

**FILED**

**DEC 29 2022**

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**DEPT. OF REAL ESTATE**  
*By [Signature]*

\* \* \*

In the Matter of the Application of:	)	DRE No. H-42334 LA
	)	
PEDRO LUIS SAUCEDO,	)	OAH No. 2022100297
	)	
	)	
<u>Respondent.</u>	)	

DECISION

The Proposed Decision dated November 30, 2022, 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.

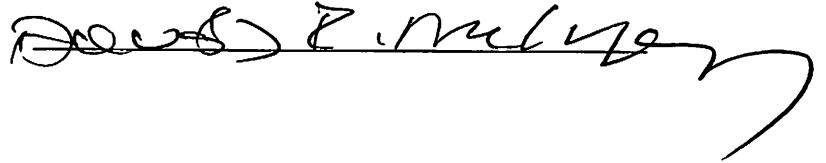
Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for 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 JAN 18 2023.

IT IS SO ORDERED 12.20.22

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER

A handwritten signature in black ink, appearing to read "Douglas R. McCauley", written over a horizontal line. The signature is stylized and includes a large, sweeping flourish at the end.

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

**In the Matter of the Application of:**

**PEDRO LUIS SAUCEDO, Respondent.**

**Agency Case No. H-42334 LA**

**OAH No. 2022100297**

**PROPOSED DECISION**

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by telephone and videoconference on November 17, 2022.

Andrea Bentler, Real Estate Counsel, Department of Real Estate (Department) represented complainant Maria Suarez, a Supervising Special Investigator for the State of California. Respondent Pedro Luis Saucedo represented himself.

Complainant declined issuing a real estate salesperson license to respondent based on allegations respondent has a criminal conviction for domestic violence, a misdemeanor substantially related to the qualifications, functions, or duties of a real estate licensee. Respondent presented evidence of rehabilitation commensurate with the alleged criminal conviction. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order granting respondent a restricted real estate salesperson license.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On December 2, 2020, respondent submitted to the Department a Salesperson Exam/License Application (December 2, 2020 Application), which is pending. No license has been issued.

2. On August 30, 2022, complainant, acting in an official capacity, filed the Statement of Issues alleging cause for denial of the December 2, 2020 Application pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b).

3. On September 6, 2022, respondent filed a Notice of Defense on Application requesting a hearing.

4. Thereafter, this administrative proceeding ensued. All jurisdictional requirements are satisfied.

### **Respondent's Background**

5. While still in high school, respondent enlisted to serve in the United States Army. Respondent's military service, which commenced in August 2003 and terminated with an honorable discharge in 2012, includes active duty in Iraq. During his service, respondent received several medals of commendation and achievement notwithstanding one incident of belligerent conduct at an overseas bar that resulted in "a 45/45," meaning 45 days without pay and 45 days of extra duty.

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## **Alleged Cause for License Denial**

6. Respondent had a decade-long relationship with the mother of his two children. They separated; she moved out of the residence they cohabited. On August 11, 2020, she was present at the residence to collect her belongings. An altercation, witnessed by their daughter, ensued when respondent believed she was packing certain items not belonging to her. Respondent became upset. He grabbed her arms to remove her from the residence. She fell. Sheriff deputies dispatched to the scene observed "redness to both her upper arms and a minor bruise on her upper left arm." (Exh. 4 at p. 14 [A65].) The deputies photographed her injuries. No photographs were offered in evidence at hearing. She declined medical treatment.

7. On August 14, 2020 in the Superior Court of California, Los Angeles County, case number OCS03388, respondent was convicted, on his nolo contendere plea, of battery on a spouse, cohabitant, fiancé, boyfriend, girlfriend, or child's parent, in violation of Penal Code section 243, subdivision (e)(1), a misdemeanor. The court denied probation and sentenced respondent to serve 180 days in Los Angeles County Jail (credit for six days in custody; four days actual custody and two days good time/work time).

8. Respondent's August 14, 2020 misdemeanor conviction is substantially related to the qualifications, functions, and duties of a real estate licensee because it involves an unlawful act with the intent or threat of doing substantial injury to the person of another. (See Legal Conclusion 6.)

