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BUREAU OF REAL ESTATE

By ALD

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of

FRANCISCO RAMIREZ JR.,

Respondent.

No. H-40731 LA

OAH No. 2017081150

DECISION AFTER REJECTION

This matter came on for hearing before Thomas Y. Lucero, Administrative Law Judge ("ALJ") of the Office of Administrative Hearings, at Los Angeles, California, on October 17, 2017.

The Complainant was represented by Steve Chu, Counsel for the Bureau of Real Estate. Respondent FRANCISCO RAMIREZ JR. appeared personally and represented himself.

Oral and documentary evidence was received, the hearing was closed, and the matter was submitted on that date.

On November 16, 2017, the ALJ submitted a Proposed Decision which I declined to adopt as my Decision herein.

Pursuant to Section 11517(c) of the Government Code of the State of California, Respondent was served with notice of my determination to not adopt the Proposed Decision of the ALJ along with a copy of said Proposed Decision. Respondent was notified that I would

1 decide the case upon the record, the transcript of the proceedings held on October 17, 2017, and  
2 upon any written argument offered by Respondent and Complainant.

3 Respondent did not submit any written argument for my consideration. On  
4 February 26, 2018, argument was submitted on behalf of Complainant.

5 I have given careful consideration to the record in this case, including the  
6 transcript of the proceedings of October 17, 2017. I have also considered the argument  
7 submitted on the behalf of Complainant.

8 The following shall constitute the Decision of the Real Estate Commissioner in  
9 this proceeding:

10 FACTUAL FINDINGS

11 1. Complainant brought the Accusation in her official capacity as Supervising  
12 Special Investigator for the Bureau of Real Estate ("Bureau"). Respondent timely requested a  
13 hearing.

14 2. On October 16, 1992, the Bureau issued Respondent a real estate salesperson  
15 license, and, on November 8, 1997, the Bureau issued Respondent a real estate broker license.  
16 At the time of hearing, Respondent's license was set to expire on November 7, 2017.

17 3. On August 5, 2016, in the Superior Court of California, County of Los  
18 Angeles, case number BA445823, on a plea of nolo contendere, Respondent was convicted of  
19 violating Penal Code section 664 with respect to Penal Code section 261.5 (attempted sexual  
20 intercourse with a minor), a felony. Respondent was sentenced to eighteen (18) months in state  
21 prison. Execution of the sentence was suspended, and Respondent was placed on formal  
22 probation for five (5) years. The terms of Respondent's probation include forty five (45) days  
23 of community labor, completion of a fifty two (52) week sex offender program, and the  
24 payment of fines and assessments totaling \$470. The court did not order Respondent to register  
25 as a sex offender.

26 4. Respondent's conviction stems from his arrest on March 30, 2016. On that  
27 date, members of the Operation South Bureau Human Trafficking Task Force and Homeland

1 Security conducted an undercover investigation at a hotel. In the course of that investigation,  
2 the officers posted an advertisement on www.backpage.com.

3 5. The headline of the advertisement read, "2 young Petite treat...Fresh & Tight  
4 2 leave you speechless...New to LA...very discreet...99." Among other statements, the body  
5 of the advertisement included the following: "Young N Wild to make you smile...Tired of the  
6 older chicks...play as my daddy." The advertisement listed the poster's age as "99."

7 6. Respondent replied to the advertisement via text message at 12:33 PM. After  
8 initially not receiving a response, Respondent sent another message at 1:10 PM, asking if the  
9 poster was available. Following a series of text message exchanges regarding the appearance of  
10 the girls and their location, Respondent was sent a text at 2:11 PM that read, "u cop? got to  
11 make sure u safe...we both 16yo."

12 7. Respondent replied at 2:13 PM stating, "Absolutely not a cop." Respondent  
13 quickly followed with a text message asking "Are you a cop??" Respondent was sent a text at  
14 2:14 PM replying "hell no." Seconds later, Respondent asked, "OK So where you at?"

15 8. Respondent received a text at 2:16 PM asking, "who u wanna date? \$\$ is for  
16 suck and fuck only...anal extra." Respondent replied within less than thirty seconds stating,  
17 "Yes that's fine."

18 9. Following a series of additional texts about the girls' appearance and how  
19 much time Respondent intended to spend with one of the girls, Respondent again asked "Ok  
20 where you at?" at 2:33 PM. At 2:36 PM, Respondent was given the location of the hotel. At  
21 2:38 PM, Respondent sent a text asking, "Wait how are you for real 16? 18?" Less than a  
22 minute later, Respondent received a text stating "16." At 2:39 PM, Respondent sent a text  
23 reading, "And your are not a cop or with cops? Your under age and i would be in huge  
24 trouble!"

