

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE

NOV 18 2020

STATE OF CALIFORNIA

DEPT. OF REAL ESTATE

By

[Signature]

* * *

In the Matter of the Application of:

) DRE No. H-41561 LA

TAYLOR ANTHONY ZAPPULLA,

) OAH No. 2020060921

Respondent.

DECISION

The Proposed Decision dated September 25, 2020, 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, but the right to a restricted real estate salesperson license is granted to Respondent.

Pursuant to Government Code Section 11521, the Department 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 Department'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.

If and when a petition for removal of restrictions is filed, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate

Commissioner.

This Decision shall become effective at 12 o'clock noon on DEC 18 2020.

IT IS SO ORDERED 11.20.20

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Application of:

Taylor A. Zappulla, Respondent

Case No. H-41561 LA

OAH No. 2020060921

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on August 11, 2020.

Maria Suarez (Complainant) was represented by Kevin H. Sun, Real Estate Counsel.

Taylor A. Zappulla (Respondent) was represented by Adam B. Brown, Attorney at Law and was present throughout the proceeding.

Oral and documentary evidence was received. The record remained open for the parties to submit written closing briefs. Complainant's brief was marked as Exhibit 5 and Respondent's brief was marked as Exhibit G. The record was closed and the matter was submitted for decision on August 28, 2020.

FACTUAL FINDINGS

1. Complainant brought the Statement of Issues in her official capacity as a Supervising Special Investigator of the State of California. Respondent served a timely Notice of Defense and this administrative proceeding ensued.
2. On February 4, 2019, Respondent submitted an application for a Real Estate Salesperson license (Application) to the Department of Real Estate (Department).
3. In a decision dated April 4, 2019, and made effective May 14, 2019, the Department of Consumer Affairs, Bureau of Automotive Repair (BAR), in Case No. 79/17-20391, revoked Respondent's Smog Inspector license pursuant to a Stipulated Revocation of License and Order (Stipulation an Order) dated March 22, 2019. Pursuant to the Stipulation and Order, Respondent admitted "the truth of each and every charge and allegation in the Accusation."
4. The Accusation in Case No. 79/17-20391 alleged causes of action based upon: (1) untrue or misleading statements, (2) violation of the Motor Vehicle Inspection program, (3) failure to comply with regulations pursuant to the motor vehicle inspection program, and (7) dishonesty, fraud, or deceit. Respondent admitted "the truth of each and every charge and allegation in the Accusation." The Accusation alleged that Respondent held license No. EO 637331, a smog inspector license, issued by the BAR. Respondent's license permitted him to conduct smog inspections/checks on motor vehicles. From January 2017 to December 2017, Respondent generated fraudulent Smog Certificates of Compliance on six (6) occasions when he substituted the information of another vehicle or source for the six vehicles. Respondent made the substitution in order to pass the smog inspections and issues Certificates of Compliance to vehicles that would not have otherwise passed inspections.

Rehabilitation/Mitigation

5. Respondent gave credible testimony of his remorse and rehabilitation at the administrative hearing. His demeanor was appropriately serious and he conducted himself in a professional manner. Respondent appeared sincere and attentive throughout the proceeding. He made no excuses for his conduct and stated that it was "unacceptable." Respondent has matured through his experiences with the BAR and the Department discipline processes. He is painfully aware of the consequences of poor judgment and professional misconduct. Respondent's bad decisions have had ramifications for his personal and professional life. However, more than the discipline process, caring for and assisting his father personally and professionally during his most recent health challenges has forced Respondent to mature and he has had a significant amount of time to contemplate his conduct. Respondent has also completed courses in Real Estate Principles, Real Estate Practice and Real Estate Finance.

6. Respondent's July 14, 2020 letter to the Department unequivocally accepts responsibility for his conduct. In relevant part, he wrote:

I wish to first acknowledge my past disciplinary actions from my smog license with the BAR. I want it to be known that I am extremely regretful and remorseful for my actions while holding my previous smog license.

(Ex. A.)

7. Respondent is a 26-year-old man. He has been an avid car-lover all of his life. Despite his family's hopes that he would follow his father and grandmother into the real estate business, after his 2014 high school graduation, he chose to attend United Technical Institute (UTI), a trade school to follow his passion and became a certified

automotive mechanic. Respondent attended UTI until 2017 and received several certifications through UTI. His father assisted him in renting a house in nearby Claremont to share with a close childhood friend, Oscar Neimar, who was attending California Polytechnic Institute, Pomona.

