

FILED

JUN - 1 2017

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

SHENG DONG GUAN,

Respondent.

) CalBRE No. H-40433 LA

) OAH No. 2016110111

NOTICE

TO: SHENG DONG GUAN, Respondent, and JOHN D. BISHOP.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated April 19, 2017, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated April 19, 2017, 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 Tuesday, March 21, 2017, 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 Tuesday, March 21, 2017, at the Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for good

1 cause shown.

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

5 DATED: 5/30/17.

6 WAYNE S. BELL
7 REAL ESTATE COMMISSIONER

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9 _____

10 By: DANIEL J. SANDRI
11 Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

SHENGDONG GUAN,

Respondent.

BRE No. H-40433 LA

OAH No. 2016110111

PROPOSED DECISION

This matter came before Nana Chin, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California on March 21, 2017.

Maria Suarez (Complainant), Supervising Special Investigator, was represented by Steve Chu, Counsel for the Bureau of Real Estate (Bureau).

Shengdong Guan (Respondent), also known as Sheng Dong Guan and as George Guan, was present and represented by John D. Bishop, Attorney at Law.

At hearing, complainant made a motion to amend page 3, paragraph 7, of the Accusation by interlineation to include the phrases "and the underlying conduct" and "10177 (j)." Paragraph 7 now reads, "The crimes of which Respondent was convicted and the underlying conduct, . . . constitute cause for denial of Respondent's application . . . under Business and Professions Code Sections 475(a)(2)-(3), 480(a)(1)-(2), and 10177(b) and 10177(j)." Respondent had no objection to the amendment and the amendment was granted.

The record was closed and the matter was submitted for decision on the day of hearing.

FACTUAL FINDINGS

Parties and Jurisdiction

1. On October 22, 2015, respondent filed an application with the Bureau for a real estate salesperson license. That application is now pending.

2. Complainant filed the Statement of Issues in her official capacity as a Supervising Special Investigator of the Bureau.

Respondent's Criminal Convictions

NOVEMBER 2012 CONVICTION

3a. On November 19, 2012, in the Superior Court of California, County of Los Angeles, case number 2PS91233, Respondent was convicted on his plea of nolo contendere of violating Penal Code section 240, assault, a misdemeanor. Imposition of sentence was suspended and Respondent was placed on summary probation for two years with certain conditions, including payment of fines and assessments and two days in Los Angeles County Jail with credit for two days served.

3b. On October 28, 2015, the court ordered that Respondent's conviction be set aside and a plea of not guilty entered and the complaint was dismissed pursuant to Penal Code section 1203.4.

4. The facts and circumstances underlying the November 2012 conviction relate to the events of December 16, 2011. On that day, Respondent and his friends had gone to a bar in the Santa Anita Mall. After leaving the bar, they remained in the area but were later asked to leave by two security guards when someone in Respondent's group spit on the ground. The group became belligerent towards the security guards. One individual punched a guard in the face while Respondent hit the other guard in the head with his elbow.¹

FEBRUARY 2013 CONVICTION

5a. On February 28, 2013, in the Superior Court of Arizona, County of La Paz, case number CR2013-00063, Respondent was convicted on his plea of no contest of violating Arizona Revised Statutes Section 13-2810, subdivision (A)(2), disobeying a court order, a misdemeanor. Respondent was ordered to pay fines.

5b. On November 16, 2016, the court ordered that Respondent's conviction and judgment be set aside.

6a. The facts and circumstances underlying the conviction relate to the events of January 25, 2013. Respondent, who had moved to Arizona earlier that year, had been stopped by Border Patrol at an immigration check point where he was found to be in possession of marijuana, drug paraphernalia and a loaded revolver. Border Patrol contacted the La Paz County Sheriff's Department. Deputy J. Bohlen responded to the scene. As Respondent had a medical marijuana card, he was not charged for possession of the marijuana and drug paraphernalia but he was cited for possession of a loaded firearm in violation of the November 2012 court order.

¹ The Arcadia Crime/Incident Report of the incident was admitted as Exhibit 6. Pursuant to the California Supreme Court's decision in *Lake v. Reed* (1997) 16 Cal.4th 448, the observations made by officers in the course of their duties and as contained in their police report are admitted and considered as non-hearsay.

6b. At hearing, Respondent testified that possession of firearms in Arizona is not uncommon. Respondent testified that he was not aware that the probationary terms of his November 2012 conviction included a prohibition against possession of a firearm as he had had a cavalier attitude towards the law when he was younger.

MARCH 2014 CONVICTION

7a. On March 19, 2014, in the Superior Court of California, County of Los Angeles, case number 3JB08090, Respondent was convicted on his plea of nolo contendere of violating Penal Code section 21810, possession of metal knuckles, and Vehicle Code section 14601.1, subdivision (a), driving when privilege suspended or revoked, both misdemeanors. Imposition of sentence was suspended and Respondent was placed on three years summary probation with terms and conditions, including payment of fines, fees, and restitution and 30 days of community labor with credit for two days of jail time already served.