25 10. After Respondent received a text stating, "fck no," he sent a text at 2:40 PM  
26 stating that he could be at the hotel in twenty minutes. After confirming the location, he sent a  
27 text at 2:42 PM asking, "Cool Last question How did you get a room if you are 16?"

1 Respondent received a text less than a minute later replying, "one of my regulars." At 2:44  
2 PM, Respondent sent a text stating, "OK on my way but I am leaving work so please promise  
3 me you will be available in 20 minutes and no other guy is coming."

4 11. At 2:48 PM, Respondent called Officer Elenes, who was part of the  
5 undercover operation. Officer Elenes did not answer that call, but she called Respondent back  
6 at 2:53 PM and they had a brief conversation. Respondent stated that he was on the way to the  
7 hotel and asked if Officer Elenes was affiliated with law enforcement. Respondent said the  
8 arrangement was a risk because she was sixteen years old.

9 12. Police officers observed Respondent arrive at the hotel. They saw him walk  
10 around the hotel appearing to look for signs of law enforcement. At 3:07 PM, Respondent sent  
11 a text stating that he had arrived. He was then sent a text message at 3:10 PM indicating a  
12 room number.

13 13. Police officers observed Respondent walk past the room and check the  
14 hallways. Respondent then knocked on the door in question and was arrested.

15 14. Respondent submitted a Conviction Detail Report RE 515D to the Bureau.  
16 In that document, Respondent provided a written description of his offense. He stated that he  
17 had visited a dating website that requires an attestation that the visitor is at least eighteen  
18 years old. Respondent said that he answered an ad that stated it was for people eighteen years  
19 and older. Respondent claimed that, while on the way to meet the woman, she called him on  
20 the phone and said she was sixteen, "which caught me completely off guard, I did not believe  
21 her as I verified she was an adult via her voice, plus its an adult site." Respondent admitted  
22 he should have turned the car around at that point, but claimed he "was there, didn't believe  
23 her, and went to verify." Respondent maintained that he would have left immediately if she  
24 was a minor, but he knew she was an adult and "just wanted to talk." Respondent also stated,  
25 "Interesting to note that throughout the proceedings, the JUDGE, kept emphasizing, that there  
26 was NO VICTIM—But as stated, I just wanted this to end for the sake of my family."  
27 Respondent advised that his wife had initially been upset, but that "once she got the facts,

1 read the case, she supported me 100% as this was 10000% entrapment and there was no  
2 victim."

3 15. Respondent also submitted an Interview Information Statement RE 515 to  
4 the Bureau. In a field entitled "Explanation" under the Heading "Employment," Respondent  
5 stated "my employer does not know of my conviction."

6 16. Respondent testified at hearing. His testimony was not credible regarding  
7 the events that lead to his arrest. When first asked if he tried to contact an escort to pay for  
8 sex on March 30, 2016, Respondent denied that he had done so. Furthermore, Respondent  
9 claimed that he was almost at the hotel when he was told the girl he was meeting was sixteen  
10 years old. When specifically questioned on the point, Respondent initially insisted he had no  
11 idea the girl was sixteen years old when he asked for her location.

12 17. Even when first shown the police report at hearing, Respondent continued  
13 to claim that he had not necessarily been trying to pay for sex. Yet, when confronted with the  
14 text message referencing prices for specific sex acts, Respondent did not deny receiving it.  
15 Respondent also acknowledged having received the 2:11 PM text message indicating that his  
16 correspondent was sixteen years old and admitted having sent a text message three minutes  
17 later asking where his correspondent was. In fact, Respondent acknowledged having sent or  
18 received all of the text messages memorialized in the police report.

19 18. Respondent repeatedly denied attempting to have sexual intercourse with a  
20 minor. Respondent explained that he "never saw anybody." Respondent acknowledged the  
21 text messages he received that indicated his correspondent was sixteen and said he should  
22 have probably turned around the car at that point. Respondent stated that he did not do so  
23 because he was already there and "wanted to see what was going on." Respondent admitted  
24 to having had previous encounters with prostitutes that he had met on Backpage.com.

25  
26 19. Respondent claimed to have been very busy at work while participating in  
27 the text message exchange and stated that he was not really paying attention. Respondent

1 testified that he asked for a phone call because he realized something was not right and asked  
2 for "voice verification." Respondent maintained that he did not believe that his correspondent  
3 was in fact sixteen years old. Respondent denied ever having been interested in a minor.  
4 Respondent stated that he went to the hotel because he "was incredibly hopeful that she was  
5 not 16 years old." Respondent admitted to having exercised poor judgment.

6           20. Respondent stated he did not recall telling a Special Investigator from the  
7 Bureau "I don't feel like I did anything wrong," but Special Investigator Marc Aguilar  
8 testified that Respondent did in fact make the statement, and Respondent did not challenge  
9 Mr. Aguilar's testimony on cross-examination.

