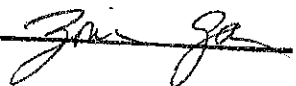


FILED

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

SEP 28 2016
BUREAU OF REAL ESTATE
By 

In the Matter of the Application of)
MOHAMMAD WALIYAR,) CalBRE No. H-40199 LA
Respondent.) OAH No. 2016041228
_____)

DECISION

The Proposed Decision dated August 15, 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 2, Paragraph No. 5. Line 5, "Respondent was placed on 36 months informal probation..." is amended to read "Respondent was placed on 36 months of informal probation...".

Factual Findings, Page 2, Paragraph No. 7, Line 9, "their starting careers," is amended to read "starting their careers,".

Legal Conclusions, Page 4, Paragraph No. 3, Line 1, "Section 480, subdivision (a)(1)(B)," is amended to read "Section 480, subdivision (a)(1),".

Legal Conclusions, Page 5, Paragraph No. 8, Line 2, "subdivision (a)(1)(B), and 10177," is amended to read "subdivisions (a)(1), and 10177,".

Legal Conclusions, Page 7, Paragraph No. 3, Line 3, "approved by the Department..." is amended to read "approved by the Bureau...".

Legal Conclusions, Page 8, Paragraph No. 4, Line 2, "Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000." is amended to read "Bureau of Real

Estate, Post Office Box 137013, Sacramento, CA 95813-7013.”.

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 OCT 18 2016.

IT IS SO ORDERED

9/22/16

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: DANIEL SANDRI
Assistant Commissioner

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

In the Matter of the Statement of Issues
Against:

MOHAMMAD MASIH WALIYAR,

Respondent.

Case No. H-40199 LA

OAH No. 2016041228

PROPOSED DECISION

Administrative Law Judge Gloria A. Barrios heard this matter on July 13, 2016, in Los Angeles, California.

Judith Vasan, Staff Counsel for the Bureau of Real Estate (Bureau), represented Maria Suarez (Complainant), Supervising Special Investigator.

Mohammad Masih Waliyar (Respondent) was present and represented himself.

The matter was submitted for decision on July 13, 2016.

FACTUAL FINDINGS

1. Complainant brought the Statement of Issues in her official capacity.
2. On May 26, 2015, Respondent submitted an application for a real estate salesperson license. The Bureau denied the application and the denial is the subject of this hearing.
3. On October 9, 2014, Respondent was convicted, after his plea of guilty, of violating Vehicle Code section 20002, subdivision (a), (hit and run), a misdemeanor. (*People v. Mohammad Masih Waliyar*, Super. Court, Orange County, case no. 14NM09860.) Imposition of sentence was suspended and Respondent was placed on three years' informal probation and ordered to pay fines, restitution and fees totaling \$405. Respondent was ordered to perform 10 days of Caltrans service in lieu of serving 10 days in jail. He paid fines, restitution and fees and completed his Caltrans service. Respondent remains on probation.

4. The facts and circumstances underlying the conviction are that on July 19, 2014, Respondent left the scene of an accident. Respondent explained that he was driving home from work when another vehicle hit his car on the right side. He pulled into a parking lot and waited for the other driver. Respondent claimed that a man began to take down his license plate number. He approached the other driver, but the man began yelling at him in broken English, swearing and waving his arms. Respondent said he became frightened and confused so he drove away. He believed that the other driver had gotten his information and since no one was injured in the accident there was no reason for him to stay at the scene. Respondent further added that in his opinion, his vehicle and the other vehicle had sustained minimal damage. He contended he drove away in order to avoid an altercation. Respondent did not call the police.

In Aggravation

5. On May 2, 2013, Respondent was convicted, after his plea of guilty, of violating Vehicle Code section 23152, subdivision (b), (driving with a blood alcohol concentration of 0.08 percent or higher), a misdemeanor. (*People v. Mohammad Masih Waliyar*, Super. Ct., San Bernardino County, case no. TWV1300898.) Imposition of sentence was suspended and Respondent was placed on 36 months informal probation and ordered to pay fines, restitution and fees totaling \$2,000. Respondent was ordered to enroll in and successfully complete a four-month First Offender Alcohol Program (Program.) It was unclear if Respondent completed probation as he was convicted in another matter in 2014. (See Finding 3 above.) Respondent did not know whether or not he remains on probation in this matter. The court records do not show Respondent violated probation. (Exhs. 3 and 4.)