8. Respondent was not able to complete his entire program and obtain all of his certifications because his father became ill and required multiple organ transplants and required Respondent's assistance at home. After four years in his rental home, Respondent moved back to his family's home to care for his father. It was during that time in 2017, while working as a smog inspector that Respondent clean plugged/clean piped six vehicles. Respondent admitted his conduct and stipulated to revocation of his smog inspector license. Respondent no longer associates with his former colleagues from the smog check station. Respondent works repairing vehicles and assisting his father.

9. Several witnesses testified to Respondent's kind, generous and honorable nature, including his father, former roommate and close friend Oscar Neimar, with whom he lived for almost four years, Donka Neimar, DDS, (Respondent's dentist and Oscar Neimar's mother), and Karen Wong, a kindergarten teacher, mother of Respondent's former girlfriend and her son's friend. Respondent is known for assisting others including his friends, parents of his friends, and his neighbors with car problems and does not accept payment for helping them. Each witness testified about Respondent's genuinely kind nature and his sincere desire to help others.

10. Respondent's father, James Zappulla is an experienced real estate salesperson, who has been licensed for 40 years. He gave candid, credible and compelling testimony on behalf of his son. James Zappulla is a second generation real estate professional, having followed his mother into the real estate field during her 35-

year career. James Zappulla gave compelling testimony about his hopes and dreams for his son. James Zappulla disclosed that he has suffered serious health problems over the past 10 years which included multiple hospital stays, multiple organ transplants, four years of dialysis treatment, congestive heart failure and the placement of two stents. James Zappulla is a 66-year-old man in deteriorating health and he hopes to introduce his son to the real estate industry and his own long-time clients. James Zappulla has developed a substantial client base and hopes his son can assist him and build on his substantial client base. In a letter to the Department dated August 5, 2020, James Zappulla, detailed his health challenges and described Respondent's return home from his academic program at UTI to care for him after his kidney transplant. (Ex. E.)

11. Karen Wong, a kindergarten teacher with 20 years of experience, has known Respondent for eight years, as her daughter's boyfriend and as her son's friend. She provided candid and credible testimony in support of Respondent's application at hearing and wrote a letter dated July 13, 2020, consistent with her testimony, in support of Respondent's application. In relevant part, Ms. Wong wrote:

I have known Taylor Zappulla for 8 years now. He dated my daughter for many of those years and therefore spent a great deal of time at my house. I know his different jobs and the respect he shows his employers. I would hire him. In fact, he is the one I call when I need a house sitter or someone to take care of my very precious dog.

Many of us make mistakes during our teens and 20s that change the rest of our lives. Those mistakes can teach us valuable lessons or they can wreck us. His mistake during his years as a smog check attendant cost him over a year of

work and possibly, due to the stress of non-work, his long term relationship with my daughter. In addition, it cost him the sale of a 2 million dollar house in Santa Monica. I know because I am the one that wanted him to make that sale. His mistake has cost a lot and he has learned from it. There is no doubt that if he could go back in time, he would "know better." Taylor Zappulla is a reliable and thoughtful person.

(Ex. D.)

12. Brian Christopher Suitt, Respondent's friend of 10 years, is aware of this disciplinary proceeding against Respondent. He wrote a letter dated July 13, 2020 in support of his licensure and attesting to his good character. In relevant part, he wrote:

Taylor is a hardworking talented, supportive, and dogged individual who has dedicated himself to excellence in whatever he has laid his hands on. . . . I first learned of his behavior regarding his fraudulent smog inspections shortly after his official revocation in March 2019. He volunteered this information without accusation, and in remorse and accepting embarrassment. He had regret for sacrificing his integrity and career in a field that he had deep care and aspirations for, over actions he did not take seriously at the time. He knew he had made a significant mistake and did not blame others, instead acknowledging that he was solely responsible for his actions and their consequences.

(Ex. B.)

13. Yuichiro Takayanagi, an intellectual property consultant and attorney, is the parent of one of Respondent's friends. He wrote a letter dated July 11, 2020 in support of Respondent's licensure. In relevant part, the letter states:

I am aware of the pending disciplinary action . . . and the basis for it ...Taylor not only genuinely regrets his actions that led to such denial but also fully understands why his actions failed to serve the purposes of the law his Smog Check Inspector license was issued under. In fact, Taylor has told me that the experience of the SCI license revocation also made him think harder about the purpose of the Real Estate License system and the responsibility he must discharge as a licensee.

Taylor is a person who will stay committed once he finds a goal to pursue. His goal now is to start and expand his real estate business and become a respected real estate agent. I am confident that Taylor is fully committed to comply with all the rules and regulations that apply to a licensee and intends to perform his real estate practice ethically, honestly and responsibly.

(Ex. C.)