10           21. Respondent testified that he has completed his court-ordered sex offender  
11 program. Respondent's testimony in this regard was supported by the hearsay report of  
12 Sharon O'Hara, MFT, which indicates that Respondent completed his fifty second session of  
13 the Sexual Offending Behaviors Recovery Program on May 17, 2017. Respondent testified  
14 that he has also been attending Sex Addicts Anonymous for the past year and has found it to  
15 be very helpful. Respondent feels he has learned how to deal with stress appropriately and  
16 has become a better person than he used to be. Ms. O'Hara's report also indicates that  
17 Respondent has learned how to better handle his frustrations so as not to relapse.

18           22. Respondent testified that he has been volunteering for the last two months  
19 at a church to complete his court-ordered community service; Respondent denied performing  
20 other community service work. In his closing argument, Respondent indicated that he started  
21 attending church again after his arrest, but the record is unclear as to the frequency of such  
22 attendance.

23           23. Respondent testified that he provides care for his disabled wife and their  
24 two children. As Respondent indicated in his testimony, he advised police that he had been  
25 having marital problems for a few years and had not been engaging in sexual activity with his  
26 wife. The hearsay report of Ronette Goodwin, Ph.D. contains further information regarding  
27 these marital difficulties. That report discusses several psychological conditions from which

Respondent's wife apparently suffers and the marital problems that Respondent and his wife have experienced.

24. In his Conviction Detail Report, Respondent claimed that he has had two court ordered evaluations, both of which found that he was not a threat. Dr. Goodwin's report indicates that she did administer two diagnostic tests to Respondent to assess risk factors associated with recidivism for sex crimes. Dr. Goodwin concluded that Respondent was in the low risk range for a repeat offense.

25. Respondent has no prior record of discipline on his real estate license.

26. Complainant incurred total reasonable costs of \$1,479: \$945 for investigation and \$534 for enforcement of this matter.

## LEGAL CONCLUSIONS

1. Complainant has the burden of showing by clear and convincing proof to a reasonable certainty that license discipline is warranted. *Ettinger v. Medical Board of Quality Assurance*, 135 Cal. App. 3d 853, 855 (1982).

2. Pursuant to Business and Professions Code (“Code”) sections 490, subdivision (a), and 10177, subdivision (b)(1), the Real Estate Commissioner may suspend or revoke a real estate license based on a conviction that is substantially related to the qualifications, functions, or duties of a real estate licensee.

3. Section 2910, title 10, chapter 6 of the California Code of Regulations (“Regulations”) sets forth the criteria by which the Commissioner may determine whether a conviction is substantially related to the qualifications, functions, or duties of a real estate licensee. Subdivision (a)(8) provides that a conviction is substantially related if it involves doing an unlawful act with the threat of doing substantial injury to another person. As used here, the term “threat” does not require an intent to injure; an unlawful act threatens substantial injury if it poses an imminent risk of substantial injury. *Donley v. Davi*, 180 Cal. App. 4th 447.

1 465 (2009). Subdivision (b) provides that a conviction for attempting to commit such an act is  
2 also deemed to be substantially related to the qualifications, functions or duties of a licensee.

3 4. Respondent was convicted on a nolo contendere plea. Regardless of the  
4 motives that may have impelled it, Respondent's plea stands as conclusive evidence of his guilt  
5 of the specific offense charged. *Arneson v. Fox*, 28 Cal. 3d 440, 449 (1980). Respondent may  
6 not impeach his conviction. *Id.* at 452; see also *Berg v. Davi*, 130 Cal. App. 4<sup>th</sup> 223, 231  
7 (2005). Respondent's nolo contendere plea admits all matters essential to his conviction.  
8 *People v. Arwood*, 165 Cal. App. 3d 167, 171 (1985), citing *People v. DeV Vaughn*, 18 Cal. 3d  
9 889, 895 (1977). In this case, those elements are that Respondent specifically intended to  
10 engage in an act of sexual intercourse with a minor who was not his spouse and that  
11 Respondent took a direct but ineffectual step towards commission of that offense. See *People v.*  
12 *Herman*, 97 Cal. App. 4<sup>th</sup> 1369, 1385, citing *People v. Jones*, 75 Cal. App. 4<sup>th</sup>, 616, 627 (1999)  
13 and Penal Code section 261.5. Respondent cannot now dispute these facts.