6. The facts and circumstances underlying the conviction are that on February 22, 2013, Respondent drove home from a restaurant after having two alcoholic beverages. His blood alcohol concentration was 1.4 percent. Respondent completed the court ordered Program. He learned in the Program that he possessed alcoholic traits and that he drank to get drunk. However, Respondent does not consider himself an alcoholic. He considers himself a social drinker. Respondent only drinks wine and does not drink to excess. He admitted to drinking alcohol infrequently in the last three years. Respondent clarified he does not drink alcohol and drive. He admitted his wrongdoing.

7. Respondent understands that his convictions have adversely impacted his life. He takes responsibility for his poor judgment. Respondent explained that he attended Chaffey College in Rancho Cucamonga from 2006 to 2010. He also attended University of Nevada at Las Vegas from 2010 to 2011. Respondent majored in International Business. He dropped out in his junior year because of his family's financial constraints. Respondent had to go to work full time to help his family. He lives with his mother and three younger siblings. Respondent's father, due to financial necessity became an interpreter for the United States government in Afghanistan. Respondent explained that he saw that his friends had moved on with their lives graduating from college and their starting careers, and he was

embarrassed to be "stuck in limbo." He thinks this attitude accounted in part for his bad judgment.

8. Respondent offered character reference letters. These letters were received in evidence as administrative hearsay.¹ Sonia Kabir (Kabir) is Respondent's cousin. She is a licensed real estate broker. Kabir wrote a letter in support of Respondent. She wrote, "Masih Waliyar is a dear cousin of mine whom I have tremendous respect for. I have come to see that Masih is tirelessly hardworking, often staying at his job long hours in order to help provide for his mother and three younger siblings. He has proven himself to be the man of the household after his father picked up a position of servicing the military overseas. Masih has recently chosen a great career path in Real Estate. He is driven and willing to go above and beyond of what is expected from him. I have known Masih for a very long time and he always achieves what he sets his mind to with dedication and sheer force of will." (Exh. A.) Kabir knew about Respondent's convictions.

9. Michael J. Venti (Venti) is a Chief Operating Officer for Turn 2 Communications, a company that offers business voice service and internet service to other businesses. He is a friend of Respondent's family. Venti wrote a letter on behalf of Respondent. Venti wrote, "I have known Masih Waliyar for the past 4 years and during that time I have seen him grow into an extremely responsible adult. My admiration for Masih has grown over the years as I have witnessed his dedication to his family. As the son of a father who works for the US Government in Afghanistan, Masih had to grow up at a young age due to his father's absence and truly embraces the role of father figure for his family. One thing that has really stood out to me is how he always puts everyone else first. As a business owner, I always look for candidates that exemplify qualities that will represent my company in the best light regardless of what challenges they may have faced in the past. Masih has always displayed the highest degree of integrity, responsibility and ambition and because of that he will be a great addition to the real estate community going forward." (Exh. B.) Venti knew about Respondent's convictions.

10. Patricia Perez (Perez) is director of Sales and Business Development for NationalLink. She is a member of the International Council of Shopping Centers (ICSC.) Perez is a family friend. She wrote a letter in support of Respondent. Perez wrote, "While I know he's had his share of growing pains and mistakes he is someone I would be proud of. He is someone that has learned and become an exemplary man that I use him as a role model for my teenage children. His strong work ethic, family values, and sense of duty [are] something you don't see very often." (Exh. C.) Perez knew about Respondent's convictions.

¹ 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.)

11. Krista Masella (Masella) is Operations Manager of the Coronado Real Estate Group affiliated with Keller Williams Realty in Studio City. She is a licensed real estate salesperson. Masella wrote a letter on behalf of Respondent. She wrote, "I have personally witnessed him take full responsibility for his mistakes, almost completely stop drinking and accept the work required to realize his goal of becoming a successful real estate agent. *I urge you not to deny him this intellectual challenge.* He is ready, willing and focused and I believe that his personality type is ideal for the position. He has a lot to learn but he is ready to be the man his father taught him to be, the great man that his friends and family know him to be, with the career that he desperately desires to be successful at. I truly believe he would be an asset to the real estate community and an example that hard work, perseverance and a positive attitude can allow any man to achieve his goal in life no matter what obstacles he has faced." (Exh. D.) Masella knew about Respondent's convictions.

12. Respondent is currently employed at Rosano Partners, a commercial brokerage in Los Angeles. He assists agents. He would like to be a real estate salesperson because he is interested in commercial real estate.

13. Respondent is Muslim. He is active in his mosque. Respondent recently observed Ramadan. As part of his observance of Ramadan, Respondent gave to charity. According to his religion, charity is very important.

