

**FILED**

**MAY 31 2023**

**DEPT. OF REAL ESTATE**

By \_\_\_\_\_

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Application of:	)	DRE No. H-42470 LA
	)	
RUSSELL T PASOS,	)	OAH No. 2023010781
	)	
Respondent.	)	

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DECISION

The Proposed Decision dated May 1, 2023, 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 June 20, 2023.

IT IS SO ORDERED 5.24.23

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER



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

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

**RUSSELL T. PASOS, Respondent.**

**Agency Case No. H-42470 LA**

**OAH No. 2023010781**

**PROPOSED DECISION**

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by telephone and videoconference on April 6, 2023.

Diane Lee, Real Estate Counsel, Department of Real Estate (Department) represented complainant Jason Parson, a Supervising Special Investigator for the State of California. Respondent Russell T. Pasos represented himself.

The Department declined issuing a real estate salesperson license to respondent based on allegations respondent has misdemeanor criminal convictions substantially related to the qualifications, functions, or duties of a real estate licensee. Respondent presented evidence of rehabilitation commensurate with the alleged criminal convictions. 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 July 7, 2021, respondent submitted to the Department a Salesperson Exam/License Application (July 7, 2021 Application), which is pending. No license has been issued.

2. On January 4, 2023, complainant, acting in an official capacity, filed the Statement of Issues alleging cause for denial of the July 7, 2021 Application pursuant to Business and Professions Code sections 475, subdivision (a)(2), 480, subdivision (a), and 10177, subdivision (b).

3. On January 17, 2023, 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. Respondent has a General Education Diploma and has completed some college. He is employed as Evening Custodian at a middle school. In a "To Whom It May Concern" reference letter dated March 20, 2023, the principal of that middle school notes respondent "is determined to improve." The principal writes, among other things, the following about respondent:

Since the first day I met Mr. Pasos he has demonstrated excellent work ethic and displayed a determination to not only get the job done right, but to get it done efficiently as

well. Mr. Pasos is an approachable person who always greets co-workers and is respected by staff. I find Mr. Pasos to be punctual, reliable, and always willing to assist when asked.

Mr. Pasos has worked extremely well with all staff, including the team he works with every evening. He does a great job supporting teachers and any request they may have. Even though I do not get to spend a lot of time working with Mr. Pasos, it is clear that he consistently meets deadlines and does an excellent job of completing his assignments.

(Exh. B.)

### **Alleged Cause for License Denial**

6. On July 9, 2016, respondent socialized and consumed alcohol with friends at a bar near the apartment complex in which he resides. Respondent and his friends observed another patron, M.E., argue with his female companion. At hearing, respondent testified, "[M.E.] was actually thrown out of the establishment for beating on his girlfriend. [M.E.] was hitting on his girlfriend and he got kicked out. [M.E.] tried to return and a friend of mine was conversating [*sic*] with him. I took that to mean they were arguing. So I thought I was helping my friend out, and then the situation escalated. The rest is pretty much on paper."

7. According to a Uniform Crime Report San Bernardino deputy sheriffs responding to the incident prepared, M.E. was walking home when respondent drove on the sidewalk and hit M.E. on the right side of his leg and caused M.E. to fall onto the car. The car hit a palm tree. M.E. got off the car and punched the car's windshield

causing it to crack. Sheriff deputies reported M.E.'s right leg was bruised and his left forearm was lacerated and bleeding. The deputies reported seeing plastic debris and a front bumper near a palm tree and that respondent's vehicle had no bumper and appeared to have been in an accident. The deputies further reported observing blood running down the left side of respondent's face and that respondent appeared intoxicated. Respondent's eyes were blood shot and watery and he emitted a strong odor of an alcohol beverage from his mouth.

8. On June 22, 2020 in the Superior Court of California, San Bernardino County, case number 16CR-046361, respondent was convicted, on his guilty plea, of assault with a deadly weapon (motor vehicle), in violation of Penal Code section 245, subdivision (a)(1), and of driving with a 0.08 percent or greater blood alcohol content causing injury, in violation of Vehicle Code section 23152, subdivision (b), both misdemeanors. The court withheld pronouncement of judgment and placed respondent on 36 months' summary probation with terms and conditions, including attending and completing an AB541 First Offender Alcohol Program, staying away from M.E., and paying fines and fees totaling \$2,003.