14 5. Respondent's conviction is substantially related to the qualifications,  
15 functions, and duties of a real estate licensee pursuant to subdivisions (a)(8) and (b) of section  
16 2910 of the Regulations. Engaging in sexual intercourse with a minor is an unlawful act that  
17 poses a substantial risk of harm to that minor. This risk of harm is reflected by the fact that  
18 Penal Code section 261.5 operates without regard to force, fear, or consent. See *People v.*  
19 *Scott*, 9 Cal. 4<sup>th</sup> 331, 342 (1994). The Legislature has determined that children are uniquely  
20 susceptible to exploitation and thus has afforded them protection above and beyond that  
21 afforded to other victims of sexual assault. *Id.* at 341-342. The fact that Respondent did not  
22 successfully complete his crime does not lessen the substantial relationship between his conduct  
23 and the qualifications, functions, and duties of a licensee, as subdivision (b) specifically  
24 addresses convictions for attempted offenses.

25 6. As Respondent's conviction is substantially related to the qualifications,  
26 functions, and duties of a real estate licensee, cause exists to suspend or revoke Respondent's  
27 real estate broker license under Code sections 490, subdivision (a), and 10177, subdivision (b).



1                   7. The Bureau has established criteria for evaluating the rehabilitation of a  
2 licensee who has committed a crime. Section 2912 of the Regulations sets forth said criteria as  
3 follows:

4           (a) The time that has elapsed since commission of the act(s) or offense(s):

5               (1) The passage of less than two years after the most recent criminal conviction  
6 or act of the licensee that is a cause of action in the Bureau's Accusation against  
7 the licensee is inadequate to demonstrate rehabilitation.

8               (2) Notwithstanding subdivision (a)(1), above, the two year period may be  
9 increased based upon consideration of the following:

10                   (A) The nature and severity of the crime(s) and/or act(s) committed by  
11 the licensee.

12                   (B) The licensee's history of criminal convictions and/or license  
13 discipline that are "substantially related" to the qualifications, functions,  
14 or duties of a real estate licensee.

15           (b) Restitution to any person who has suffered monetary losses through "substantially  
16 related" acts or omissions of the licensee, or escheat to the State of these monies or  
17 other properties if the victim(s) cannot be located.

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

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

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

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

26           (g) Payment of any fine imposed in connection with the criminal conviction that is the  
27 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.

8. Respondent presented evidence of stability of family life and the fulfillment of his parental responsibilities. Factual Finding 23. Respondent also indicated that he has been resumed attending church and has been fulfilling his court-ordered community service there. Factual Finding 22.

9. Notwithstanding the above, however, Respondent does not meet most of the applicable Criteria of Rehabilitation. Less than two years have elapsed since the time of Respondent's August 5, 2016 conviction. Factual Finding 3. Respondent's conviction has not been expunged. Respondent is still on probation and is scheduled to remain so until August of 2021. Factual Finding 3. Respondent did not present evidence that he has paid his criminal fines. Respondent did not offer evidence regarding new and different social and business relationships from those that existed at the time of his crime. Respondent did not demonstrate that he has completed or sustained enrollment in formal educational or vocational training courses for economic self-improvement. Furthermore, Respondent has not had a sufficient change in attitude.

10. Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. *Seide v. Committee of Bar Examiners*, 49 Cal. 3d 933, 940 (1989). While Respondent professes to take full responsibility for his actions, his testimony makes clear that he has not yet appreciated the extent of his misconduct. In his testimony, his interview

1 with Special Investigator Aguilar, and his Conviction Detail Report, Respondent made  
2 statements that tend to minimize his crime and his degree of fault in it. Factual Findings 14, 16,  
3 17, 18, 19, and 20. Such statements support the conclusion that Respondent has not had a  
4 sufficient change in attitude. *See Donley* at 469. The inconsistencies between Respondent's  
5 testimony and the other evidence further support this conclusion. *See Donley* at 469; Factual  
6 Findings 16 and 17.

7           11. While Respondent did present evidence that he has made progress through  
8 his sex offender program and his participation in Sex Addicts Anonymous, that progress is  
9 insufficient to overcome Respondent's unwillingness or inability to fully acknowledge the  
10 wrongfulness of his conduct. Respondent has yet to appreciate the need to speak honestly  
11 about his actions. Respondent claimed that he did not set out to have sexual relations with a  
12 minor. Factual Finding 19. Yet, Respondent replied to an advertisement specifically targeted  
13 to attract individuals seeking sexual relations with young women. Factual Finding 5.  
14 Respondent maintained that he relied at least in part on the fact that Backpage.com requires  
15 users to be over eighteen years of age, but Respondent clearly did not rely on all of the  
16 information on the website, as the advertisement indicated that the poster was ninety nine years  
17 old. Factual Findings 5 and 14. Furthermore, after having been repeatedly told that his  
18 correspondent was sixteen years old, Respondent persisted in his attempt to meet her for sexual  
19 relations. Factual Findings 6, 7, 8, 9, 10, 11, 12, and 13. Respondent claims that he believed  
20 his correspondent was an adult and that he only wished to verify her age. Factual Findings 18  
21 and 19. Respondent's position is unavailing. Even if Respondent's claim were to be credited,  
22 it shows that, at a minimum, Respondent was willing to take a chance that he might be meeting  
23 a minor for sexual relations.