14. Respondent is 27 years old. He is not married.

LEGAL CONCLUSIONS

1. Respondent is asserting the affirmative in this matter by claiming that he should be granted the applied-for-license. Therefore he has the burden of proof. The standard of proof is a preponderance of the evidence.

2. Under Business and Professions Code,² sections 475, subdivision (a)(2), the Bureau may deny a real estate license applicant on the ground that he has been convicted of a crime.

3. Section 480, subdivision (a)(1)(~~B~~), provides that a real estate license applicant may have his application denied on the grounds he has been convicted of a crime if the crime is substantially related to functions, duties and qualifications of real estate licensee.

²All further statutory references are to the Business and Professions Code except when noted.

4. Section 10177, subdivision (b), provides a real estate license applicant may have his application denied if he has been convicted of a crime if it is substantially related to the qualifications, functions, or duties of a real estate licensee.

5. The Bureau has issued regulations that specify the types of crimes that are "substantially related" to the qualifications, functions, or duties of an applicant for a Bureau license. Respondent's convictions for hit and run and driving with a blood alcohol concentration of 0.08 percent or higher are "substantially related" under California Code of Regulations, title 10 (CCR), section 2910, subdivision (a)(10), "conduct which demonstrates a pattern of repeated and willful disregard of law." Respondent's convictions for driving with a blood alcohol concentration of 0.08 percent or higher in 2013 and hit and run in 2014 demonstrate a pattern of repeated and willful disregard of law.

6. Respondent argued that there are extenuating circumstances regarding the conviction of hit and run. Respondent cannot impeach his criminal conviction. The entry of a guilty plea in his 2014 conviction is conclusive evidence of his guilt. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.) However, the Bureau may examine the underlying circumstances of the conviction in order to fix the degree of discipline, if any, pursuant to section 493. In this case, Respondent is ultimately responsible for the accident. However, he stopped after the accident and attempted to obtain the other driver's information.

7. Cause exists to deny Respondent's application for a real estate salesperson's license pursuant to Code section 475, subdivision (a)(2), because Respondent has been convicted of crimes. (Factual Findings 3-6 and Legal Conclusion 2.)

8. Cause exists to deny Respondent's application for a real estate salesperson's license pursuant to Code section 480, subdivision (a)(1)(~~B~~), and 10177, subdivision (b), because Respondent committed crimes that are substantially related to the qualifications, functions, or duties of an applicant for a Bureau license. (Factual Findings 3-6 and Legal Conclusion 3-4.)

9. Although cause for license denial exists, it is necessary to determine whether Respondent has been sufficiently rehabilitated to warrant issuance of a license. Criteria have been developed by the Bureau to evaluate the rehabilitation of an applicant who has committed a crime. These criteria, found at CCR section 2911, are summarized as follows:

Subdivision (a), passage of at least two years since the conviction or the underlying acts, or longer if there is a history of substantially related acts;

Subdivision (b), restitution;

Subdivision (c), expungement of the conviction;

Subdivision (d), expungement of the requirement to register as an 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), stability of family life;

Subdivision (i), enrollment in or completion of educational or training courses;
Subdivision (j), discharge of debts to others, or earnest efforts to do so;
Subdivision (k), correction of business practices causing injury;
Subdivision (l), significant involvement in community, church or private programs for social betterment;

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

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

10. Rehabilitation is a state of mind and the law looks with favor upon one who has achieved reformation and regeneration with the reward of the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) 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.) 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.) Respondent bears the particular burden of establishing rehabilitation sufficient to compel his licensure. (*In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309.)

11. Respondent has provided evidence of rehabilitation. He provided impressive character letters. Respondent remains on probation. He has completed all court ordered terms and conditions of probation in both matters. Respondent acknowledged the wrongfulness of his actions, which is an essential step toward rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933.) The Real Estate Law and the disciplinary procedures are designed to protect the public. Clients rely upon real estate licensees' integrity to represent their interests. (*Ring v. Smith* (1970) 5 Cal.App.3d 197, 205; *Golde v. Fox* (1976) 98 Cal.App.3d 167, 177; *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) In weighing Respondent's wrongdoing and considering Respondent's mitigation and rehabilitation evidence, the public will be protected if he is allowed to obtain a license on a restricted basis.

ORDER

Respondent Mohammad Masih Waliyar'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 Business and Professions Code section 10156.5, if Respondent makes application therefore and pays to the Bureau 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 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 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 the restricted license.

2. 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 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 RE 552 (Rev. 4/88) approved by the ~~Department~~ *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.

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4. 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: August 15, 2016

DocuSigned by:
gloria a. barrios
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GLORIA A. BARRIOS
Administrative Law Judge
Office of Administrative Hearings