

FLAG

FILED

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

JUN 12 2018
BUREAU OF REAL ESTATE
BY at doio

* * *

In the Matter of the Application of	)	CalBRE No. H-40940 LA
ANDREW R SLOCUM,	)	OAH No. 2018020853
Respondent.	)	

DECISION

The Proposed Decision dated April 26, 2018, 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 application for a real estate salesperson license is denied. The earliest date on which the applicant may reapply for a license is one year from the effective date of this Decision. If and when application is again made for this license, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

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 7/2/18.

IT IS SO ORDERED June 8, 2018

WAYNE S BELL
REAL ESTATE COMMISSIONER

A handwritten signature in blue ink, appearing to read "Daniel J. Sandri", is written over a horizontal line.

By: DANIEL J. SANDRI
Chief Deputy Commissioner

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

In the Matter of the Application of

ANDREW R. SLOCUM

Respondent.

Case No. H-40940 LA

OAH No. 2018020853

PROPOSED DECISION

This matter came on regularly for hearing on April 9, 2018, at Los Angeles, California, before Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California.

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

Andrew R. Slocum (Respondent) was present and represented himself.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant brought the Statement of Issues in her official capacity as a Supervising Special Investigator of the State of California.
2. On April 17, 2017, the Bureau received from Respondent an application for a real estate salesperson license (the Application).
- 3A. On January 28, 2005, in the Superior Court of California, County of San Bernardino, case no. TMB024037, Respondent was convicted, on his plea of guilty, of violating California Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of .08 percent or more), a misdemeanor. Respondent was placed on 36 months conditional and revocable release, ordered to serve 19 days in jail and to pay restitution, fines and fees. Additionally, Respondent was ordered to complete a first offender alcohol

program. Respondent violated his probation and was ordered to serve 50 days in jail and his probation was extended to January 26, 2011. Respondent's request for expungement pursuant to Penal Code section 1203.4 was denied on February 18, 2016.

3B. The facts and circumstances of the January 28, 2005 conviction are that Respondent was stopped by police near his mother's home in Joshua Tree and failed field sobriety tests. He had been out drinking alcoholic beverages with friends.

4A. On November 22, 2006, in the Superior Court of California, County of San Bernardino, case no. TMB025455, Respondent was convicted, on his plea of nolo contendere, of violating California Vehicle Code section 14601.1, subdivision (a) (driving when privilege suspended or revoked), a misdemeanor. Respondent was ordered to serve 15 days in jail, with credit for 4 days served, and pay fines and fees. Respondent was on probation at the time, and the court extended the probation for an additional three years to November 22, 2009. The case was dismissed pursuant to Penal Code section 1203.4 (expungement) on February 18, 2016.

4B. The facts and circumstances of the November 22, 2006 conviction are that on July 21, 2006, Respondent was stopped by police officers in Joshua Tree as he was on his way to mandatory alcohol education classes required by the court for his January 28, 2005 conviction. At that time, Respondent did not give police officers the right name when he was stopped and found to be driving while his driver's license was suspended.

5A. On October 21, 2011, in the Superior Court of California, County of Orange, case no. 09HM07140, Respondent was convicted, on his plea of guilty, of violating California Penal Code section 484, subdivision (a) (Petty Theft), a misdemeanor. Respondent was placed on three years of informal probation, ordered to pay fines and fees, and to serve 6 days in jail. The sentence was to run concurrently with Case no. 09HM00456 which is set forth in detail in factual finding 6 below.

5B. The facts and circumstances surrounding the conviction are that on September 21, 2009 Respondent stole clothing from a Bloomingdale's store. Respondent does not remember much of the incident because he was under the influence of various substances including opioids at the time of the incident.

6A. On October 21, 2011, in the Superior Court of California, County of Orange, case no. 09HM00456 MA, Respondent was convicted, on his plea of guilty, of violating California Vehicle Code section 14601.1, subdivision (a) (driving when privilege suspended or revoked), a misdemeanor. Respondent was ordered to serve 6 days in jail and pay fines and fees.

6B. The facts and circumstances of the conviction are that on December 19, 2008, Respondent was stopped by police because of a defective rear windshield. At that time, Respondent had an open container of alcohol in his vehicle, did not have proof of financial responsibility, and had a suspended driver's license.

