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FILED

JAN 31 2019

DEPT. OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

| | | |
|-------------------------------------|---|--------------------|
| In the Matter of the Application of |) | DRE No. H-41154 LA |
| |) | |
| BRENT DAVID MUSSON, |) | OAH No. 2018101006 |
| |) | |
| Respondent. |) | |

NOTICE

TO: BRENT DAVID MUSSON, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated December 31, 2018, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated December 31, 2018, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on Thursday, December 06, 2018, and any written argument hereafter submitted on behalf of respondent and complainant.

Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Thursday, December 06, 2018, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

BRENT DAVID MUSSON,

Respondent.

Case No. H-41154 LA

OAH No. 2018101006

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on December 6, 2018, in Los Angeles.

Andrea Bentler, Real Estate Counsel, represented complainant Maria Suarez, a Supervising Special Investigator, Department of Real Estate (Department), State of California.

Respondent Brent Musson was present and represented himself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 6, 2018.

SUMMARY

Complainant alleges that respondent's real estate salesperson license application should be denied based on (a) discipline imposed by the Contractors' State License Board (CSLB) against a license held by respondent, and (b) respondent's three criminal convictions. Respondent admitted the license discipline and the convictions at hearing, and presented mitigation and rehabilitation evidence, including evidence that his CSLB license has been reinstated and his convictions have been expunged. As discussed below, respondent established that the public would be protected if he were issued a restricted salesperson license.

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FACTUAL FINDINGS

Parties and Jurisdiction

1. On January 12, 2017, respondent filed with the Department an application for a real estate salesperson's license.¹

2. Complainant filed a Statement of Issues in her official capacity. Respondent timely filed a notice of defense.

Respondent's License Discipline by Another California State Agency

3. On February 10, 2006, in a Default Decision in Case No. S2004-435 effective March 16, 2006, the Registrar of Contractors, CSLB, revoked contractor's license number 807712, issued to respondent under the name of "Pasadena Construction." The Default Decision provided that respondent could apply for reissuance or reinstatement of his license after one year, on the condition that he pay \$31,959 in restitution to the complaining party and \$3,293.46 to the CSLB for investigation costs.

4. In the Accusation filed in Case No. S2004-435, the CSLB alleged that respondent had committed numerous violations of law, including violations of Business and Professions Code sections 7107 (abandonment), 7109, subdivision (a) (departure from accepted trade standards), 7113 (failure to complete the project for the price stated in the contract), 7110 (failure to provide workers' compensation insurance), and 7159, subdivisions (e) and (f) (violations of home improvement contract form). In its Default Decision, the Registrar of Contractors found that the factual allegations in the Accusation were true and that respondent had committed acts constituting grounds for disciplinary action.

5. Seven years after his license revocation, respondent reapplied for a contractor's license and paid the CSLB, by check dated February 22, 2013, its costs in the amount of \$3,293.46. Respondent also paid restitution to the complaining party. The CSLB reinstated respondent's contractor's license on May 13, 2013.

Respondent's Convictions

6. On August 9, 1991, in *People v. Musson* (Super. Ct. Los Angeles, 1991, No. 91M02881), respondent pled nolo contendere to and was convicted of violating Vehicle Code section 31 (giving false information to a peace officer), a misdemeanor.

a. The court found respondent guilty, suspended imposition of sentence, and placed respondent on one year's summary probation under terms and conditions including that

¹ From July 1, 2013, to July 1, 2018, the Department was a Bureau in the Department of Consumer Affairs. For purposes of this decision, references to the Department shall include the Bureau.

respondent pay fines and assessments totaling \$235. On October 30, 1992, because respondent had not paid the fines and assessments, the court held a probation and sentence hearing. The court again suspended imposition of sentence and placed respondent on an additional six months' summary probation under terms and conditions including that he serve 30 days in county jail and pay fines and assessments totaling \$235.

b. The facts and circumstances underlying the conviction are that, trying to avoid a traffic ticket because he was driving with a suspended license, respondent gave a police officer his brother's name rather than his own. When the officer challenged him, respondent conceded that he had given the wrong name and provided his own name.

c. On December 5, 2018, on respondent's petition, the court ordered respondent's plea of nolo contendere set aside and vacated, a plea of not guilty entered, and the complaint dismissed, under Penal Code section 1203.4.

