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NOV 29 2017

BUREAU OF REAL ESTATE

By [signature]

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	CalBRE No. H-40551 LA
	)	
EMILIO ESPANA,	)	OAH No. 2017060093
	)	
Respondent.	)	
	)	

DECISION

The Proposed Decision dated October 18, 2017, 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.

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted 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 party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. 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.

This Decision shall become effective at 12 o'clock noon on 12/19/17.

IT IS SO ORDERED 11/22/17

WAYNE S. BELL
REAL ESTATE COMMISSIONER

By: DANIEL J. SANDRI
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of: EMILIO ESPANA, Respondent.	Case No. H-40551 LA OAH No. 2017060093

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on September 19, 2017, in Los Angeles, California.

Complainant was represented by Steve Chu, Counsel for the Bureau of Real Estate (Bureau).

Emilio Espana (respondent) appeared personally and represented himself.

Evidence was received and the matter was submitted for decision on September 19, 2017. The Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. Maria Suarez (complainant) made the Accusation in her official capacity as Supervising Special Investigator for the Bureau of Real Estate.

2. Respondent is presently licensed and/or has licensing rights as a real estate salesperson under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code. Respondent has been licensed since 2007.

3. On January 11, 2016, in the Superior Court of California, County of Los Angeles, Case No. SA089346, respondent entered a plea of nolo contendere and was convicted of violating Penal Code section 25850, subdivision (a), carrying a loaded firearm in

public, a felony.[1] Imposition of sentence was suspended and respondent was placed on formal probation for 36 months on certain conditions including, inter alia, that respondent serve two days in the county jail (time served), pay a restitution fine and court fees totaling $411, and complete 60 days of community service. Respondent has paid the court imposed fines, paid restitution to the victim, and completed the Cal Trans work. On September 15, 2017, the court granted respondent's motion to terminate probation, vacate his nolo contendere plea, entered a plea of not guilty, and dismissed the charge pursuant to Penal Code section 1203.4 (Exhibit A).

4.A. The facts and circumstances underlying the conviction were that on November 23, 2014, respondent and his brother took some weapons to an uninhabited area to shoot at rabbits. After shooting their weapons, respondent, who still had his loaded handgun in his car, drove to his old neighborhood because a friend (J.O.) called respondent and asked him for a ride to a local pharmacy. J.O. had been selling illegal drugs through an internet site at the time of the incident, and had posted an advertisement with his cell phone number indicating that he would sell Oxycodone for $15 per pill. On November 18, 2014, an undercover police officer sent a text to J.O. requesting to buy 10 pills and was told by J.O. that 10 pills would cost $150.

4.B. On November 23, 2014 (the date of respondent's arrest), the undercover officer initiated another text communication with J.O., stating that he was ready to buy the Oxycodone pills. J.O. responded that they could meet at a pharmacy parking lot and that he (J.O.) would be in a blue Toyota. J.O. then called respondent and asked respondent for a ride to the pharmacy. Respondent agreed and picked up J.O. in his blue Toyota minivan and took him to the pharmacy. Respondent and J.O. arrived at the pharmacy parking lot at approximately 2:30 p.m. J.O. got out of the vehicle, walked toward the undercover officer, and made the drug transaction with the officer. When the drug transaction was completed, J.O. walked back toward respondent's parked car and entered the vehicle. The undercover officer "radioed a black and white" which arrived forthwith. At that point, respondent attempted to drive away but was stopped by the police officers who responded to the radio call. The responding police officers searched respondent's car and found respondent's loaded handgun with a magazine capacity of ten rounds on the back seat. They also found another loaded magazine containing nine rounds. In addition, they found methamphetamine in the vehicle. Finally, the officers searched respondent and found $727 in his right pants pocket. Respondent was arrested at the scene.

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[1] Respondent was originally charged with violating Health and Safety Code sections 11352.subdivision (a), transporting or sales of controlled substances; and 11370.1, subdivision (a), possession of a controlled substance while armed. Both offenses are felonies. These charges were dismissed pursuant to plea negotiation.

4.C. The police report contains a property report and a receipt for property for each arrestee. The first receipt for property (Exhibit 4, page 7) indicates that the illegal drugs found in the vehicle belonged to J.O. The second property receipt (Exhibit 4, page 9) indicates that the loaded handgun and the loaded magazines belonged to respondent. This fact, along with J.O.'s continuing communication with the undercover officer supports respondent's testimony that he was not involved in the drug sale.

5. Respondent testified that he was not aware of J.O.'s activities in selling illegal drugs. While respondent was not initially aware of J.O.'s reason for asking respondent for a ride, it is reasonable to assume that at some point during the trip to the pharmacy parking lot, respondent became aware of the actual reason. The amount of drugs found in respondent's car, although belonging to J.O., would have alerted respondent of J.O.'s drug-related activity. Once respondent picked up J.O., and realized that J.O. had these drugs in his possession, he should have refused to take J.O. to the pharmacy parking lot.

6. Respondent grew up in rough neighborhood. He testified that he has learned his lesson and now realizes that he should not have associated with certain individuals in his old neighborhood, such as J.O. Respondent's assertion was supported by Fernando Jacinto, a friend who has known respondent for many years and who was with respondent when respondent and his brother were shooting the handgun that afternoon. Respondent purchased the handgun legally, and properly registered it with local and state authorities. In fact, respondent submitted a Handgun Safety Certification from the Department of Justice (Exhibit C), which contains his California driver's license number. The registration of his handgun and subsequent certification supports his testimony that he did not intend to use the gun in furtherance of J.O.'s drug transaction or to commit other crimes.