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's real estate salesperson license pursuant to Business and Professions Code (Code) section 10177, subdivision (f) based upon the revocation of his smog inspector license effective in May of 2019.
2. Cause for denial of Respondent's application having been established, Respondent bears the burden of proving that he is sufficiently rehabilitated to warrant licensure. (See *Martin v. Alcoholic Beverage Control Appeals Bd.* (1950) 52 Cal.2d 259, 264-265; *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 315.)
3. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940), but remorse, while necessary, is insufficient to demonstrate rehabilitation. A truer indication of rehabilitation than remorse is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) "The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct." (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)
4. Rehabilitation is evaluated on two different scales. One is an internal, attitudinal scale and the other is an external objective scale. In other words, Respondent must present evidence both of a state of mind and a state of facts showing he or she has been rehabilitated. The state of mind demonstrating rehabilitation is one that has a mature, measured appreciation of the gravity of the misconduct and remorse for the harm caused. Acceptance of responsibility is a necessary prerequisite to establishing

rehabilitation. The rehabilitative state of facts is demonstrated by a record of conduct that convinces and assures the Department that the public will be safe in granting licensure to an applicant. Thus, Respondent must establish a record of reliable, responsible, and consistently appropriate conduct.

5. The criteria for assessing the rehabilitation of a license applicant include consideration of the following factors:

A. whether at least two years have passed since the most recent conviction or act, where the passage of less than two years after the most recent criminal conviction is inadequate to demonstrate rehabilitation; the nature and severity of the crime or act; the applicant's history of substantially related criminal convictions; payment of restitution and fines in connection with a criminal conviction; expungement of criminal convictions; successful completion or early discharge from probation or parole; and

B. stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction; completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement; significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; new and different social and business relationships from those which existed at the time of the criminal conduct; and

C. a change in attitude from that which existed at the time of the conduct in question as evidenced by Respondent's testimony or other evidence of rehabilitation, which may include evidence from family members, friends, or other persons familiar with the applicant's previous conduct and his subsequent attitudes or

behavioral patterns, or the absence of subsequent convictions or other conduct that provides grounds to discipline a real estate licensee, or which reflect an inability to conform to societal rules when considered in light of the conduct in question. (Cal. Code Regs., tit. 10, § 2911.)

6. Applying the Department's rehabilitation criteria to Respondent's misconduct and evidence of rehabilitation supports the following conclusions.

A. More than two years have passed since Respondent's bad acts which led to the revocation of his smog inspector license. Respondent's conduct was serious and resulted in the revocation of his license. There is no criminal conviction associated with Respondent's misconduct and no restitution at issue.

B. Respondent moved in with his father who has suffered from tremendous health challenges. Respondent lives with and cares for his father and assists him to the extent possible with his real estate clients. Respondent has displayed charity and kindness to others by assisting them with car repairs without charge. He has also undertaken a course of study in Real Estate completing courses in Real Estate Practice, Real Estate Principles and Real Estate Finance.

C. Respondent demonstrated a change in attitude from that which existed at the time of the bad acts as evidenced by him fully acknowledging the wrongfulness of his behavior and stipulating to the revocation of his smog inspector license, and by his commitment to his father and his friends and their families, to improving himself professionally and demonstrating maturation since the conduct underlying his license revocation occurred. Respondent presented compelling evidence from family members, friends, or other persons' familiar with his previous conduct and with his subsequent attitudes or behavioral patterns. Respondent's misconduct with

regard to his smog inspector license appears to be an aberration from an otherwise law-abiding and exemplary life. Respondent, by his acceptance of responsibility and discipline by the BAR, demonstrated that he learned a valuable lesson. Respondent has no history of criminal conduct or fraud before or after the conduct underlying his license revocation. The absence of such conduct over an extended period of time, reflects an ability to conform to societal rules and lessons learned through the discipline process.

7. Respondent established by a preponderance that he is sufficiently rehabilitated to warrant the issuance of a restricted real estate salesperson license and that the issuance of an appropriately restricted license to Respondent will not contravene the public protection mandate of the Department.

ORDER

The application of Respondent Taylor A. Zapulla for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to Respondent Taylor a. Zapulla 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 license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may, by appropriate order, suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until five years have elapsed from the date of issuance of the restricted license to Respondent.

3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of Respondent's arrest, the crime for which Respondent was arrested and the name

and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

5. Respondent shall provide the Department of Real Estate with proof of Respondent's completion of 40 hours of continuing education in the area of Professional Ethics and Consumer Protection within one year of the effective date of this order. These continuing education hours shall be in addition to and not replace any existing continuing education requirements that Respondent has or will have as a licensee or applicant.

DATE: September 25, 2020

DocuSigned by:
Glynda B. Gomez
GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings