

FILED

JAN 25 2023

DEPT. OF REAL ESTATE

By _____

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of:)	DRE No. H-42403 LA
)	
RICHER TRAN,)	OAH No. 2022090708
)	
Respondent.)	

DECISION

The Proposed Decision dated December 16, 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 February 15, 2023.

IT IS SO ORDERED 1.19.23

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:

RICHER TRAN, Respondent.

Agency Case No. H-42403 LA (Statement of Issues)

OAH No. 2022090708

PROPOSED DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on November 17, 2022.

Diane Lee, Counsel, Department of Real Estate (Department), represented complainant Maria Suarez, a Supervising Special Investigator of the Department.

Respondent Richer Tran represented himself.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on November 17, 2022.

FACTUAL FINDINGS

Background and Procedural History

1. On April 21, 2021, the Real Estate Commissioner (Commissioner) received respondent's application for a real estate salesperson license. The application is pending, and no license has been issued.

2. In August 2021, the Department notified respondent that it had forwarded the application to the Department's Licensing Background Review Unit for additional processing. A background review revealed respondent was convicted of a misdemeanor criminal offense in January 2020.

3. On September 13, 2022, complainant filed a Statement of Issues in her official capacity alleging the criminal conviction was cause for the Commissioner to deny respondent's application under Business and Professions Code sections 475, 480, and 10177. Respondent submitted a timely Notice of Defense on Application requesting a hearing.

Hearing

4. Complainant presented records from the Superior Court of California, County of Orange, proving that on January 13, 2020, respondent was convicted of opening or maintaining a place for the purpose of unlawfully selling, giving away, or using a controlled substance in violation of Health and Safety Code section 11366. (*People v. Richer Tran*, Super. Ct. of Cal., County of Orange, Case No. 19NM01105.) The misdemeanor conviction arose from respondent working as an employee at an illegal marijuana dispensary in Anaheim, California in December 2018. Anaheim Police Department officers executed a search warrant at the dispensary on December 13,

2018, and respondent was working there when the officers arrived. Respondent pleaded guilty to the charge of violating Health and Safety Code section 11366, and the court sentenced him to pay a \$200 fine plus penalty assessments, a \$150 state restitution fine, and court fees.

5. Respondent testified he started working at the dispensary just two days before police arrived to execute the search warrant. He was 22 years old at the time. When the police arrived at the dispensary, everyone else fled or pretended to be customers, but respondent stayed and acknowledged he worked there. Respondent found the job through an advertisement on Craigslist, and the dispensary seemed legitimate to him. He testified he did not know it was illegal. Respondent was supposed to be paid \$11.50 per hour, but he never received any payment from the owners. Respondent did not know the owners beforehand, and he has not talked to anyone associated with the dispensary since police cited and released him on that day.

6. Respondent explained that if he could it over, he would be more careful and check whether the dispensary was legal. He no longer works in the dispensary business. Respondent now helps his father in the construction business and helps his brother with short-term vacation rentals. Respondent has also started a sports trading card business. He lives with his girlfriend in her parents' house, and he hopes the real estate business will provide increased financial stability for the two of them and other family members.

7. Respondent has been interested in real estate transactions and investing for about four years. He hopes to help others become property owners and to eventually buy and sell properties himself. He has communicated with a Coldwell Banker real estate agent in Huntington Beach about the possibility of working with

her. Respondent testified he also gives food and supplies to homeless persons in his community.

LEGAL CONCLUSIONS

Legal Standards

1. In this application proceeding, respondent bears the burden of proving that he should receive the requested license. (*Coffin v. Alcoholic Beverage Control Appeals Board* (2006) 139 Cal.App.4th 471, 476-477; Gov. Code, § 11504.) This burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

2. The Commissioner may deny a license if an applicant has been convicted of a crime within the preceding seven years from the date of application that is "substantially related to the qualifications, functions, or duties" of a real estate licensee. (Bus. & Prof. Code, §§ 475, subd. (a)(2), 480, subd. (a)(1), 10177, subd. (b) [undesigned statutory references are to the Business and Professions Code].) A crime may be deemed to be substantially related to a real estate licensee's qualifications, functions, or duties if it involves the "[d]oing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) "The nature and gravity of the offense, the number of years that have elapsed since the date of the offense, and the nature and duties of a real estate licensee shall be taken into consideration when determining whether to deem an offense to be substantially related to the qualifications, functions or duties of a licensee." (*Id.*, subd. (c).)

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3. However, "a person shall not be denied a license on the basis that the person has been convicted of a crime, or on the basis of acts underlying a conviction for a crime, if that person has obtained a certificate of rehabilitation . . . , has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to Section 482." (§ 480, subd. (b).) An applicant's showing of rehabilitation is evaluated by applying the Department's criteria of rehabilitation. (§ 482, subds. (a), (b); Cal. Code Regs., tit. 10, § 2911.) "The Department has developed 14 criteria to be used to evaluate rehabilitation of an applicant for a license who has committed a crime. (Cal. Code Regs., tit. 10, § 2911.) These criteria attempt to gauge whether the applicant has changed so that a repeat of his criminal behavior is unlikely." (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.)

