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FILED

MAR 24 2022

DEPT. OF REAL ESTATE

By R. Rosales

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

DAVID BRYON MIHALCZO,

No. H-40909 LA

Respondent.

ORDER DENYING REINSTATEMENT OF LICENSE
BUT GRANTING RIGHT TO A RESTRICTED LICENSE

On June 8, 2018, in Case No. H-40909 LA, a Decision was rendered revoking the real estate broker license of Respondent effective July 2, 2018.

On July 28, 2021, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and integrity than an applicant for first time licensure. The proof must be sufficient to overcome the prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

I have considered Respondent's petition and the evidence submitted in support thereof.

1 The Department has developed criteria in Section 2911 of Title 10, California
2 Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for
3 reinstatement of a license. Among the criteria relevant in this proceeding are:

4
5 ***2911. Criteria for Rehabilitation***

6 *(a) (3) Expungement of criminal convictions.*

7 On May 12, 2017, in the Superior Court of California, County of San Diego, Case
8 No. CN370513, Respondent was convicted for violating California Vehicle Code
9 section 23152(b) (driving with a blood alcohol level of .008 percent or more), a
10 misdemeanor, with enhancements under California Vehicle Code section 23546
(prior DUI convictions within 10 years) and California Vehicle Code section
23578 (blood alcohol level of .15 percent or more).

11 Respondent has offered no evidence that this conviction has been expunged.

12 *(a) (5) Successful completion or early discharge from probation or parole.*

13 Respondent was sentenced to 5 years of probation for the conviction listed above.
14 There is no evidence that Respondent has received an early discharge from
15 probation.

16 Respondent has failed to demonstrate to my satisfaction that Respondent has
17 undergone sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted real
18 estate broker license.

19 I am satisfied, however, that it will not be against the public interest to issue a
20 restricted real estate broker license to Respondent.

21 A restricted real estate broker license shall be issued to Respondent pursuant to
22 Section 10156.5 of the Business and Professions Code, if Respondent satisfies the following
23 conditions prior to and as a condition of obtaining a restricted real estate broker license within
24 twelve (12) months from the effective date of this Order:

25 1. Submits a completed application and pays the fee for a real estate broker
26 license within the 12 month period following the effective date of this Order; and
27

1 2. Submits proof that Respondent has completed the continuing education
2 requirements for renewal of the license sought. The continuing education courses must be
3 completed either (i) within the 12 month period preceding the filing of the completed
4 application, or (ii) within the 12 month period following the effective date of this Order.

5 The restricted license issued to Respondent shall be subject to all of the provisions
6 of Section 10156.7 of the Business and Professions Code and to the following limitations,
7 conditions and restrictions imposed under authority of Section 10156.6 of that Code:

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

12 B. The restricted license issued to Respondent may be suspended prior to
13 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner
14 that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
15 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
16 license.

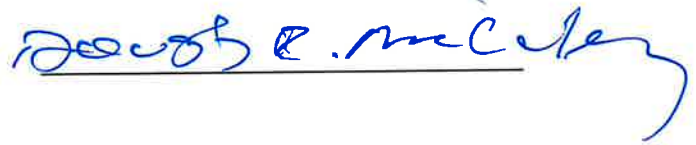
17 C. Respondent shall not be eligible to apply for the issuance of an
18 unrestricted real estate license nor the removal of any of the limitations, conditions or restrictions
19 of a restricted license until two (2) years have elapsed from the date of the issuance of the
20 restricted license to Respondent.

21 D. Respondent shall notify the Commissioner in writing within 72 hours of
22 any arrest by sending a certified letter to the Commissioner at the Department of Real Estate,
23 Post Office Box 137007, Sacramento, CA 95813-7007. The letter shall set forth the date of
24 Respondent's arrest, the crime for which Respondent was arrested and the name and address of
25 the arresting law enforcement agency. Respondent's failure to timely file written notice shall
26 constitute an independent violation of the terms of the restricted license and shall be grounds for
27 the suspension or revocation of that license.

This Order shall become effective at 12 o'clock noon on APR 13 2022.

IT IS SO ORDERED 2.4.22

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

A handwritten signature in blue ink, appearing to read "Douglas R. McCauley", is written over a horizontal line.