7. Respondent has been gainfully employed throughout his adult life and has held a salesperson license since 2007. He worked eight years for Vilma Salazar, his former employing broker whose business is located in Inglewood, California He has never been disciplined by the Bureau or its predecessor, the Department of Real Estate. After leaving Ms. Salazar's real estate office, respondent worked in an administrative capacity for Dr. Hadi Shirzadian where he prepared medical reports and oversaw many of the day-to-day operations of the medical office. Dr. Shirzadian wrote a letter in support of respondent during respondent's criminal proceedings. In his letter, Dr. Shirzadian attested to respondent's honesty and character. He stated respondent "is the hardest working and most productive individual I have ever met. . . . Emilio is very bright as well and I've increasingly relied on him for everything. His attention to detail is excellent and have no doubts about his honesty."

8. Respondent also presented evidence of community service. He volunteers his time to coach soccer and trains amateur boxers.

9. Pursuant to Business and Professions Code section 10106, complainant requests costs of investigation of this matter in the amount of $550.50, and costs of enforcement in the amount of $667.50. These costs are reasonable under section 10106.

LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke respondent's real estate salesperson license under Business and Professions Code sections 490, and 10177, subdivision (b), for a conviction of a crime that is substantially related to the duties, functions and qualifications of a real estate salesperson pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8).

2. Complainant submitted reasonable costs of investigation under Business and Professions Code section 10106. Therefore, cause exists to grant complainant's request for the costs of investigation and enforcement.

3. California Code of Regulations, title 10, section 2912, sets forth criteria for establishing rehabilitation. The rehabilitation criteria set forth in section 2912, have been developed and to be considered by the Bureau pursuant to section 482 of the Business and Professions Code for the purpose of evaluating rehabilitation of a licensee who has committed a crime, and are set forth as follows:

> (a) The time that has elapsed since commission of the act(s) or offense(s):
>
> (1) The passage of less than two years after the most recent criminal conviction or act of the licensee that is a cause of action in the Bureau's Accusation against the licensee is inadequate to demonstrate rehabilitation.
> (2) Notwithstanding subdivision (a)(1), above, the two-year period may be increased based upon consideration of the following:
> (A) The nature and severity of the crime(s) and/or act(s) committed by the licensee.
> (B) The licensee's history of criminal convictions and/or license discipline that are "substantially related" to the qualifications, functions, or duties of a real estate licensee.
>
> (b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee,

or escheat to the State of these monies or other properties if the victim(s) cannot be located.

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

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

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances and/or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance and/or alcohol.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

(1) Testimony and/or other evidence of rehabilitation submitted by the licensee.
(2) Evidence from family members, friends and/or other persons familiar with the licensee's previous conduct and with subsequent attitudes and/or behavioral patterns.
(3) Evidence from probation or parole officers and/or law enforcement officials competent to testify as to licensee's social adjustments.
(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.
(5) Absence of subsequent felony convictions, misdemeanor convictions, or other conduct that provides grounds to discipline a real estate licensee, which reflect an inability to conform to societal rules when considered in light of the conduct in question.

4. Respondent's felony offense of carrying a loaded weapon in his vehicle created a potential for danger to the public. He was convicted of the offense less than two years ago and was placed on formal probation. Respondent has no other convictions. Further, respondent's conviction was expunged in September 2017. The relatively light sentence imposed by the superior court and the fact that the court terminated respondent's probation and expunged his conviction after only 20 months, is an indication that the court did not consider respondent a recidivist or a danger to society. He testified credibly that he has learned his lesson and now realizes that he should not have given J.O. a ride to the pharmacy and should not participate in activities of certain individuals from his old neighborhood. Respondent's handgun was purchased legally and was properly registered, which tends to support his testimony that he did not intend to use the gun in furtherance of J.O.'s drug transaction or to commit other crimes. Further, the fact that he has an otherwise clean record also supports this notion. Respondent has been gainfully employed throughout his adult life. He has been licensed for 10 years with no prior record of discipline. Finally, respondent presented evidence of community service in that he coaches organized youth sports.

5. Living and growing up in a rough neighborhood can present problems even for individuals who are otherwise law abiding. However, such an individual must at some point decide to no longer associate with others who engage in misconduct or criminal activity. The evidence established that respondent is a decent person who made a bad decision on the day of his arrest. Based on respondent's demeanor and respectful attitude at the hearing and his otherwise clean record, respondent's testimony that he has learned a valuable lesson is credible. Recidivism is not likely. Based on the entire record of this case, the public will be adequately protected by imposing a stayed revocation under probationary conditions, including a period of suspension. The purpose of the suspension is to ensure that respondent has truly learned the lesson he claims to have learned.

ORDER

All licenses and licensing rights of respondent Emilio Espana, under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application thereof and pays to the Bureau of Real Estate 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 of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. Respondent's license and licensing rights are hereby suspended for a period of 30 days beginning on the effective date of this decision.

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

3. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

4. 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 effective date of this Decision.

5. Respondent shall submit with any application for a license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Bureau of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

6. Respondent shall pay to the Bureau of Real Estate the costs of investigation and enforcement of this matter in the amount of $1,218. In its discretion, the Bureau may allow respondent to pay this amount in installments.

7. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

8. 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, California 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 suspension or revocation of that license.

DATED: October 18, 2017

DocuSigned by:
humberto flores
HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings