

Sacto

FILED

MAY 24 2017

BUREAU OF REAL ESTATE

By [Signature]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation of	)	CalBRE No. H-40474 LA
	)	
MARK R. MACIAS,	)	OAH No. 2017010708
	)	
Respondent.	)	

NOTICE

TO: MARK R MACIAS, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated March 24, 2017, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated March 24, 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 Wednesday, February 22, 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 Wednesday, February 22, 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: 5/11/2017.

6 WAYNE S. BELL  
7 REAL ESTATE COMMISSIONER

8   
9 \_\_\_\_\_  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

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

In the Matter of the Statement of Issues Against:

MARK R. MACIAS,  
aka MARK RUBEN MACIAS,  
aka MARK RUBEN MACIAS-GONZALEZ,

Respondent.

Case No. H-40474 LA

OAH No. 2017010708

**PROPOSED DECISION**

Chantal M. Sampogna, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 22, 2017, in Los Angeles.

Diane Lee, Counsel, represented Veronica Kilpatrick (complainant).

Mark R. Macias (respondent), also known as Mark Ruben Macias and Mark Ruben Macias-Gonzalez, was present and represented himself.

Oral and documentary evidence was received. The record was closed and the matter submitted on February 22, 2017.

**SUMMARY**

Complainant alleges that respondent's real estate salesperson's license application should be denied based on respondent's criminal convictions. Respondent admitted complainant's factual allegations and offered evidence of mitigation and rehabilitation. As discussed below, respondent's application should be denied, but he should be issued a restricted salesperson license.

## FACTUAL FINDINGS

### *Parties and Jurisdiction*

1. On February 2, 2016, respondent submitted an application to the Bureau of Real Estate (Bureau), Department of Consumer Affairs, for a real estate salesperson license. In the application, respondent disclosed that he suffered three criminal convictions. The Bureau denied the license, and respondent appealed.

2. Complainant brought the Statement of Issues in her official capacity as a Supervising Special Investigator for the Bureau. Respondent timely submitted a Notice of Defense.

### *Respondent's Convictions*

3. A. On April 14, 2003, in the Superior Court of California, County of San Bernardino, case number TVA89655, respondent pled guilty to and was convicted of driving with a blood alcohol level of .08 percent or more, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor.

B. The court suspended imposition of sentence and placed respondent on summary probation for three years, restricting his driver's license to permit him only to drive to and from work and his treatment program, and ordering him to attend a First Offender Alcohol Program, serve one day in jail with credit for one day served, and pay fines and fees totaling \$1,639. On September 10, 2003, respondent completed his alcohol program. On June 2, 2006, respondent paid the outstanding fine and completed his probation.

C. The circumstances underlying this conviction are the following. In December 2002, respondent drove home after drinking alcohol with college friends. He fell asleep while driving and crashed his car into the side of the road, breaking his arm and leg. A police officer found respondent and arrested him.

4. A. On March 29, 2005, in the Superior Court of California, County of San Bernardino, case number TSB116994, respondent pled guilty to driving under the influence of alcohol, in violation of Vehicle Code section 23152, subdivision (a), driving with a blood alcohol level of .08 percent or more, in violation of Vehicle Code section 23152, subdivision (b), and driving with a suspended license, in violation of Vehicle Code section 14601.2, subdivision (a), misdemeanors.

B. The court suspended imposition of sentence and placed respondent on summary probation for three years, restricting his driver's license to permit him to drive only to and from work, and ordering him to complete an alcohol rehabilitation program, serve 15 days in jail with credit for one day served, only drive vehicles with an ignition interlock device, and pay fines and fees totaling \$1,478. Respondent completed the alcohol

rehabilitation program on December 7, 2007. On June 6, 2008, respondent paid his fines in full and completed his probation.