24           12. Respondent's lack of candor about his offense speaks directly to his fitness to  
25 remain licensed. Honesty and integrity are important qualifications of real estate licensees.  
26 They are deeply and daily involved in various aspects of real estate practice. *Golde v. Fox*, 98  
27 Cal. App. 3d 167, 176 (1979). As the appellate court noted in *Harrington v. Department of*

1 *Real Estate*, clients rely on licensees' integrity in representing them, disclosing important facts  
2 about properties, and holding monies in a fiduciary capacity. 214 Cal. App. 3d 394, 406 (1989).

3 13. The Commissioner is charged with enforcing the Real Estate Law in a  
4 manner that achieves the maximum protection of the public. Code section 10050 (2018). Here,  
5 Respondent has a recent conviction for attempted unlawful sexual intercourse with a minor, and  
6 he remains on probation for that conviction. Respondent's hearing testimony and his statements  
7 to the Bureau demonstrate a lack of candor, and they highlight Respondent's failure to  
8 appreciate the true extent of his misconduct. Respondent does not meet the majority of the  
9 Criteria for Rehabilitation. Under the circumstances, the public would not be adequately  
10 protected by any discipline short of revocation.

11  
12 ORDER

13 WHEREFORE, THE FOLLOWING ORDER is hereby made:

14 All licenses and licensing rights of Respondent FRANCISCO RAMIREZ JR.  
15 under the Real Estate Law are revoked.

16 Respondent is ordered to reimburse the Bureau for its investigation and  
17 enforcement costs in the amount of \$1,479. This amount shall become due and payable at such  
18 time as Respondent may petition the Bureau for reinstatement of his license rights.

19 This Decision shall become effective at 12 o'clock noon on 4/20/18.

20 IT IS SO ORDERED March 29, 2018.

21  
22 WAYNE S. BELL  
23 REAL ESTATE COMMISSIONER

24 *Samuel J. Sand*  
25  
26  
27

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BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of

FRANCISCO RAMIREZ, JR.,

Respondent.

) CalBRE No. H-40731 LA

) OAH No. 2017081150

NOTICE

TO: FRANCISCO RAMIREZ, JR., Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated November 16, 2017, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated November 16, 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, October 17, 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, October 17, 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: 1/3/18.

6 WAYNE S. BELL  
7 REAL ESTATE COMMISSIONER

8 By   
9 DANIEL J. SANDRI  
10 Chief Deputy Commissioner  
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BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

FRANCISCO RAMIREZ, JR.,

Respondent.

Case No. H-40731 LA

OAH No. 2017081150

**PROPOSED DECISION**

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 17, 2017, in Los Angeles, California.

Veronica Kilpatrick, complainant, was represented by Steve Chu, Staff Counsel.

Francisco Ramirez, Jr., respondent, was self-represented.

Oral and documentary evidence was received. The hearing was closed and the matter was submitted for decision on October 17, 2017.

**SUMMARY**

Respondent was convicted of attempting sexual relations with a minor, but he was not seeking out a minor. He made a quick decision, which he acknowledges was catastrophic and thoroughly ill-advised, to proceed with an assignation after being informed of the age of the person he was texting. He is well on the way to rehabilitation, however.

**FACTUAL FINDINGS**

1. Complainant brought the accusation in her official capacity as Supervising Special Investigator of the Bureau of Real Estate (Bureau or BRE). Respondent timely requested a hearing.

2. On October 16, 1992, BRE issued respondent a real estate salesperson license and on November 8, 1997 a Broker license, number B/01147852. At the time of hearing, the license was set to expire on November 7, 2017. (Exhibit 2.)

3. On August 5, 2016, in the Superior Court of California, County of Los Angeles, case number BA445823, on a plea of nolo contendere, respondent was convicted of violating Penal Code section 664 with respect to Penal Code section 261.5 (attempted sexual intercourse with a minor), a felony. The court's sentence of 18 months in state prison was suspended and respondent was placed on five years of formal probation on these conditions: (i) one day in custody, with credit for one day served; (ii) payment of fines and assessments totaling \$470; (iii) cooperation with the probation department on a plan for rehabilitation; (iv) maintenance of training, schooling, or employment; (v) maintenance of respondent's residence; (vi) payment of support for dependents; (vii) thumb and full palm prints and blood or other biological samples for future identification by law enforcement; (viii) 45 days of community labor; and (ix) completion of a 52-week sex offender program, with the proviso that the probation department would determine whether respondent's ongoing psychological treatment would be sufficient. (Exhibit 3.)

