

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED

AUG 29 2024

DEPT. OF REAL ESTATE

By

In the Matter of the Application of:  
  
JOSE ANTONIO RAMIREZ,

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) DRE No. H-42754 LA  
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) OAH No. 2024030347  
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Respondent.

DECISION

The Proposed Decision dated July 5, 2024, 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.

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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 9/18/2024.

IT IS SO ORDERED 8/22/2024

Chika Sunquist  
REAL ESTATE COMMISSIONER



By: Marcus L. McCarther  
Chief Deputy Real Estate Commissioner

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

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

**JOSE ANTONIO RAMIREZ,**

**Respondent.**

**Agency Case No. H-42754 LA**

**OAH No. 2024030347**

**PROPOSED DECISION**

Administrative Law Judge (ALJ) Deena R. Ghaly, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 28, 2024. Steve Chu, Counsel, Department of Real Estate (Department), represented complainant Jason Parson, a Supervising Special Investigator of the Department. Respondent Jose Antonio Ramirez represented himself.

At the conclusion of the hearing, the undersigned ALJ held the record open to allow respondent to file and serve evidence he successfully satisfied court orders for two criminal convictions he incurred and for complainant to provide any response. Both parties timely filed and served their post-hearing submissions. Respondent's submission was marked Exhibit A and admitted into the record; complainant's submission stating he is not objecting to respondent's submission, was marked Exhibit

16 and lodged with the record. Thereafter, on June 7, 2024, the record closed and the matter was deemed submitted.

## **SUMMARY**

Complainant cites respondent's two recent criminal convictions, one for carrying a loaded firearm in public and one for disturbing the peace, as the basis for denying his real estate salesperson license. In the Statement of Issues, complainant also listed four criminal convictions respondent incurred between 2006 and 2011 as matters "in aggravation." These were for disturbing the peace, two instances of driving under the influence of alcohol, and carrying a loaded firearm in public.

Under the Department's criteria for determining whether a criminal conviction is substantially related to the qualifications, functions, or duties of real estate licensees, and therefore constitute grounds for denying a license application, carrying a loaded weapon falls into that category while the disturbing the peace criminal conviction does not.

With respect to the four criminal convictions respondent incurred between 2006 and 2011, Complainant's counsel withdrew the evidence establishing these criminal convictions were not considered in determining whether to grant respondent's license application.

Applying the Department's rehabilitation criteria, respondent has sufficient positive ones to conclude his application should not be denied outright. In particular, respondent's credible testimony indicated a growing maturity and indications he has changed his life for the better. Under these circumstances, a restricted license subject to terms and conditions is appropriate.

## **FACTUAL FINDINGS**

### **Background and Procedural History**

1. On November 8, 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. On June 21, 2022, 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 several crimes, including two recent ones.

3. On February 8, 2024, complainant filed a Statement of Issues in his official capacity alleging respondent's recent criminal convictions were cause for the Commissioner to deny respondent's application under Business and Professions Code sections 475, subdivisions (a)(2) and (3), 480, subdivisions (a)(1) and (2), and 10177, subdivision (b)(1). Respondent submitted a timely Notice of Defense on Application requesting a hearing and this matter ensued.

### **Grounds for Denying License Application**

4. Complainant presented records from the Superior Court of California, County of San Bernardino, Victorville District, establishing that, on March 24, 2021, in case number MVI1701187, respondent pled nolo contendere and was convicted of violating Penal Code section 25850, subdivision (a) (carrying a loaded firearm in public), a misdemeanor. Respondent was placed on 12 months of summary probation and ordered to pay fines and fees. The incident resulting in this criminal conviction occurred on June 17, 2017. (See, Exh. 13, p. A181.)

The only direct evidence presented at the hearing regarding the facts and circumstances underlying this conviction was respondent's testimony. He stated that, at the time of his arrest, he was operating his own restaurant and carried large amounts of cash from it each evening. To protect himself, he brought his father's loaded gun with him, keeping it in a secured place in his vehicle. Respondent was not aware that a gun kept in a vehicle constituted carrying it in public. Respondent also presented evidence of paying the fines and fees the court ordered him to pay. (See, Exh. A, p. B27.)

5. Complainant presented records from the Superior Court of California, County of San Bernardino, Victorville District, establishing that, on March 24, 2023, in case number FV121001261, pursuant to a plea agreement, respondent was convicted of violating Penal Code section 415, subdivision (2) (making a disturbance by loud/unreasonable noise), a misdemeanor. The court fined respondent \$220, which respondent paid. (See, Exh. A, p. B12.)

6. The March 2023 misdemeanor conviction occurred on March 20, 2021, and arose from a family dispute. At the hearing, the only direct evidence presented about the underlying circumstances was respondent's testimony. He stated the incident arose from an altercation with his adult daughter with whom he had been living. She physically attacked him and he had reached for a golf club to protect himself, then called the police. As a result of this incident, respondent was initially charged with assault with a deadly weapon.

The Sheriff's Report submitted by complainant reflects diametrically opposed stories from respondent and his daughter, with respondent's daughter indicating respondent was the aggressor and had a history of violence, that she was the one trying to defend herself, and that she had been the one to call the police. (Exh. 14.)

## **Additional Evidence from Respondent**

7. Respondent is 60 years old. For 27 years he owned and operated a restaurant in Victorville, California. He attended the Cordon Blue Culinary Institute and has an associate's degree in the culinary arts.

8. Respondent acknowledges a complicated past, including multiple criminal convictions and a history of heavy drinking. He has done what he can to improve himself, including maintaining sobriety for over four years and attending church regularly.

9. Respondent had to close his restaurant several years ago. He has considered his employment options in light of his age and physical limitations. Respondent stated many jobs are now out of his reach but he believes his natural abilities to connect with people, to effectively show property, acquire knowledge about the profession, and learn the applicable computer software, makes real estate a vocation at which he can succeed.

10. Respondent argued the crimes at issue, carrying a loaded firearm in public and disturbing the peace, have no relation to the essential duties of a real estate salesperson.

11. At the hearing, the undersigned ALJ asked what legal authority support finding misdemeanor convictions older than seven years to be factors in aggravation. Complainant's counsel did not respond to the question. He withdrew the criminal court records establishing these earlier convictions. He did not amend the Statement of Issues to remove them as aggravating factors to be considered in determining whether to deny respondent's license application. Nonetheless, because there is no evidentiary basis establishing whether the earlier convictions occurred and

Department's counsel did not argue their legal relevance to this matter, they have not been considered as grounds to deny respondent's application.

## **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 Department may deny a license if within the preceding seven years from the date of the application, an applicant has been convicted of a crime 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).) (Further statutory references are to the Business and Professions Code unless otherwise designated.) With exceptions not applicable to the instant case, denial of licenses based on criminal convictions is limited to crimes that occurred in the seven year period prior to the date of the application. (See, § 480, subd. (a)(1); § 10177, subd. (b)(1).)

3. The Department's regulations include a provision setting out the criteria for determining whether a crime may be deemed to be substantially related to a real estate licensee's qualifications, functions, or duties. (See, Cal. Code Regs, tit. 10 (Reg.), § 2910.) The criterion potentially applicable to the instant case is: "(8) [the] [d]oing of any unlawful act with the intent . . . or threat of doing substantial injury to the person or property of another." Regulation section 2910 goes on to provide:



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.

(Reg. § 2910, subd. (c).)

4. Carrying a loaded weapon in public is inherently threatening behavior which could well result in injury to another, including potentially innocent bystanders. Even though, as respondent testified, his only intent was to protect himself, choosing to do so by carrying a loaded weapon in public, an illegal act, put others in harm's way. As such, respondent's criminal conviction for this act meets one of the Department's substantial relationship criteria and therefore constitutes a basis for denying his license.

5. Conversely, respondent's criminal conviction for disturbing the peace does not necessarily involve intent or threat of doing substantial injury to anyone or anything. Applying the general criteria of substantial relationship, the nature and gravity of the offense, the time elapsed since the date of the offense, and the nature and duties of real estate licensees' duties, as noted above, this crime does not necessarily involve violence. It can be said to be of minimal to moderate seriousness and does not involve conduct such as dishonesty or untruthfulness which implicate the characteristics of a real estate licensee. As such, this conviction is not substantially related to the qualifications, functions, or duties of a licensee and therefore does not provide a basis for rejecting respondent's application.

6. Respondent's application may be denied due to the criminal conviction, unless respondent has made a showing of rehabilitation. An applicant's showing of rehabilitation is evaluated by applying the Department's 14 criteria of rehabilitation. (Regs., § 2911.) The criteria and their application to respondent's application follow:

(1) The time that has elapsed since commission of the acts(s) or offense(s). More than seven years have elapsed since respondent's substantially related crime, and more than three years have elapsed since his conviction for that crime. The time elapsed since respondent's criminal conviction exceeds the period of less than two years that the Department considers "inadequate to demonstrate rehabilitation." (Reg., § 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 has successfully completed his probation term.

(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 paid the fines and fees imposed on his criminal conviction.

(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. Based on respondent's testimony, there is some evidence of family discord.

(9) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement. Respondent has completed the necessary education courses for obtaining his real estate license.

(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. This criterion is not applicable.

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(12) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems. During his testimony, respondent stated he regularly attends church.

(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 did not provide any evidence relevant to this criterion.

(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.

7. 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 more than seven years have elapsed since the offense itself. In addition, respondent's testimony indicated 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 Jose Antonio Ramirez's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to him 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 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

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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 grounds for the suspension or revocation of that license.

DATE: 07/05/2024



Deena R. Ghaly (Jul 5, 2024 09:15 PDT)

DEENA R. GHALY

Administrative Law Judge

Office of Administrative Hearing