C. The circumstances underlying this conviction are the following. On February 17, 2005, respondent drank alcohol while at a party and then drove home. A police officer pulled him over when respondent failed to turn on his turn signal before turning right. The police officer determined respondent was under the influence of alcohol and arrested him.

5. A. On April 25, 2006, in the Superior Court of California, County of San Bernardino, case number TSB119843, respondent pled guilty to driving with a blood alcohol level of .08 percent or more, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor.

B. The court suspended imposition of sentence and placed respondent on summary probation for three years, ordering him to complete a multiple offender alcohol program, serve 180 days in jail with credit for two days served, and pay fines and fees totaling \$1513. Respondent completed the alcohol rehabilitation program on December 7, 2007.<sup>1</sup> On October 9, 2008, respondent paid his fines in full and completed his probation.

C. The circumstances underlying this conviction are the following. On February 8, 2006, respondent drank alcohol while at his girlfriend's house. He drove to the store to buy food and got a flat tire. While he was fixing his flat tire, a police officer approached and offered help. The police officer asked for respondent's license but respondent had none. The police officer then performed an alcohol test on respondent, determined respondent was under the influence of alcohol, and arrested him.

6. A. On January 6, 2014, in the Superior Court of California, case number TSB1302617, respondent pled guilty to driving under the influence of alcohol, in violation of Vehicle Code section 23152, subdivision (a), and driving under the influence of alcohol with a blood alcohol level of .08 percent or more, in violation of Vehicle Code section 23152, subdivision (b), misdemeanors.

B. The court suspended imposition of sentence and placed respondent on summary probation for three years, ordering him to complete a multiple offender alcohol program, serve 137 days in jail with credit for 63 days served, and pay fines and fees totaling \$1,902. Respondent submitted proof of his completion of the alcohol rehabilitation program on August 14, 2015. On July 6, 2016, respondent paid his fines in full and completed his probation.

C. The circumstances underlying this conviction are the following. On August 31, 2013, respondent went to a bar and drank alcohol. For the prior 13 days,

---

<sup>1</sup> The alcohol education program respondent completed on December 7, 2007, satisfied this term of probation for case numbers TSB119843 and TSB116994.

respondent had not been sleeping regularly because he was tending to the health of his wife and his newborn son, who was in the Neonatal Intensive Care Unit (NICU) due to labor complications. After drinking alcohol, he left the bar and drove home. He ran into another car. He called the police and reported he had been drinking and driving. During the field sobriety test, respondent exhibited distinct nystagmus, swayed while standing, lost his balance while walking and turning, and his blood alcohol preliminary screening was .162 percent; his second screening was .145 percent. Respondent was arrested.

*Respondent's License Application*

7. On respondent's application to obtain a real estate salesperson license, he answered "yes" to the application question which asked if he had ever been convicted of a crime. Respondent reported his 2005, 2006, and 2014 convictions on this application, but failed to report his April 14, 2003 conviction.

8. A. The application states the following:

32. Have you ever been convicted . . . of any violation of the law at the misdemeanor or felony level? If yes, complete item 38 with information on each conviction.

38. Detailed explanation of item 32 and/or 33. Complete one line for each violation and provide explanation below. If you are unable to provide this information, provide all the requested information you can obtain, with an explanation for the missing information. If the conviction status has been subsequently changed or reduced, note that fact in the area provided for additional information. Attachments for additional information should specify which lines you are referring to. Each additional sheet must be signed by applicant and employing broker, if any.

40. Additional Information: Specify which lines you are referring to. Attach extra sheets if more room is needed. Each additional sheet must be signed by applicant and employing broker, if any.

B. Item 32 clearly directs the applicant to report all convictions. Respondent failed to follow the direction in item 32 when he reported three of his four convictions, and decided to withhold information about one of his convictions due to a lack of space. Although he failed to provide important information required to complete his application, the evidence established that the omission was not an attempt to mislead the Bureau. Nevertheless, respondent should have understood the application called for him to disclose all convictions, and he made the decision to knowingly omit his earliest conviction, thereby engaging in dishonesty.