7b. On December 15, 2016, the court granted Respondent's petition for dismissal and Respondent's convictions were dismissed pursuant to Penal Code section 1203.4.

8a. The facts and circumstances underlying the March 2014 conviction relate to an investigation conducted by the Department of Motor Vehicles (DMV) into whether Respondent had fraudulently obtained a second driver's license after his original driver's license, which he obtained on July 8, 2008, had been suspended.

8b. As part of the investigation, Respondent was asked to come to the DMV office in West Covina on November 18, 2013. Investigator Paul Poso watched Respondent drive into the DMV parking lot. Upon his arrival, Respondent was asked for his driver's license as proof of his identity, which he provided. Respondent was then interviewed by Investigators Poso and Kevin Hendricksen. During the interview, Respondent denied ever applying for a driver's license under another name or ever having his driver's license suspended or revoked. Respondent was then shown copies of his 2008 driver's license and his 2011 driver's license. After confirming that both of the licenses belonged to him, Respondent was asked why he denied having the previous license and the suspension. Respondent told the investigators that he had obtained the original license when he was a juvenile and that he believed the suspension would "go away" when he turned eighteen. (Exhibit 8.)

8c. Respondent was being transferred to the City of Industry Sheriff's Station for booking. During the transfer, Investigator Hendricksen conducted an inventory of Respondent's vehicle and located brass knuckles and a knife in the vehicle's glove box. At the sheriff's station, while being booked, an Arizona Driver's License in the name of David Chen was found in Respondent's wallet. Respondent admitted that he had obtained the driver's license on the internet so that he could go out drinking as he was not yet 21 years old.

9a. Respondent's original driver's license was suspended on November 22, 2010, based on DMV's determination that he was a negligent operator. At hearing, Respondent testified that he believed the DMV made this determination because he had received a number of speeding tickets when originally licensed and for an incident when he was 17 years old where he had been found to be in possession of marijuana.

9b. Respondent's testimony at hearing was consistent with his statements to the DMV investigators. According to Respondent, when he applied for his second driver's license on April 7, 2011, he was not purposefully trying to deceive the DMV. Respondent waited until he turned 18 years old to reapply for the second license because he was under the misapprehension that the driver's license he received when he was a minor "didn't count." The application Respondent submitted to obtain his second driver's license was submitted into evidence as an attachment to the DMV Investigative Report (Exhibit 8.). The application shows Respondent denied previously applying for a driver's license but, at the same time, Respondent admitted to having his "driving privilege or driver's license cancelled, refused, delayed, suspended or revoked" due to a 2007 citation for speeding. Respondent's disclosure of the suspension in the application is consistent with his statement that he was not trying to conceal that he had been previously licensed or trying to deceive the DMV in order to obtain his license.

9c. With respect to the brass knuckles and the knife, Respondent testified that he purchased the items in Chinatown but that he had never used them. Looking back, Respondent does not know why he had the items, he just "wanted to prove [himself]" and was simply "young and stupid."

Education/Employment/Volunteer Activities

10. Respondent is 24 years old and lives with his mother, sister and stepfather. Respondent acknowledges that he has made poor choices in the past. Respondent testified that when he was younger, he had no plans and no thoughts about the future. After the incident in West Covina which resulted in the conviction described in Factual Finding 3, Respondent stopped drinking. Respondent now spends his time working and going to the gym and church. Respondent assists his mother with the care of his 14-year-old sister by picking her up and occasionally dropping her off at school. He has matured and has separated himself from the social circle of "troublemakers" who had been a bad influence in his life.

11. Respondent works as a manager for Taiwan Deli, a restaurant owned by his mother. As the manager, he is in charge of managing the inventory and the accounts, as well as directing employees. Respondent has taken real estate classes and has passed the real estate salesperson examination. Respondent wants to obtain a real estate salesperson license because he genuinely enjoys real estate and wants a better financial future so that he can provide for his mother and for himself.

Character Reference Letters

12. Respondent submitted three character reference letters from friends in support of his application for licensure. These letters (Exhibits B, C and D) were received as "administrative hearsay."² Respondent informed each of these individuals of his past convictions when he asking for these characters reference letters. The writers depict Respondent as a generous individual who has matured from his past irresponsible behavior and become a responsible adult.

LEGAL CONCLUSIONS

Standard of Proof

1. The burden of proof is on the applicant to establish that he is entitled to the license. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205; *Southern Cal. Jockey Club v. California Horse Racing Bd.* (1950) 36 Cal.2d 167.) The standard of proof is a preponderance of the evidence. "Preponderance of the evidence means evidence that has more convincing force than that opposed to it." (Citations omitted.) The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325; italics in original.) To meet the burden of proof by a preponderance of the evidence, Respondent "must produce substantial evidence, contradicted or uncontradicted, which supports the finding." (*In re Shelley J.* (1998) 68 Cal.App.4th 322 at p. 329.)