## **Factors in Aggravation, Mitigation, and Rehabilitation**

9. In the Statement of Issues, complainant alleges a 13-year-old hit and run conviction as an aggravating factor. (See Exh. 1.) On October 8, 2009, in the Superior

Court of California, San Bernardino County, case number TVA 700913, respondent was convicted, on his nolo contendere plea, of hit and run in violation of Vehicle Code section 20002, subdivision (a), a misdemeanor. The court withheld pronouncement of judgment and granted conditional and revocable release for 24 months with terms and conditions, including serving one day in jail (credit for one day actually served), not driving a motor vehicle unless properly licensed and insured according to California law, and paying fees and fines totaling \$1,000.

10. That October 8, 2009 conviction is a consequence of respondent imbibing alcohol before his deployment to Iraq. Respondent consumed approximately eight 16-ounce bottles of beer on February 7, 2008. At the time, he had a sports car, the power of which he wanted to show off to his companions. Respondent testified, "I did donuts. I was irresponsible. I lost control and hit the street sign." Respondent abandoned his vehicle and initially falsely reported the vehicle as stolen. He was charged with committing the crimes of hit and run driving and giving false information to a police officer.

11. The October 8, 2009 conviction is sufficiently remote to render its evidentiary value insignificant. (See *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061 [the evidentiary significance of misconduct diminishes with the passage of time].)

12. At hearing, respondent testified, "I take full responsibility for that [meaning his August 14, 2020 misdemeanor conviction]. I was verbal. It got physical." Without attempting to impeach that conviction, respondent explained his plea and related incarceration as a manifestation of responsibility, which additionally avoided "putting [his] daughter on the trial stand as a witness."

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13. Respondent's two children primarily reside with their mother, with whom he communicates via text messages. He testified, "Everything has been great now." Each school day, respondent takes his children to school. They spend weekends with him.

14. Respondent has been a volunteer member of Team Rubicon, a natural disaster relief organization, since 2012 when he completed his military duty. Among other things, he participated in the recovery effort following the 2014 cyclone on the Big Island of Hawai'i.

15. Respondent is matriculated at a community college. According to his testimony, he is "half a year away from receiving an associate degree in communications." His post-military employment history includes functioning as a supervisor at a manufacturing concern. Currently, respondent is a self-employed, full-time Lyft driver.

16. The August 2020 incident resulting in his conviction and incarceration served as wake up call for respondent "to be professional and a better person." He asserts, "Overall, I'm a good guy."

## **LEGAL CONCLUSIONS**

### **Standard and Burden of Proof**

1. Respondent bears the burden of establishing his fitness and qualification to perform the functions and duties of a real estate salesperson. (Gov. Code, § 11504; *Coffin v. Alcoholic Beverage Control Appeals Bd.* (2006) 139 Cal.App.4th 471, 476.)

2. The standard of proof is the preponderance of the evidence. (Evid. Code, § 115.) Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (See *Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) "[T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of evidence presented by each side is irrelevant." (*Id.* at p. 325, original italics.) In meeting the burden of proof by a preponderance of the evidence, respondent "must produce substantial evidence, contradicted or un-contradicted, which supports the finding." (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 339.)

### **Applicable Law**

3. Administrative consideration of respondent's license application is not penal in nature; the purpose of this administrative proceeding is not to impose additional punishment on respondent. The appropriate court has already imposed appropriate and significant criminal punishment on respondent. Rather, the purpose of this administrative proceeding is to protect the public. (*Camacho v. Youde* (1979) 95 Cal. App. 3d 161, 164.)

4. The Real Estate Law is intended, among other things, to ensure licensed real estate professionals are worthy of the fiduciary responsibilities they will bear. Integrity, trustworthiness, and honesty are essential qualifications to perform the fiduciary duties of a real estate professional. If conduct reflects unfavorably on the worthiness of a person to be a fiduciary, he or she lacks the necessary qualifications to become a licensed real estate professional. (See *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394.)