//

### *Mitigation, Rehabilitation and Other Relevant Facts*

9. Respondent took full responsibility for his convictions. He acknowledged that while in college he drank alcohol to excess when he spent time with his college friends (the time-period for his first three convictions). These persons are no longer in his life. Respondent acknowledged that though he attended the two alcohol rehabilitation programs for his first three convictions, he did not learn from these programs or from the convictions that he had a problem with alcohol and how to control his alcohol consumption and identify the triggers that caused him to use alcohol. He did not make a commitment at that time to limit his consumption of alcohol. Respondent explained that in 2009, as his relationship with his now wife became more committed and they decided to marry, he also committed to sobriety and active involvement in their church. These efforts were a necessary first step towards his sobriety, but fell short of the work that he needed to do, and he continued to deny that he is an alcoholic.

10. Respondent relapsed on August 31, 2013. He is very ashamed of his decision to drink alcohol when his then newborn child was in the NICU, and respondent took responsibility for abandoning his wife and son during that time and creating stress for his family. Respondent found his most recent alcohol rehabilitation program, including Alcoholic Anonymous (AA), have taught him how to control his use of alcohol and to handle stressors in his life. Respondent developed a supportive relationship with the program coordinator, Eva Horridge-DuBief, and learned the importance of reaching out to others when he feels emotionally overwhelmed. He no longer attends these support groups, but is willing to return if that is made a condition of licensure. Respondent clearly understands all that he would lose were he to drink again. He did not demonstrate, though, that he has integrated his history of drinking, his family's history of drinking, his related convictions. He believes he is not an alcoholic because he no longer drinks; this is contrary to what alcohol programs, including AA, generally teach. He did not demonstrate that he understands his triggers to the degree necessary to guard against future relapses.

11. Respondent apologized for failing to include his 2003 conviction on his real estate salesperson application. He thought he was to provide conviction information as it fit in the space provided in item 38. Because item 38 only has three lines, he only provided information about three convictions. He did not understand the directions in items 38 or 40 to mean he needed to provide information about additional convictions on an attachment or in the space provided in item 40.

12. Respondent has significantly changed his lifestyle since starting his family and since his last conviction. Over the past three years, respondent has been employed full-time for FedEx, and has fulfilled his personal commitment to his physical and emotional health so he can be responsible and healthy for his family. Since his last conviction and his completion of his most recent rehabilitation program, respondent has exercised regularly, improved his eating, and strengthened his relationships with his family and friends so he can turn to them if significant stressors, such as a child being in critical health, were to arise. Respondent submitted photographs corroborating his testimony of his active family life with

his wife and his three-and-one-half-year-old son and one-and-one-half-year old daughter. These pictures depict him and his wife and children during the pregnancies, and during family holidays and trips. Respondent takes his children to school and church, and shares with his wife the responsibilities of their daily routine. Respondent also volunteers at his church at least three Sundays per month for one to two hours, passing out brochures.

13. Respondent submitted documents corroborating his testimony about his rehabilitation. He provided a copy of his unrestricted class C driver's license (effective October 3, 2016), and a copy of his certificate of completion of his most recent alcohol rehabilitation course (July 31, 2015). Eva Horridge-DuBief, the program coordinator of the rehabilitation program, stated in her February 20, 2017 letter that respondent did not hesitate to take responsibility for his decisions and has made changes towards a more positive lifestyle. Cynthia Gomez, a broker with Century 21 Town and Country (Century 21), wrote a letter in support of respondent's application for licensure, stating that she first met respondent in 2009 when he was a marketing assistant in her office, that he takes all the real estate trainings he can, and that he is dedicated, honest, and responsible about his real estate career. Ms. Gomez knows of respondent's convictions and would be his supervisor were he to obtain his license. Julio Sandoval, a real estate salesperson with Century 21, also wrote a letter in support of respondent's licensure. He stated he has known respondent for several years and knows him to be trustworthy, dependable, and respectful.