Analysis

4. Respondent's criminal conviction was within the preceding seven years, and the crime is "substantially related to the qualifications, functions or duties" of a real estate licensee. Respondent worked at an illegal marijuana dispensary for pay, which was the "[d]oing of an[] unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator . . ." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8)), even though respondent did not actually receive payment. While almost four years have elapsed since the offense, respondent's violation of Health and Safety Code section 11366 "necessarily evidences moral turpitude because it involves the intent to corrupt others." (*People v. Vera* (1999) 69 Cal.App.4th 1100, 1103.) His testimony that he thought the dispensary was legal does not prove otherwise, because his criminal conviction is conclusive evidence of his guilt of the offense charged. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449) The intent to corrupt others strengthens the link between

respondent's crime and the nature and duties of a real estate licensee, who must act in the best interests of clients.

5. Therefore, the Commissioner may deny respondent's application due to the criminal conviction, unless respondent has made a showing of rehabilitation under Business and Profession Code section 482. (§§ 475, subd. (a)(2), 480, subd. (a)(1), 10177, subd. (b).) The Commissioner evaluates respondent's showing of rehabilitation by considering the Department's 14 criteria of rehabilitation. (Cal. Code Regs., tit. 10, § 2911.) The evidence presented about those criteria is as follows:

(1) The time that has elapsed since commission of the acts(s) or offense(s). Almost four years have elapsed since respondent's crime, and almost three years have elapsed since his criminal conviction. The time elapsed since respondent's criminal conviction exceeds the period of less than two years that the Department considers "inadequate to demonstrate rehabilitation." (Cal. Code Regs., tit. 10, § 2911, subd. (a)(1)(A).)

(2) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant, or escheat to the State of these monies or other properties if the victim(s) cannot be located. There was no evidence presented of any person suffering monetary losses due to respondent's crime, and no evidence restitution was ordered in the criminal proceeding. Therefore, this criterion is inapplicable.

(3) Expungement of criminal convictions. Respondent's criminal conviction has not been expunged.

(4) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code. This criterion is

inapplicable in this case because it concerns registration for persons convicted of certain sex-related offenses.

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

Respondent was not placed on probation or parole.

(6) Abstinence from the use of controlled substances and/or alcohol for not less than two years if the conduct which is the basis to deny the Department action sought is attributable in part to the use of controlled substances and/or alcohol.

Respondent's crime was not shown to be attributable to the use of controlled substances or alcohol.

(7) Payment of the fine and/or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment. Respondent testified he paid the fines and fees imposed on his criminal conviction, and complainant presented no evidence to the contrary.

(8) 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 Department action sought. Respondent testified he maintains a stable relationship with his family and girlfriend. He works with family members and does not have parental responsibilities.

(9) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement. No evidence was presented about this criterion.

(10) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others. No evidence was presented of adjudicated debts or

monetary obligations of respondent to others, apart from the criminal fines and fees discussed above.

(11) Correction of business practices resulting in injury to others or with the potential to cause such injury. Respondent no longer works at the illegal marijuana dispensary or in the dispensary business.

(12) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems. Respondent testified he gives food and supplies to the homeless, but he presented no evidence of involvement in community, church, or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(13) 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 Department action sought. Respondent has not talked to anyone associated with the dispensary since police cited and released him in December 2018.

(14) Change in attitude from that which existed at the time of the conduct in question. Of the many criteria, change in attitude is "arguably the most important in predicting future conduct" (*Singh v. Davi, supra*, 211 Cal.App.4th at p. 149.) Respondent testified he learned from his criminal conviction, and his testimony about his personal and professional goals evidence a change in attitude.

6. Considering these criteria, respondent has demonstrated sufficient rehabilitation to warrant issuing him a restricted license under Business and Professions Code section 10156.5. Although respondent's criminal conviction is fairly recent, he has satisfied the terms of his sentence, and almost four years have elapsed

since the offense itself. Respondent's sentence did not include jail time or probation, and he has no subsequent criminal record. In addition, respondent's testimony proved he has matured and changed his life for the better. With many criteria of rehabilitation satisfied, outright denial of licensure is not necessary to protect the public. Instead, a restricted real estate salesperson license is the appropriate result.

ORDER

Respondent Richer Tran's 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.

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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 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.

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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.

DATE: 12/16/2022


Thomas Heller (Dec 16, 2022 10:41 PST)

THOMAS HELLER
Administrative Law Judge
Office of Administrative Hearing