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

9. At hearing, respondent testified, "In no way am I claiming I was right about what happened. I don't contest the conviction. I was wrong. I was punished for it. I agree completely."

10. At around the time of the July 9, 2016 incident, respondent spent four months caring for his mother, whom he lost to cancer. Respondent testified, "I was in a dark place with anxiety and depression." A psychiatrist diagnosed respondent as having a chemical imbalance, for which he received pharmacological treatment. "I have

done a lot to better myself. I am no longer in that dark place. I am back on track to being myself before this big mistake," respondent testified.

11. Respondent has completed two alcohol education programs. While criminal charges resulting from the July 9, 2016 incident were pending, respondent completed an alcohol education program in therapy. He testified, "That was not accepted [by the court]." Consequently, respondent attended and completed the court-ordered first offender alcohol program.

12. Respondent's credible testimony establishes he has paid the \$2,003 fines and fees in full.

13. Respondent is compliant with terms and conditions of his 36 months summary probation, which concludes in June 2023.

14. Between January and March 2019, respondent prepared for and then successfully passed the real estate salesperson examination for licensure on April 27, 2022. In the process of preparing for and taking the licensing examination, respondent received a solicitation notice from Keller Williams. Respondent testified he knew Keller Williams was the best for training, and he wanted to get as much training as possible. Respondent called Keller Williams and received an invitation from Alan Sarrail to visit the office. Respondent received training at Keller Williams.

15. Sarrail, a licensed real estate professional, is the office manager for Keller Williams in La Quinta, California. Sarrail knows about respondent's conviction and application for licensure. In the following undated letter, Sarrail favorably supports respondent's licensure and pledges to oversee respondent's real estate activities should respondent obtain a real estate license.

I was able to meet Russell almost a year ago as he came into our office. I have met many prospective agents in the last 15+ years of my involvement in this business. From the moment I met Russell, he has been nothing but respectful, learning-based, coachable, and most importantly, a man of his word. After getting to know Russell and his story, his interactions with me and our office made complete sense. I see him now for where he came from and I am proud of the active changes he has made and continues to make to build himself into the person he is determined to become.

I believe that Russell deserves to be considered to have his license to conduct real estate business in the state of California. I also believe that Russell is going to need a high level of support and oversight when he begins his career as a REALTOR in California and our office will be able to provide him that support. If licensed, I will personally oversee Russell activities for as long as the State requires and beyond.

(Exh. A.)

16. Respondent credibly testified, "I know there are rules and I understand that they are to be followed. Real estate is not something to take lightly; it is something that is serious. You can't just allow any one to practice it. I know I committed a crime. I just want to better myself. I studied real hard. I just would like to be considered, even for a restricted license."

## 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.)

5. Thus, Business and Professions 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, 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).)

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## Discussion

8. Respondent's conduct on July 9, 2016, involved unlawful activity resulting in substantial injury to M.E. Respondent's June 22, 2020 misdemeanor convictions are therefore substantially related to the qualifications, functions, and duties of a real estate licensee. Given the context in which the unlawful activity occurred—notably under the influence of alcohol—significant weight is accorded the convictions.

9. Cause exists pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b), and California Code of Regulations, title 10, section 2910, subdivisions (a)(8) and (c), to deny respondent's July 7, 2021 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. (Factual Finding 8 and Legal Conclusions 5 through 8.)

10. Although cause exists to deny respondent's July 7, 2021 application, the Department, pursuant to Business and Professions 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; payment of the fine or other monetary penalty imposed in connection with a criminal conviction; completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-

improvement; and change in attitude from that which existed at the time of the commission of the criminal act in question. (See Cal. Code Regs., tit.10, § 2911.)