4. The court approved respondent's psychological evaluation pursuant to Evidence Code sections 730 and 952. Ronette Goodwin, Ph.D., a licensed psychologist, performed the evaluation on July 13, 2016. Respondent was asked about and described a happy childhood and events in his life relating to sexual relations, primarily his marriage. He described his wife's diagnoses of PTSD (Post-Traumatic Stress Disorder), Bipolar (sometimes called manic-depressive) Disorder, and Borderline Personality Disorder, as well as a time in the past when she abused methamphetamine. He described a lack of intimacy. Dr. Goodwin administered two tests to respondent, both designed to gauge his "risk factors associated with recidivism for sex crimes." (Exhibit B.) Both tests, the Static 99R and SVR-20, placed respondent in the low-risk category for a repeat sexual offense. Dr. Goodwin concluded:

It appears that external factors such as marital stress contributed to Mr. Ramirez using poor judgment and ignoring cues for appropriate decision making. His current treatment program appears to be a comprehensive program that not only address [sic] coping skills for sex offenses, but life skills to reduce risk and vulnerability. Mr. Ramirez should continue in his current program given that he has been proactive in seeking treatment and appears motivated to complete programming. Based upon his ties to his work and family, he would likely be a good candidate for probation or alternative sentencing and would likely complete any additional requirements indicated by the court.

(*Ibid.*)

5. On respondent's August 11, 2016 motion, the court granted respondent permission to travel to Las Vegas, Nevada, from August 11 through 13, 2016. (Exhibit 3.)

///



6. The facts and circumstances underlying the conviction occurred on March 30, 2016, when respondent initiated communications with a person featured in an advertisement on the internet, as set out in Exhibit 8, which includes a minute-by-minute transcript of the messaging monitored by law enforcement.

A. Special agents from Homeland Security and Investigation posted the advertisement. They sought "to attract 'johns' interested in engaging in sexual activity in exchange for money with minor females" as part of an undercover operation at a Doubletree hotel in Los Angeles.

B. The website advertised, among other things: "2 young Petite treat, fresh & Tight 2 leave you speechless, New to LA, very discreet, 99" and "2 girl specialz" near Long Beach, California.

C. At about half past noon, respondent initiated communication by text. With no response at first, respondent texted again at 1:10 p.m., writing "Are you available?" He received an affirmative response about a minute later.

D. After some intermediate messaging, at 2:11 p.m. the text to respondent stated: "u cop? gots to make sure u safe.. we bot 16yo."

E. At 2:38:04 p.m., after a text stating where they could meet, respondent texted: "Wait how are you for real 16? 18?" At 2:38:39 the response was: "16."

F. At 2:39 p.m., respondent texted back: "And your are not a cop or with cops? Your under age and i would be in huge trouble!"

G. At 2:42:11 p.m., respondent texted: "Last question How did you get a room if you are 16?"

H. At 2:42:51 p.m., the texted response was: "one of my regulars.."

I. At 2:53 p.m., a female officer and respondent had a brief telephone conversation during which respondent acknowledged risk because the assignation he had arranged was with a 16-year-old.

J. After he parked at the hotel, respondent walked around the hotel complex. He approached the door of the room number that had been texted to him but walked past it to check the hotel's hallways.

K. Police arrested respondent after he knocked on the door of the room where he expected to meet the person he had been texting.

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L. Respondent remembered the arrest differently, testifying at hearing, though not credibly, that he went from his car directly to the room but, before he could knock, was arrested in front of the room next door.

7. Respondent told the police, and testified at hearing, that one reason for his plan to pay for sex was that he and his wife were having marital difficulties and his sexual needs were unmet for an extended period. During this period, he talked to a friend, who told him about the website respondent used.

8. Respondent did not set out to have sexual relations with a minor. Even after a text informed him he was communicating with a minor, respondent was skeptical. He believed he had good reason to believe he was in contact with an adult, not a minor, because he obtained her contact information from an adults-only website. As respondent told the arresting officers, and as he testified at hearing, the voice of the female officer with whom he spoke by telephone shortly before his arrest convinced him that the person with whom he had been texting was an adult. He testified that he was arrested because he showed up, whereas he should have aborted his plans.

9. Respondent acknowledged, however, that he was guilty of "bad judgment." He was having a very bad day on the day of his arrest. He was stressed not only by the long deterioration of his marriage, but by too much work. He was receiving and responding that day, even as he drove to the hotel, too many calls to his cellphone.

10. Respondent emphasized at hearing circumstances that he believes should mitigate his misconduct. There was no victim. Respondent never saw or came into contact with a girl at the hotel. Respondent is not required to register as a sex offender. He pleaded nolo contendere in order to bring the criminal case to a quick resolution and spare his family.