Cause for Denial Related to Respondent's Convictions

2. Under Business and Professions Code³ sections 475, subdivision (a)(2), 480, subdivision (a)(1), and 10177, subdivision (b), the Real Estate Commissioner may deny a real estate license to an applicant on the grounds that the applicant has been convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee.

3. A crime is substantially related to the qualifications, functions, or duties of a real estate licensee if it involves willfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted

² "Administrative hearsay" is a shorthand reference to Government Code section 11513, subdivision (d), under which hearsay evidence "may be used for the purpose of supplementing or explaining other evidence," but is not sufficient, by itself, to support a finding of fact.

³ All statutory references are to the Business and Professions Code, unless otherwise noted.

public authority before engaging in a business or course of conduct (California Code of Regulations, title 10⁴, section 2910, subdivision (a)(7);) disobeying a court order (Regulation 2910, subdivision (a)(9);) or is conduct which demonstrates a pattern of repeated and willful disregard for the law (Regulation 2910, subdivision (a)(10).)

4. Cause exists to deny Respondent's application for a real estate salesperson license pursuant to sections 475, subdivision (a)(2), 480, subdivision (a)(1), and 10177, subdivision (b), as Respondent's 2013 and 2014 convictions and the conduct underlying each of the convictions, as set forth in Factual Findings 5 through 8, are crimes that are substantially related to the qualifications, functions and duties of a real estate licensee.

5. Cause exists to deny Respondent's application for a real estate salesperson license pursuant to sections 475, subdivision (a)(2), 480, subdivision (a)(1), and 10177, subdivision (b), as Respondent's multiple convictions, as set forth in Factual Findings 3 through 8, demonstrate a pattern of repeated and willful disregard for the law and therefore are crimes that substantially relate to the qualifications, functions and duties of a real estate licensee.

Underlying Conduct

6. Under Code sections 475 subdivision (a)(3), 480, subdivision (a)(2), and 10177, subdivision (j), the commissioner may deny a real estate license if the applicant has committed any act involving "dishonesty, fraud or deceit."

7. Cause exists to deny Respondent's application for a real estate license pursuant to sections 475, subdivision (a)(3), 480, subdivision (a)(2), and 10177, subdivision (j), as Respondent possessed and used a false Arizona Driver's License to purchase and drink alcohol while under 21 years of age, as set forth in Factual Finding 8.

Rehabilitation/Mitigation

8. As it was established that cause exists for the denial of his application for a real estate license, the onus is on the Respondent to show that he is sufficiently rehabilitated from the wrongful act such that he is fit to hold the license. (Evid. Code, §§ 115 and 500.)

9. Criteria have been developed by the Bureau for the purpose of evaluating the rehabilitation of an applicant for issuance of a license in considering whether or not to deny the issuance on account of a crime or act committed by the applicant. The relevant criteria, found at Regulation section 2911, are summarized below, with references to the relevant evidence.

⁴ All references to a regulation are to California Code of Regulations, title 10, unless otherwise noted.

Subdivision (a), passage of at least two years since the conviction or the underlying acts that is a basis to deny the application. (A longer period is required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the Bureau.) Though the regulation does not indicate the length of time required when the conduct is substantially related, Respondent's convictions occurred between 2012 and 2014. As such, more than two years have passed since respondent's latest conviction.

Subdivision (c), expungement of the conviction. All of Respondent's convictions have been dismissed.

Subdivision (e), completion of, or early discharge from, the criminal probation. Respondent completed probation for his convictions.

Subdivision (g), payment of any criminal fines or penalties. Respondent has paid all fines and penalties related to his convictions.

Subdivision (h), stability of family life. Respondent currently lives with his mother, stepfather and younger sister and actively contributes to the household.

Subdivision (i), enrollment in or completion of educational or training courses. Respondent has taken real estate courses and passed his real estate salesperson's exam.

Subdivision (l), significant involvement in community, church or private programs for social betterment. Respondent testified that he attends church regularly.

Subdivision (m), new and different social and business relationships. Respondent no longer associates with those individuals who were a negative influence in his life.

Subdivision (n), change in attitude from the time of conviction to the present. Respondent changed his view of life and has actively worked to improve his life, as set forth in Factual Findings 10 through 12.

Subdivisions (b), (d), (f), (j), (k) (o) and (p) are not applicable.

11. Given these circumstances, protection of the public can be achieved with a restricted license.

ORDER

Respondent'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 Code section 10156.5. The restricted license issued to Respondent shall be subject to all of the provisions of section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6:

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 two 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 Department 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.

DATED: April 19, 2017

DocuSigned by:

Nana Chin

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NANA CHIN

Administrative Law Judge

Office of Administrative Hearings