development for \$1,080,000. Construction began, but stopped in 2008 after the recession and the value of the property in question depreciated to an extent that disrupted financing from the involved lenders.

9. On August 17, 2008, one of the investors, Victor Castillo, submitted a written complaint to the CSLB. He claimed respondent had received \$70,000 to prepare and submit a complete set of plans to the local building and safety department, but that respondent only completed some of the plans and ran out of money before completing the rest. Mr. Castillo requested reimbursement from respondent totaling \$46,000. In documents submitted to the CSLB, respondent generally denied Mr. Castillo's claims, contended the requisite public authorities had belatedly approved his plans, and counter-claimed that Mr. Castillo owed him approximately \$30,000 for his time and expenses in preparing and submitting the plans.

10. Pursuant to Business and Professions Code sections 7085 through 7085.9,<sup>2</sup> the CSLB offered the parties an opportunity to voluntarily submit the case to binding arbitration. They agreed. The CSLB therefore referred the matter to an arbitrator for resolution, and closed its formal disciplinary file for respondent. The parties proceeded to arbitration.

11. The CLSB's voluntary arbitration process is meant to be informal and expeditious. For example, a record of the arbitration is not required. (§ 7085.5, subd. (g)). An arbitrator is empowered to proceed in an expeditious fashion, though the parties are allowed to present documents and call witnesses. (§7085.5, subd. (i)). The arbitrator has 30 days from the conclusion of the hearing to issue an award, but the governing statute does not specify any required contents of the award other than the relief, if any, to be provided by one or both of the parties. (§ 7085.5, subd. (i)). Once the arbitrator's award becomes final, it is deemed to be an order of the Registrar. (§ 7080.3). A licensed contractor's failure to comply with a final arbitration award is grounds for automatic suspension of the license. (§ 7085.6). A licensee may reinstate the license by complying with the arbitration award; but if such is not done within 90 days, the license shall be automatically revoked. (§ 7085.6).

12. On June 3, 2009, the arbitrator assigned to the case issued an Arbitration Award, in which respondent was ordered to pay \$45,788.00 to Mr. Castillo for "[f]ailing to complete and submit for public approval a set of building plans pertaining to the improvement of real property located at 2651 Braided Mane Drive, Diamond Bar, California." The arbitrator denied respondent's counter-claim against Mr. Castillo. The arbitrator made no other factual findings, nor did he make any express legal conclusions.

13. Respondent requested the arbitrator reconsider the award, but the request was denied. The Arbitration Award became final on a date not established in June 2009. By law, respondent had 30 days to satisfy the Arbitration Award. By a notice dated July 14, 2009, respondent was advised by the CSLB that he had not yet complied with the Arbitration Award; his license would be suspended if he did not comply by August 13, 2009; and thereafter his license could be revoked.

14. On January 11, 2010, the CSLB revoked respondent's contractor license for failure to comply with the Arbitration Award. He was advised his license would not be reinstated until he complied with the Arbitration Award and filed a disciplinary bond.

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<sup>2</sup> Unspecified statutory references are to the Business and Professions Code.

*Mitigation, Rehabilitation and Other Relevant Facts*

15. Respondent traces his three convictions to a drinking problem he developed in the midst of a personal crisis. He started drinking socially to cope with having a developmentally disabled child. His drinking tumbled out of control after his daughter died and his marriage began to crumble while mourning the loss of his child. Respondent also was diagnosed with cancer and had his voice box removed. He then divorced his wife. By this time, his drinking was out of control. Respondent has accepted responsibility for his convictions and candidly admits he is an alcoholic. He has subsequently remarried and he and his wife have a six-year-old child. Both respondent and his wife credibly testified respondent has been sober for the last six years. However, respondent did not offer evidence indicating he is following any sort of 12-step or other sobriety program. He is apparently staying sober on his own.

16. Respondent successfully completed probation in each of his criminal cases, although he violated his probation in two of his cases and had those probations revoked briefly before being reinstated. None of his convictions have been expunged.

17. A. Before his contractor license was revoked, respondent had no prior disciplinary record with the CSLB.

B. Respondent steadfastly denies any wrongdoing against Mr. Castillo and testified the plans were submitted to the building and safety department in question after a delay in the precedent approval by the requisite homeowners' association.

C. Respondent testified he was unable to pay the Arbitration Award because of his personal financial problems which led to bankruptcy. Respondent named Mr. Castillo as a creditor in his Chapter 7 bankruptcy petition. Respondent's bankruptcy resulted in a Discharge of Debtor Order being issued by the bankruptcy court on July 22, 2013, in which his debt to Mr. Castillo was discharged, among others. Mr. Castillo received only \$7,000 from respondent's bond company. Respondent is no longer in debt to Mr. Castillo.

18. On January 29, 2016, respondent submitted an application to the CSLB to have his contractor license reinstated. The CSLB has accepted the Discharge of Debtor Order as proof that respondent has satisfied his debt to Mr. Castillo. On March 21, 2016, respondent passed the CSLB's law and trade examinations. He also has obtained contractor and disciplinary bonds. Respondent's application is now being reviewed by the CSLB's disciplinary unit for a determination on his reinstatement. It appears that he has completed the requisite tasks to having his contractor license reinstated. According to respondent, he expects to hear from the CSLB imminently.

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19. Because of respondent's health situation, he cannot actively work in construction. However, he would like to obtain a real estate salesperson license, as well as have his contractor license reinstated, so he may work with his wife in the real estate field. Respondent's wife is a licensed real estate salesperson who works for a local real estate broker. Because he has a six-year-old child to support, respondent wants to keep working.

20. The Bureau has developed criteria for evaluating the rehabilitation of a prospective licensee, at California Code of Regulations, title 10, section 2911, subdivisions (a)-(n). Respondent has established the following level of rehabilitation by meeting the applicable criteria indicated below:

A. More than 10 years have passed since respondent's last conviction (subd. (a)).

B. Although respondent has not fully reimbursed Mr. Castillo, both the bankruptcy court and the CSLB have accepted his Discharge of Debtor Order as satisfaction of that debt (subds. (b) & (j)).

C. Respondent has not expunged any of his convictions (subd. (c)), but he did complete probation in all of his criminal cases (subd. (e)).

D. He has remained sober for the past six years (subd. (f)). He has demonstrated a stable family life and fulfills his familial responsibilities to his new wife and child (subd. (h)).

E. Respondent has changed his social relationships, from those which existed when he suffered his convictions, by no longer frequenting bars and instead spending his free time with his family (subd. (m)).

F. Respondent presents a mixed picture in terms of a meaningful change in attitude from that which existed at the time of his misconduct (subd. (n)). With regard to his criminal convictions, it appears from the testimony of respondent and his wife that he has accepted his alcoholism and responsibility for his convictions. He now understands the importance of staying sober for the sake of his new family, especially his child. Respondent disclosed his convictions and past license revocation in his application to the Bureau, which demonstrates candor. During the hearing, respondent appeared contrite and remorseful for his crimes. On the other hand, respondent accepts no responsibility for his breach of contract with Mr. Castillo. While somewhat concerning, it should be noted that, like many other contractors, respondent's construction business imploded during the recession that began in 2008 and he failed to meet his contractual obligations to his client. The failed contract with Mr. Castillo was the only blemish on an otherwise spotless record of over 30 years as a licensed contractor.

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## LEGAL CONCLUSIONS

1. *Cause for Denial.* Cause was established to deny respondent's application for a real estate salesperson license pursuant to sections 475, subdivision (a)(2), 480, subdivision (a), and 10177, subdivision (b), in that respondent has been convicted of three crimes, all of which are substantially related to the qualifications, functions or duties of a licensed real estate salesperson. (Factual Findings 3-6.)

2. *Cause for Denial.* No cause for denial of respondent's application for a real estate salesperson license was established pursuant to section 10177, subdivision (j), in that it was not proven that respondent engaged in fraud or dishonest dealing with Mr. Castillo. While the Arbitration Award indicated respondent breached his contract with Mr. Castillo, there were no factual findings or legal conclusions by the arbitrator indicating respondent engaged in fraud or dishonesty. None of the other evidence presented established the same. (Factual Findings 7-14.)

3. *Cause for Denial.* No cause for denial of respondent's application for a real estate salesperson license was established pursuant to section 10177, subdivision (g), in that it was not proven that respondent was negligent or incompetent in performing an act for which he was required to hold a license. While the Arbitration Award indicated respondent breached his contract with Mr. Castillo, there were no factual findings or legal conclusions by the arbitrator indicating respondent engaged in negligence or incompetence. A breach of contract does not necessarily establish negligence or incompetence and none of the other evidence presented established the same either. (Factual Findings 7-14.)

4A. *Cause for Denial.* The Statement of Issues was amended to add section 10177, subdivision (f), as additional cause for denial of respondent's application. Subdivision (f) provides the Real Estate Commissioner cause to deny an application when an applicant has:

Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500 of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.



4B. Complainant argues section 10177, subdivision (f), applies to respondent because his contractor license was revoked based on his negligence, incompetence, fraud and/or dishonesty toward Mr. Castillo. While such actions would be grounds for discipline if done by a Bureau licensee, it was not established in this case that respondent engaged in such conduct. As discussed above, the Arbitration Award simply found respondent breached his contract to Mr. Castillo by not completing and submitting building plans for public approval. The arbitrator made no findings, express or implied, that respondent was negligent, incompetent, fraudulent or dishonest. Nor did the arbitrator make "an express finding of a violation of law" as is required by section 10177, subdivision (f). Finally, the CSLB revoked respondent's contractor license because he failed to comply with the Arbitration Award, not due to his underlying actions. While it is concerning respondent did not comply with what was deemed to be an order of the Registrar (the Arbitration Award), respondent established he was unable to pay the award due to his financial situation, as demonstrated by his successful bankruptcy petition and discharge of his debts. On top these deficiencies, it is not clear that the voluntary arbitration process in which respondent and Mr. Castillo participated included "other due process protections comparable to the Administrative Procedure Act."

4C. Based on the above, it was not established respondent's conduct constitutes cause for denial of his application for a real estate salesperson license pursuant to section 10177, subdivision (f). (Factual Findings 7-14.)

5. *Disposition.* In this case, cause for denial of respondent's application may only be based on his substantially related convictions. Those convictions are 10-19 years old and were related to respondent's alcoholism. Respondent has been sober for the past six years. He has remarried and has a young child, which are reasons for him to maintain his sobriety. Analysis of the Bureau's rehabilitation criteria demonstrates respondent has made significant strides and is not likely to commit similar misconduct in the future. Denial of his application would be unwarranted and punitive under these circumstances. However, inasmuch as respondent had a longstanding drinking problem and it was not demonstrated that he is participating in an alcohol recovery program at the current time, there is concern about his ability to maintain his sobriety in the future as he faces the pressure of reentering the workforce. Moreover, respondent had some problems complying with probation in two of his criminal cases. The interests of public protection therefore require that respondent receive a restricted license for three years so as to allow him to continue his recovery. (Factual Findings 1-20.)

#### ORDER

Respondent Julio Israel Gonzalez'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 10156.5 of the Business and Professions Code. The restricted license issued to the 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 said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(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 the 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 three 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 shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. 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: April 27, 2016

DocuSigned by:  
Sawyer, Eric  
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ERIC SAWYER,  
Administrative Law Judge  
Office of Administrative Hearings