11. Respondent did not fully understand the criminal proceedings, but he instructed his counsel for his family's sake to do whatever was necessary for a quick resolution. Two major reasons for respondent's accepting the plea bargain counsel negotiated on his behalf were: (i) he would not be required to register as a sex offender, and (ii) he would serve no time in jail.

12. Respondent professed to take full responsibility for his crime in any event. His wife is aware of the conviction, they have discussed the "situation," and she is understanding. She chose to stay married to him, and they continue to live together with their children, a teenage daughter and pre-teen son. Respondent's wife is permanently disabled and receives social security payments as a result. Respondent provides the bulk of the family's financial support and is concerned that loss of his Broker's license would cause deprivations for his family.

13. Respondent has no record of license discipline and there have been no complaints about him or his practice from his clients. In the Conviction Detail Report he provided BRE, respondent summarized:

March 30 2016 was by far the worse [sic] day of my life. Prior to this, I literally was never even sent to the principal office [sic] in school – I live a very healthy lifestyle – I do not drink, smoke, etc, and workout 5-6 days a week – NEVER been in trouble, nor honestly did anything close to this. It was totally out of my character.

(Exhibit 5.)

14. Respondent completed court-ordered counseling in mid-2017. As indicated in the court docket, Finding 3 above, respondent attended a Sexual Offending Behaviors Recovery (SOBR) Program supervised by Sharon O'Hara, MFT (Marriage and Family Therapist), a certified sexual offender treatment provider. She wrote in a May 17, 2017 progress report that he had learned to handle frustrations and triggers and was unlikely to relapse. She recommended that he have one more year of weekly SAA (Sex Addicts Anonymous) meetings. She recommended couples counseling, but noted that while respondent was willing, his wife had declined. Ms. O'Hara noted respondent's "primary motivation for recovery is to be the best Dad he can be for his kids" and that his "prognosis for ongoing recovery continues to be excellent." (Exhibit A.)

15. Complainant incurred total reasonable costs of \$1,479: \$945 for investigation (Exhibit 6) and \$534 for enforcement.

## LEGAL CONCLUSIONS

### *Pertinent Law*

1. BRE has the burden of showing by "clear and convincing proof to a reasonable certainty" that license discipline is warranted. (*Ettinger v. Medical Board of Quality Assurance* (1982) 135 Cal.App.3d 853, 855.)

2. Business and Professions Code section 490 provides that an agency such as the Bureau may suspend, revoke, or otherwise discipline a license based on a licensee's conviction, so long as the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

3. Business and Professions Code section 10177, subdivision (b)(1), also provides for license discipline when a licensee has been found guilty or convicted of a felony.

4. Case law comports with Business and Professions Code section 490, holding that discipline of a license may not be based on a conviction alone. Rather, a substantial relationship between the crime and licensed activities must also be established. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.)

5. California Code of Regulations, title 10, section 2910 provides in pertinent part:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Bureau within the meaning of Sections 480 and 490 of the Code if it involves: [¶] . . . [¶]

(5) Sexually related conduct affecting a person who is an observer or non-consenting participant in the conduct or convictions which require registration pursuant to the provisions of Section 290 of the Penal Code.

[¶] . . . [¶]

(8) Doing of any unlawful act with the intent of . . . doing substantial injury to the person . . . of another.

[¶] . . . [¶]

(b) The conviction of a crime constituting an attempt, solicitation or conspiracy to commit any of the above enumerated acts or omissions is also deemed to be substantially related to the qualifications, functions or duties of a licensee of the department.

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

#### *Substantial Relationship*

6. Specific sections of California Code of Regulations, title 10, section 2910, do not address the facts here.

A. Section (a)(5) of California Code of Regulations, title 10, section 2910, for instance, might seem at first blush to be pertinent. It is not, however, because respondent's communications were actually with police. His conduct involved no minor, no person who might be affected by or might observe respondent's sexually related conduct.

The issue of consent raised by section (a)(5) is not pertinent. (*Donaldson v. Dept. of Real Estate* (2005) 134 Cal.App.4th 948.) Respondent was not required to register as a sex offender under Penal Code section 290.

B. There was no evidence to establish that by his misconduct respondent intended substantial injury to the person of another, so that section (a)(8) of California Code of Regulations, title 10, section 2910, is not pertinent.

7. Nevertheless, respondent's conviction is substantially related to the functions and duties of a licensee of the Department. The laws reflect the public's interest in preventing adults from engaging in sexual relations with minors. Respondent's misconduct threatened harm to that public interest. It did so to such an extent that the criminal court in respondent's case exercised its discretion for the conduct of an expert psychological examination of respondent, to evaluate whether he posed a continuing risk to the public. A real estate licensee's functions and duties are to protect the public in transactions of high public importance, given that real estate transactions generally involve property of high value and personal wealth. A licensee who cannot be trusted to uphold one public interest, such as for the protection of minors, causes justified concern as to whether the licensee may be trusted to protect other important public interests.