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5. Thus, Business and Professions Code (Code) sections 480, subdivision (a)(1), and 10177, subdivision (b)(1), authorize the denial of an application for licensure on grounds the applicant has been convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee. A conviction means “a plea or verdict of guilty or a conviction following a plea of nolo contendere.” (Bus. & Prof. Code, § 480, subd. (a)(1).)

6. California Code of Regulations, title 10, (CCR) section 2910, in pertinent part, provides, “When considering whether a license should be denied . . . on the basis of the conviction of a crime, . . . the crime or act should be deemed to be substantially related to the qualifications, functions, or duties of a licenses of the Department . . . if it involves: [¶] . . . [¶] (8) Doing any lawful act . . . with the intent or threat of doing substantial injury to the person or property of another.”

7. In the case where a conviction for a crime is substantially related to the qualifications, functions or duties of a real estate licensee, the context in which the crime was committed goes only to the question of the weight to be accorded to the crime when considering the action to be taken with respect to the licensee. (Cal. Code Regs., tit.10, § 2910, subd. (c).)

## **Discussion**

8. Respondent’s altercation with his former girlfriend culminated in his August 14, 2020 conviction for the crime of battery on a spouse, cohabitant, fiancé, boyfriend, girlfriend, or child’s parent. That crime is substantially related to qualifications, functions, or duties of a real estate licensee. (See Legal Conclusion 6.) Given the context in which the crime occurred—notably, in the presence of

respondent's minor child—significant weight is accorded respondent's August 14, 2020 conviction.

9. Cause exists pursuant to Code sections 480, subdivision (a)(1), and 10177, subdivision (b), and CCR section 2910, subdivisions (a)(8) and (c), to deny respondent's December 12, 2020 Application for a real estate salesperson license. Respondent has been convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee. (This conclusion is based on Factual Findings 7 and 8 and Legal Conclusions 5 through 8.)

10. Although cause exists to deny respondent's December 2, 2020 application, the Department, pursuant to Code section 482, subdivision (a)(1), has promulgated criteria for evaluating respondent's rehabilitation. People can and do reform. In such circumstances they should not be barred from licensure. (See *Tardiff v. State Bar* (1980) 27 Cal.3d 395, 404.)

11. The Department's criteria for evaluating the rehabilitation of an applicant for licensure who has a criminal record include, among other things, the lapse of time since committing the act or offense (the passage of less than two years after the most recent criminal conviction or act is inadequate to demonstrate rehabilitation); expungement of criminal convictions; stability of family life and fulfillment of parental and familial responsibilities subsequent to conviction; completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement; significant and conscientious involvement in community, church, or privately sponsored programs to better society; and change in attitude from that which existed at the time of the commission of the criminal acts in question. (See Cal. Code Regs., tit.10, § 2911.)

12. Two years have elapsed since the August 2020 incident culminating in respondent's conviction, which is unexpunged. Respondent acknowledges he alone was responsible for the August 2020 incident and its aftermath. He eschewed plea bargaining and accepted incarceration as an inevitable consequence. Fully acknowledging the wrongfulness of past actions is an essential rehabilitative factor. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

13. Respondent's rehabilitation is commensurate with the August 2020 incident, resulting criminal conviction, and subsequent incarceration. These events were a wakeup call for respondent "to be professional and a better person." Currently, respondent is gainfully employed as a Lyft driver. His family life is stable as he discharges his parental responsibilities, which include accompanying his children to school and providing for their care and well-being when in his custody. He is matriculated at a community college where he is on track to complete a degree in communication. His significant and conscientious community involvement includes volunteering when natural disasters occur.

14. Having considered the totality of the credible evidence of respondent's post-incarceration rehabilitation, granting respondent a restricted license is consistent with protection of the public.

## **ORDER**

Respondent Pedro Luis Saucedo's December 2, 2020 Application 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 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 said 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 two 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 Bureau 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

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(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 ground for the suspension or revocation of that license.

DATE: **11/30/2022**

*Jennifer Russell*

JENNIFER M. RUSSELL

Administrative Law Judge

Office of Administrative Hearings