12. Approximately seven years have elapsed since the July 9, 2016 incident occurred. The resulting June 22, 2020 misdemeanor convictions are unexpunged. Respondent paid the \$2,003 fines and fees imposed by the court. Respondent completed the first offender program imposed by the court in addition to another program required while he received therapeutic services. Respondent successfully passed the Department's licensing examination in an effort to improve his economic prospects.

13. The fact of respondent's compliance with the terms and conditions of his court-ordered probation is significant, and therefore credited. Complainant's counsel's argument to the contrary while citing, without any analysis, to *In re Menna* (1995) 11 Cal.4th 979 and *In re Gossage* (2000) 23 Cal.4th 1080 is rejected.

14. Both *Menna* and *Gossage* involve applicants seeking admission to the State Bar. In *Menna*, the license applicant had a significant background of compulsive gambling and excessive use of alcohol spanning several years; a history of professional misconduct, which included repeated theft of client funds, manufacturing of illegal drugs, and failure to file a state income tax return; criminal convictions resulting in four years of imprisonment; and a history of prior professional discipline (disbarment) in another state. The *Menna* court held, given the enormity of the license applicant's protracted course of willful misconduct, the license applicant's relative short time of unsupervised good conduct was insufficient to demonstrate genuine reform or unblemished, exemplary conduct.

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15. In *Gossage*, the license applicant had a 10-year history of demonstrated moral turpitude and lawlessness. The license applicant was convicted of voluntary manslaughter and other financial crimes involving dishonesty. In addition, the license applicant had a history of disregard for laws regulating the privileges of driving a motor vehicle on the roadways. The license applicant's failure to appear in court to respond to traffic citations resulted in multiple criminal convictions and imposition of fines, which were not fully paid as ordered. Even while the license applicant's application was pending, the pattern of misconduct continued. Abatement of the license applicant's numerous illegal and bad acts occurred only when imprisoned or paroled. Thus, in light of the moral turpitude and lawlessness the license applicant displayed over a 10-year period, as in *Menna*, the *Gossage* court required a compelling showing of reform or exemplary behavior over a meaningful period of time when the license applicant was not under any direct supervision of correctional authorities.

16. Both *Menna* and *Gossage* are factually distinguishable from this matter. The July 9, 2016 incident is an isolated occurrence. It has not recurred. There is no evidence of respondent having any protracted history of serious misconduct or engaging in repeated violations of the law. There is no evidence respondent has a history of requiring the direct supervision of correctional authorities to ensure he does the right thing. Before his June 22, 2020 conviction occurred, respondent commenced and received treatment from a healthcare professional. Having received therapeutic and pharmacological interventions, respondent testified about how he emerged from the "dark place" he believed contributed to his misbehavior. Respondent's rehabilitation continued with his compliance with the court-ordered probationary terms and conditions. The factually specific holdings in *Menna* and *Gossage* are inapplicable to the facts and circumstances of this case.

17. Respondent has taken full responsibility for the July 9, 2016 incident. Respondent confronted his past misconduct without any attempt at minimization. Fully acknowledging the wrongfulness of past actions is an essential rehabilitative factor. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Respondent's rehabilitative efforts are evident not only in his conduct, but also in his changed state of mind. State of mind is an important aspect of rehabilitation. (*In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 317; *Resner v. State Bar* (1967) 67 Cal.2d 799, 811).

18. The amount of evidence of rehabilitation required to justify licensure varies according to the seriousness of the misconduct at issue. (*Kwasnik v. State Bar* (1990) 50 Cal.3d, 1061, 1086.) Respondent's rehabilitation is commensurate with the July 9, 2016 incident and resulting June 22, 2020 convictions.

19. The law looks with favor upon rewarding one who has achieved reformation and regeneration with the opportunity to serve. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.) The record as a whole supports granting respondent a restricted license. Doing so is consistent with protection of the public.

## **ORDER**

Respondent Russell T. Pados' July 7, 2021 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

(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 ground for the suspension or revocation of that license.

DATE: 05/01/2023

*Jennifer Russell*

JENNIFER M. RUSSELL

Administrative Law Judge

Office of Administrative Hearings