#### *Cause for Discipline and Its Context*

8. Cause exists to discipline respondent's license under Business and Professions Code sections 490 and 10177, subdivision (b)(1), as a result of his felony conviction.

9. At hearing, respondent testified that he took responsibility for his misconduct but his testimony was at times equivocal. He testified he thought the person with whom he was texting was an adult, in effect denying that he intended to engage in sexual relations with a minor. To the extent this may be considered an assertion of innocence, it may not be accepted. Conviction of a crime stands as "conclusive evidence." (Bus. & Prof. Code, § 493.) The conviction may not be collaterally attacked. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 452.)

10. The testimony may be considered, however, in weighing "circumstances surrounding the commission of the crime in order to fix the degree of discipline." (Bus. & Prof. Code, § 493.) Also, "the context in which the crime or acts were committed" is properly considered in determining "the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee." (Cal. Code Regs., tit. 10, § 2910, subd. (c).)

11. A mitigating factor is that respondent did not set out to have sexual relations with a minor. Only at the last minute, so to speak, was he plainly informed that he was communicating with a minor. As he testified at the hearing, he should have cut off communications. Instead, in the excitement of the moment, he allowed his desire to carry him into illegality.

12. Respondent's testimony was not entirely credible. He asserted, for instance, that he believed he was communicating with an adult, continuing to the rendezvous because the voice he heard on the telephone sounded adult. Both before and during the telephone call, however, the evidence shows that respondent was willing to take the chance of meeting a minor for a sexual encounter.

### *Rehabilitation*

13. Some of respondent's actions since the conviction, as opposed to his testimony, are more indicative of rehabilitation. These actions are considered under BRE's criteria for evaluating rehabilitation, as set out in California Code of Regulations, title 10, section 2912.

14. Respondent has undergone counseling and psychological evaluation specifically for sexual misconduct, and while all of this was court-ordered, those who have counseled and evaluated him agree that he is not likely to commit any crime like that for which he was convicted.

15. A notable index of rehabilitation, especially in this context, is the stability of respondent's family life. Respondent's marriage is intact and he continues to support his children. (Cal. Code Regs., tit. 10, § 2912, subd. (j).)

16. Most noteworthy is that respondent's attitude is deeply contrite. (Cal. Code Regs., tit. 10, § 2912, subd. (m).) As noted above, respondent was less than willing to acknowledge his wrongdoing fully. Nevertheless, he understands that he is the only one at fault, and that his misconduct, or his willingness to engage with the sex trade, threatened his whole way of life, both his family life and his work as a real estate professional. Respondent has changed his attitude so that now he understands he must carefully avoid such misconduct in the future. The evidence from psychiatric evaluators supports respondent's change in attitude and the unlikelihood of his repeating his misconduct. (Cal. Code Regs., tit. 10, § 2912, subd. (m)(4).)

17. It is also noteworthy that respondent has been licensed for approximately 25 years without prior discipline or complaints from clients.

18. Respondent's rehabilitation, however, is incomplete. His misconduct and the conviction occurred less than two years ago. That is a short amount of time for rehabilitation, given the severity of the criminal conduct. Respondent's rehabilitation is properly considered incomplete for this reason. (Cal. Code Regs., tit. 10, § 2912, subd. (a).) In addition, he has not completed probation. (Cal. Code Regs., tit. 10, § 2912, subd. (e).)

19. The indications are that respondent has not fully acknowledged his wrongdoing despite protestation to the contrary. Respondent professed understanding that rehabilitation usually requires taking full responsibility for wrongdoing (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.), even as his testimony weakened the believability of what he professed.

20. Respondent has made good progress towards full rehabilitation and is unlikely to threaten any public interest in the future. A restricted license is warranted.

*Costs*

21. BRE is entitled to costs, \$1,479, under Business and Professions Code section 10106, subdivision (a).

**ORDER**

All licenses and licensing rights of respondent, Francisco Ramirez, Jr., under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefore 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. 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.

2. 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 attached to the restricted license.

3. 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 four years have elapsed from the effective date of this Decision.

4. 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 the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

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5. 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.

6. Under Business and Professions Code section 10106, subdivision (a), respondent shall reimburse the Bureau of Real Estate its costs in the amount of \$1,479, on such terms as the Bureau may direct.

DATED: November 16, 2017

DocuSigned by:  
*Thomas Y. Lucero*  
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THOMAS Y. LUCERO  
Administrative Law Judge  
Office of Administrative Hearings