14. Ana Karina Macias, respondent's wife, testified and submitted a letter of reference on respondent's behalf. Ms. Macias met her husband in high school over 20 years ago. She has seen respondent mature and believes the commitment respondent made in 2009, to sobriety and to being an active member of their church community, has allowed him to fulfill his role as a responsible and sober husband and father. Ms. Macias did not minimize the detriment of respondent's relapse and behavior in August 2013, or the resulting conviction. She explained that the time when their son was in the NICU took a toll on both her and respondent, but respondent's use of alcohol was not excusable and must not be repeated. That final incident made respondent realize that alcohol was at the root of his problems and he could not be the father or husband he wants to be if he returned to drinking. She further explained that respondent has not consumed alcohol since then, that he has taken a very active role in parenting their children, is a leader in his family (respondent's commitment to his own sobriety led his brothers and father to stop their consumption of alcohol, a family problem), has become a leader at their church, and studied diligently for the real estate salesperson exam while working full-time. Based on these changes and consistent behavior, Ms. Macias trusts her husband with the safety of her children.

## LEGAL CONCLUSIONS

1. Respondent bears the burden of proving he meets all prerequisites necessary for the requested license. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1221.) This burden requires proof by a preponderance of the evidence. (Evid. Code, § 115.)



2. The Real Estate Commissioner “has full power to regulate and control the issuance and revocation . . . of all licenses to be issued . . .” (Bus. & Prof. Code, § 10071.) “Protection of the public shall be the highest priority for the [Bureau] of Real Estate in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.” (Bus. & Prof. Code, § 10050.1.)

3. The Real Estate Commissioner may deny an application for a license if the applicant has been convicted of crimes substantially related to the qualifications, functions or duties of a licensed real estate salesperson. (Bus. & Prof. Code, §§ 475, subd. (a)(2), 480, subd. (a), 10177, subd. (b).)

4. The Real Estate Commissioner may deny an application for a license if the applicant has engaged in conduct that constitutes fraud or dishonest dealing. (Bus. & Prof. Code, § 10177, subd. (j).)

5. A crime is substantially related to the qualifications, functions, or duties of a real estate licensee if it involves conduct which demonstrates “a pattern of repeated and willful disregard of law,” or two or more convictions involving the consumption of alcohol when at least one of the convictions involves driving. (Cal. Code Regs., tit. 10, § 2910, subd. (a), criteria (10), (11).)

6. Cause exists to deny respondent’s real estate salesperson license application under Business and Professions Code sections 475, subdivision (a)(2), 480, subdivision (a), and 10177, subdivision (b), because respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a real estate licensee. (Factual Findings 3-6.)

7. Cause exists to deny respondent’s real estate salesperson license application under Business and Professions Code section 10177, subdivision (j), because respondent engaged in conduct that constitutes dishonest dealing. (Factual Finding 7-8.)

8. Cause for denial of respondent’s application having been established, respondent bears the burden of proving that he is sufficiently rehabilitated from his convictions and from providing to the Bureau false information on his license application to warrant licensure. (See *Martin v. Alcoholic Beverage Control Appeals Bd.* (1950) 52 Cal.2d 259, 264-265; *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309.) Rehabilitation is a “state of mind” and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved “reformation and regeneration.” (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940), but remorse, while necessary, is insufficient to demonstrate rehabilitation. A truer indication of rehabilitation than a mere expression of remorse is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) “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.)

9. The criteria for assessing the rehabilitation of a license applicant include whether at least two years have passed since the most recent conviction or act, any restitution the applicant has made, expungement of convictions for immoral acts, successful completion of probation, payment of fines imposed in connection with a criminal conviction, stability of family life and fulfillment of familial responsibilities, completion of educational courses taken for economic self-improvement, involvement in community programs designed to provide social benefits, new and different social and business relationships, and changes in attitude as reflected by, for example, evidence from family members or others familiar with respondent’s previous conduct and changes in behavior and the absence of subsequent convictions. (Cal. Code Regs., tit. 10, § 2911.)

10. The duty to make a full disclosure in an application for a professional license is an absolute duty. (*Spears v. State Bar of Cal.* (1930) 211 Cal. 183, 187.) Justification for a failure to perform that duty is not found in the excuse that the applicant believed the disclosure was not necessary. Whether a failure to disclose is caused by intentional concealment, reckless disregard for the truth, or an unreasonable refusal to perceive the need for disclosure, such an omission is itself strong evidence that the applicant lacks integrity or intellectual discernment required of a professional. (See *In re Gehring* (1943) 22 Cal.2d 708.) Lacking the required integrity or intellectual discernment is a basis for license discipline. (See *Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518 [law protects public not only from intentional misdeeds, but also from uninformed, negligent, or unknowledgeable salesman].) The real estate business is a complex one requiring license holders to operate in sophisticated and complex business environments while entrusted with the money and financial security of others, to make full and honest disclosures, and to complete and execute complex and difficult forms. Respondent’s failure to understand he needed to report all of his convictions, rather than choose the three most recent, demonstrates a lack of attention to detail that is required for unrestricted licensure.

11. Respondent’s four substantially related convictions all involve the consumption of alcohol and driving. However, three of them occurred more than 11 years ago, and the most recent conviction occurred three-and-one-half years ago. Respondent’s convictions and continued ambiguity as to his alcoholism show the seriousness of his challenges with alcohol. Respondent was successful in his sobriety and life changes from 2009 to 2013, but he relapsed and again drove under the influence of alcohol. Since his 2013 relapse, respondent has made significant additional changes to his life. Respondent’s rehabilitation includes three-and-one-half years of sobriety, successful completion of his probations, no longer associating with those persons he drank alcohol with, stability of family life and fulfillment of familial responsibilities, completion of education courses to better his career, and establishment of trusting working relationships with persons in the real estate industry. In addition, respondent takes full responsibility for his convictions, as evidenced by his own testimony and the corroborative statements by his wife, colleagues, and the director of his most recent alcohol rehabilitation program.

12. Respondent has established his rehabilitation and has fully acknowledged the wrongfulness of his past actions. However, in consideration of his still recent sobriety date and his ambiguity as to whether he is an alcoholic, respondent has not demonstrated the public would be protected if he were issued an unrestricted license. Respondent has not demonstrated he can recognize his triggers to use alcohol or that he understands his relationship to alcohol. Given the personal and financial matters entrusted to a real estate salesperson and the stress inherent in a real estate salesperson's job duties, respondent requires the oversight of a supervisor and the support of an ongoing alcohol support program. The interests of public protection therefore require that respondent's application be denied on the condition that he receives a restricted license for three years' subject to the limitations, conditions, and restrictions identified below, including at least weekly attendance at an alcohol support program.

### ORDER

The application of respondent Mark R. Macias, also known as Mark Ruben Macias and Mark Ruben Macias-Gonzalez, 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 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 the 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. While working as a real estate salesperson under his restricted license, and with any application for an unrestricted license or transfer to a new employing broker, respondent shall submit to the Bureau a statement signed by any current or prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Bureau, 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.

5. Respondent shall attend an alcohol support program, such as Alcoholics Anonymous, at least weekly during the term of his restricted license. He shall maintain a meeting sign-in card on which he will list the days of meetings he attended, the times and places, and a signature from someone at the meeting to confirm that he attended. Respondent shall be prepared to show a complete history of his attendance through these cards to the Department upon request.

DATED: March 24, 2017

DocuSigned by:

*Chantal Sampogna*

EFCE61A19557469

---

CHANTAL M. SAMPOGNA  
Administrative Law Judge  
Office of Administrative Hearings