

**FILED**

**NOV 05 2024**

**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:                     )  
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Respondent.

DRE No. H-42868 LA

OAH No. 2024070516

DECISION

The Proposed Decision dated September 23, 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.

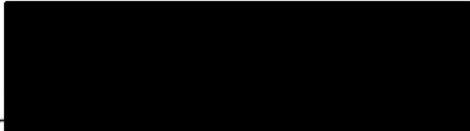
If and when a petition for removal of restrictions is filed, all competent evidence

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 05 2024.

IT IS SO ORDERED 10/29/2024

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 Statement of Issues Against:**

**JOHN ELAM MPWO,**

**Respondent.**

**Agency Case No. H-42868 LA**

**OAH No. 2024070516**

**PROPOSED DECISION**

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by ZOOM videoconference on August 6, 2024.

Kevin Sun, Counsel for the Department of Real Estate (Department), represented Jason Parson (complainant), a Supervising Special Investigator of the State of California.

John Elam Mpwo was present and represented himself.

Testimony and documents were received as evidence. The record was held open until August 23, 2024, for the parties to submit closing briefs.

On August 15, 2024, respondent submitted a closing brief (entitled "Detailed Brief for Office of Administrative Court Hearing: Department of Real Estate"), which was marked for identification as exhibit A.

On August 23, 2024, complainant submitted a closing brief (entitled "Complainant's Post-Hearing Brief"), which was marked for identification as exhibit 11.

On August 23, 2024, the record closed and the matter was submitted for decision.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On May 18, 2023, respondent filed an application with the Department for licensure as a real estate salesperson.
2. On June 17, 2024, complainant filed a Statement of Issues in his official capacity. The Statement of Issues alleged causes to deny respondent's application.
3. On June 26, 2024, respondent filed a Notice of Defense, which requested a hearing on the allegations in the Statement of Issues.
4. All jurisdictional requirements have been met.

### **Respondent's Prior Criminal Convictions**

5. Complainant alleged cause exists to deny respondent's application for licensure as a real estate salesperson because respondent has suffered multiple prior convictions.

### **RESPONDENT'S 2015 CONVICTION**

6. On February 17, 2015, in the District Court of Harris County, Texas, in case number 1453038, respondent was convicted, on his plea of guilty, of unauthorized use of a vehicle, a felony. The criminal court sentenced respondent to three years of community supervision, 180 hours of community service, and payment of fines and fees. Respondent was 17 years-old when he committed this crime.

### **RESPONDENT'S 2017 CONVICTION**

7. On November 28, 2017, in the Las Vegas Municipal Court, Clark County, Nevada, in case number C1184291A, respondent was convicted, on his plea of no contest, of violating Nevada Revised Statutes section 203.010 (disturbing the peace), a misdemeanor. The criminal court sentenced respondent to 20 days in jail.

### **RESPONDENT'S 2019 CONVICTION**

8. On April 23, 2019, in the Justice Court, Las Vegas Township, Clark County, Nevada, in case number 18M02899X, respondent was convicted, after a bench trial, of violating Nevada Revised Statutes section 197.190 (Giving false statement/obstructing public officer), a misdemeanor. The criminal court sentenced respondent to impulse control counseling and to stay out of trouble.

### **RESPONDENT'S 2023 CRIMINAL MATTER**

9. On May 26, 2023, in the Superior Court of California, County of Los Angeles, in case number 2CJ05421, respondent was placed on judicial diversion for a period of 12 months. The criminal charges alleged respondent violated Penal Code sections 25400, subdivision (a)(3)(carrying concealed weapon with a vehicle), and 25850, subdivision (a)(carrying a loaded firearm in a vehicle), both misdemeanors. The

terms of respondent's judicial diversion included: complete John Hopkins gun safety course, perform 20 hours of community service, do not possess any firearms, and attend 12 anger management classes. The criminal court ordered that, if respondent successfully completed the terms and conditions of his judicial diversion, the criminal court would dismiss the criminal charges against respondent, pursuant to Penal Code section 1001.95, subdivision (c). Respondent's judicial diversion was scheduled to conclude on May 27, 2024. However, the criminal court's minutes (exhibit 8, page A215) indicate respondent remains on judicial diversion, for reasons that were not established by the evidence presented.

10. Respondent's 2023 criminal matter was not alleged as a basis to deny respondent's application for licensure. The 2023 criminal court records, along with other documents, were provided to the Department by respondent. Therefore, these records may be considered by the ALJ as aggravating factors.

### **Respondent's Evidence of Rehabilitation**

11. Respondent testified and requested a restricted license.

12. Respondent currently holds a real estate sales agent license, number 811062, issued by the state of Texas, which is set to expire on August 31, 2025, unless renewed.

13. Respondent currently holds Life Agent license number 3046488, issued by the state of Texas on August 7, 2023, which authorizes him to sell life insurance in that jurisdiction, which is set to expire on August 31, 2025, unless renewed.

14. Both of respondent's licenses issued by Texas are in good standing.

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15. Respondent is enrolled as a registered tax preparer with the California Tax Education Council.

16. Respondent is the father of three children, ages six, four, and five months. He supports all of them by paying child support and some additional expenses for each child.

17. Respondent owns a business called Razzle Dazzle Tax Magic, which assists people with filing necessary tax forms. Respondent also owns a business called Second Chance Trucking Dispatch.

18. In 2019, respondent was involved in a vehicular accident and was badly injured. As he recovered, he began thinking about his life choices and the fact that he wanted to leave something for his child, and future children, when he died. As a result, respondent testified he changed his lifestyle. However, respondent was thereafter placed on judicial diversion in 2023, as discussed in Factual Findings 9 and 10.

## **LEGAL CONCLUSIONS**

### **Burden of Proof**

1. Respondent, as an applicant for licensure, bears the burden of proof to establish that he is entitled to the license. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205.)

### **Causes for Denial of Licensure**

2. Pursuant to Business and Professions Code (Code) sections 490 and 10177, subdivision (b), the Real Estate Commissioner may deny an application for



licensure if the applicant has entered a plea of guilty or no contest to, or been found guilty of, or been convicted of, a felony, or a misdemeanor crime substantially related to the qualifications, functions, or duties of a real estate licensee.

2. Pursuant to Code section 480, the Real Estate Commissioner may only deny an application for a license if the applicant has been convicted of a crime within the preceding seven years from the date of application. Respondent's application was dated May 19, 2023. Therefore, cause does not exist to deny respondent's application for licensure based on his February 17, 2015 conviction because it occurred more than seven years prior to the date of his application and may not serve as a basis for denial of licensure. However, respondent's 2017 and 2019 criminal convictions may serve as a basis to deny his application.

3. Pursuant to California Code of Regulations (CCR), title 10, section 2910, subdivision (10), respondent's convictions in 2017 and 2019 are conduct which demonstrates a pattern of repeated and willful disregard of law. Therefore, respondent's 2017 and 2019 convictions are for crimes which are deemed substantially related to the qualifications, functions, or duties of a real estate licensee. For these reasons, cause exists to deny respondent's application for licensure based on his convictions in 2017 and 2019. All further references to the CCR are to title 10.

### **Respondent's Evidence of Rehabilitation**

4. The Department's criteria for the purpose of evaluating the rehabilitation of an applicant for a license, which are set forth at CCR section 2911, have been considered.

5. Respondent offered significant evidence of rehabilitation. He is currently licensed as a real estate agent and as an insurance sales agent in Texas. He is gainfully



employed and supports his three children. Respondent testified he wants to change his lifestyle. However, respondent's most recent interaction with law enforcement occurred in 2023, as set forth in Factual Findings 9 and 10. As such, the evidence presented paints a mixed picture of respondent.

6. Respondent's convictions in 2017 and 2019 did not involve violence or dishonesty. Respondent owns multiple businesses and holds similar licenses issued by the state of Texas. Respondent presents as a person who is trying to do the best for himself and his family, and yet he occasionally stumbles.

7. The statutes relating to real estate licenses are designed to protect the public from any potential risk of harm. (Lopez v. McMahon (1988) 205 Cal.App.3d 1510, 1516; Arneson v. Fox (1980) 28 Cal.3d 440.)

8. The issue at hand is whether issuing respondent a restricted license would place the consuming public at risk. No evidence was presented that respondent is a dishonest or unethical person. Respondent is sufficiently rehabilitated to justify the issuance of a restricted license. In order to utilize his real estate salesperson license, respondent will be required to have a supervising real estate broker and that broker will be aware of respondent's criminal past. Additionally, the Department will be able to monitor respondent's activities while his license remains restricted. After considering all the evidence, the undersigned concluded that issuing respondent a restricted license will not place the consuming public at risk.

## **ORDER**

Respondent John Elam Mpwo's application for a real estate salesperson license is denied; provided, however, that 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 three 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:

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(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.

DATE: 09/23/2024

  
Christopher Ruiz (Sep 23, 2024 11:56 PDT)

CHRIS RUIZ

Administrative Law Judge

Office of Administrative Hearings