7A. On March 20, 2017, in the Superior Court of California, County of Riverside, case no. INM1306305, Respondent was convicted, on his plea of guilty, of violating California Penal Code section 537, subdivision (a) (Defrauding Providers of Food, Fuel, Services, or Accommodations), a misdemeanor, and California Penal Code Section 148.9, subdivision (a) (Falsely Representing Self as Another Person to Peace Officer), a misdemeanor. Respondent was placed on three years of summary probation, and ordered to serve one day in jail, with credit for one day, and pay fines, fees and restitution.

7B. The facts and circumstances of the conviction are that on September 14, 2013, Respondent and a female friend dined at the Village Pub in Palm Springs, but did not pay for the food they consumed. Each claimed the other was supposed to pay for the food and neither paid. Instead, they fled from the restaurant. Later, Respondent was apprehended on the street and gave a false name to a police officer. Respondent and his female friend were both arrested and prosecuted. Respondent appeared for arraignment on October 25, 2013, entered a plea of not guilty and was released on his own recognizances. At the pre-trial hearing on November 12, 2013 Respondent did not appear and the case was continued. A warrant was issued for Respondent on December 9, 2013. When Respondent was researching the details of his various convictions in preparation for submitting the Application, he discovered that the case was still open and made an immediate "walk-in" appearance at the court to resolve the matter.

8. Respondents crimes and acts as set forth in factual findings 3, 4, 5, 6 and 7 are substantially related to the qualifications, functions, or duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivision (1), (4), (10) and (11).

9A. The Application requests information about all convictions. The Background Information section of Question 23 of the Application asks:

HAVE YOU EVER BEEN CONVICTED (SEE PARAGRAPH ABOVE) OF ANY VIOLATION OF THE LAW AT THE MISDEMEANOR OR FELONY LEVEL? IF YES, COMPLETE ITEM 29 WITH INFORMATION ON EACH CONVICTION

9B. Respondent answered "Yes." Respondent disclosed the convictions set forth in factual findings 3, 4, 5 and 7, but failed to disclose the conviction set forth in factual finding 6 above. At hearing, Respondent credibly testified that his failure to disclose the conviction was inadvertent and not intended to deceive the Bureau.

10. At the administrative hearing, Respondent expressed genuine remorse and took full responsibility for his actions. Respondent is a 32-year-old man. He was a professional motor-cross racer for three years until he had a devastating accident at the Baja 500 race in Mexico in 2002. Respondent was trapped in the desert for eight hours until the racing staff located him and had him airlifted to a hospital. Respondent suffered a spinal

injury that left him in a wheelchair unable to walk for two years. After surgery in 2002, and a grueling regimen of physical therapy, Respondent remained in pain. Respondent had started using opioids for his pain after surgery and became addicted. Respondent spent eight years battling the opioid addiction. Respondent also used Xanax and Ativan in combination with opioids. At the time of the accident, Respondent was also a student pursuing a degree in finance at the University of San Diego. Respondent dropped out of college and moved back into his mother's home after the accident. Respondent's behavior and opioid use became so extreme that his mother asked him to leave. Respondent was homeless for three years until he finally sought and obtained treatment in 2013. Although Respondent occasionally has an alcoholic beverage, he does not use opioids and has not since 2013.

11. Respondent participated in a two-year-long outpatient rehabilitation program which he completed in 2015. Respondent attends a relapse prevention program and has changed his friends and associates. Respondent lives in his own apartment. He has used his experience being homeless in his current employment with a real estate development company that specializes in developing housing for low income and homeless individuals. Respondent works as part of a development team locating and evaluating potential properties for investment. Respondent has been a speaker at various industry events and conferences about his journey to and from homelessness.

LEGAL CONCLUSIONS

1. Respondent's crimes and acts are substantially related to the qualifications, functions, and duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivisions (1),(4), (10), and (11).
2. Cause exists to deny Respondent's application for a real estate salesperson license pursuant to Business and Professions Code sections 475, subdivision (a)(2) and (3), 480, subdivision (a)(1) and (2), and 10177, subdivision (b)(1) and (j), for conviction of crimes and commissions of acts substantially related to the qualifications, functions and duties of the licensed activity, as set forth in factual findings 3-7.
3. Cause does not exist to deny Respondent's application for a real estate salesperson license pursuant to Business and Professions Code sections 457, subdivision (a)(1), 480, subdivision (d) and 10177, subdivision (a) because Respondent's failure to disclose one of his convictions was inadvertent and not an attempt to procure a real estate license by fraud, misrepresentation, or deceit, or by making a false statement of material fact. Respondent disclosed four of his five convictions, and the failure to disclose the subject conviction was an unintentional oversight. (factual findings 3-9.)
4. California Code of Regulations, title 10, section 2911 contains the criteria to which the Bureau looks in evaluating the rehabilitation of an applicant for whom cause exists to deny a license application. The criteria are set forth and analyzed here:

- (a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the Bureau action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the Bureau.) *Less than two years have passed since Respondent's most recent conviction and Respondent has a long history of criminal acts and convictions. However, more than four years have elapsed from the acts upon which the 2017 conviction is based.*
- (b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant. *Respondent has complied with all court ordered restitution.*
- (c) Expungement of criminal convictions resulting from immoral or antisocial acts. *Respondent has received an expungement for one of the five convictions.*
- (d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code. *Not Applicable.*
- (e) Successful completion or early discharge from probation or parole. *Respondent has completed probation on all but his most recent conviction in March of 2017 for acts that occurred in September of 2013. Respondent is scheduled to remain on probation until September of 2020.*
- (f) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the Bureau action sought is attributable in part to the use of controlled substances or alcohol. *Respondent has abstained from the use of opioids for more than four years, but has not abstained from the use of alcohol.*
- (g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment. *Respondent has paid all fines and monetary penalties except those pertaining to the March 2017 conviction. Respondent continues to make payments on his financial obligations for the March 2017 conviction.*
- (h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct

that is the basis for denial of the Bureau action sought. *Respondent is motivated to improve himself and has made new social and professional connections.*

(i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement. *Respondent completed a course of study to obtain his real estate license and has completed an out-patient drug rehabilitation program.*

(j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others. *Not Applicable.*

(k) Correction of business practices resulting in injury to others or with the potential to cause such injury. *Respondent no longer uses opioids and has made new social and business contacts.*

(l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems. *Respondent's job is to help look for appropriate properties for low-income and homeless housing developments. The evidence did not reveal any significant church, community or charitable involvement.*

(m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought. *Respondent has new friends and business associates and continues to participate in a relapse prevention group.*

(n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

(1) Testimony of applicant. *Respondent offered sincere remorseful testimony on his own behalf.*

(2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns. *Respondent did not provide such evidence.*

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments. *Not applicable.*

(4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances. *Not applicable.*

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

Respondent's most recent conviction was in March of 2017, but the underlying facts arise from conduct that occurred in 2013.

5. Respondent meets some of the Bureau's rehabilitation criteria. He has taken important initial steps toward rehabilitation by completing a drug rehabilitation program, participating in relapse prevention groups, obtaining and maintaining employment and meeting his court-ordered obligations and should be commended for these steps. However, Respondent's long criminal history and recent conviction require a more substantial showing to establish rehabilitation. Respondent remains on probation until 2020 for his most recent conviction. Rehabilitation is generally a process in which a licensee establishes a record of good conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991; *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Because people have a strong incentive to obey the law while under the supervision of the criminal justice system, little weight is generally placed on the fact that a licensee has engaged in good behavior while on probation or parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) 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, supra*, 50 Cal.3d at 1070.) Respondent has had insufficient time to establish his full rehabilitation and complete his criminal probation. Respondent should be encouraged to continue on his current path, complete his probation and to obtain letters and witness testimony from friends, business associates, therapists and employers supporting his application, should he choose to reapply

//
//
//
//
//
//
//

in the future. At this time, Respondent has made excellent progress, but has yet to establish his full rehabilitation. The public safety, welfare, and interest cannot yet be protected, even by the issuance of a restricted license at this time.

ORDER

The application of Andrew R. Slocum for a real estate salesperson license is denied.

Dated: April 26, 2018

DocuSigned by:

Glynda B. Gomez

8B367A214F494B3
GLYNDA B. GOMEZ

Administrative Law Judge
Office of Administrative Hearings