7. On October 8, 1992, in *People v. Musson* (Super. Ct. Los Angeles, 1992, No. 92M74103), respondent pled nolo contendere to and was convicted of violating Penal Code section 12031, subdivision (a) (carrying loaded firearm in public place), a misdemeanor. The court found respondent guilty.

a. On October 30, 1992, the court suspended imposition of sentence and placed respondent on two years' summary probation under terms and conditions including that respondent serve 10 days in county jail.

b. The facts and circumstances underlying the conviction are that, after leaving a target practice session, respondent had placed, in a bag in his car, a pistol, spent casings, ear protection, eye protection, and targets. There was no clip in the weapon, but respondent had forgotten to unload a single round that was still in the gun.

c. On November 20, 2018, on respondent's petition, the court ordered respondent's plea of nolo contendere set aside and vacated, a plea of not guilty entered, and the complaint dismissed, under Penal Code section 1203.4.

8. On November 17, 2014, in *People v. Musson* (Super. Ct. Los Angeles, 2010, No. OPS00835),² respondent pled nolo contendere to and was convicted of violating Vehicle Code section 20002, subdivision (a) (hit and run), a misdemeanor. The court found a factual basis for and accepted respondent's plea, and found respondent guilty.

² The case was filed in 2010. On September 8, 2010, the court issued a bench warrant for respondent in the amount of \$30,000 after respondent failed to appear for a pre-trial hearing; the court recalled the warrant on June 17, 2011. On August 1, 2011, the court issued a bench warrant for respondent in the amount of \$50,000 after respondent failed to appear for a bench warrant hearing. The warrant remained outstanding until respondent was arrested in September 2014 (see Factual Finding 10); he did not appear in court in the matter again until the date of his conviction in November 2014.

a. The court suspended imposition of sentence and placed respondent on two years' summary probation under terms and conditions including that respondent serve one day in county jail, with credit for one day served, pay fines totaling \$220, and pay restitution in an amount not specified in the court record. The court recalled the \$50,000 bench warrant.

b. The circumstances underlying the conviction are that, on January 27, 2010, respondent and another driver were using their vehicles to express their "road rage;" they were both driving aggressively and cutting each other off. Respondent informed the Department in a Conviction Detail Report dated February 6, 2018, that, after the other driver tried to "ram" him, he called 911 to report the incident. After speaking to both respondent and the other driver, the police charged respondent with a hit-and-run violation. Though the court ordered that respondent pay restitution, respondent wrote to the Department that there was no damage to the other car. (Ex. 7.) He suspects that he alone was charged due to racial discrimination; the driver of the other car was "a Caucasian lady in a BMW," and he is African American.

c. On November 20, 2018, on respondent's petition, the court ordered respondent's plea of nolo contendere set aside and vacated, a plea of not guilty entered, and the complaint dismissed, under Penal Code section 1203.4.³

d. Respondent testified, adopting what he wrote in the Conviction Detail Report, that he is "determined never to be forced to plead 'no contest' because I can't afford an attorney! In this case [i.e., the 2014 hit-and-run conviction], my choice was plead 'no contest' or miss my final exams while waiting a few weeks in jail for a trial date." (Ex. 7.)

Additional Mitigation and Rehabilitation Evidence

9. With respect to the CSLB's Default Decision revoking his contractor's license, while respondent acknowledged that he had performed poorly on the contract at issue, he disputes that he abandoned the project. He failed to defend the Accusation against his license, however, because he never received notice of the March 2006 hearing; the notice was sent to his parents' address, where he no longer resided at the time.^{4,5} The CSLB reissued respondent's

³ Respondent argued that a no-contest plea in a criminal matter, though "the same as a guilty plea in terms of criminal record . . . only implies guilt." (Ex. 2, p. 12.) Respondent is incorrect. (See Legal Conclusion 2.)

⁴ Respondent challenged the accuracy of the CSLB's findings. The CSLB based its decision on the evidence before it and on its own expertise. The CSLB's findings in a matter involving its own licensee are given deference.

⁵ Relying on California Code of Regulations, title 10, section 2910, respondent argued that his contractor's license revocation is not substantially related to the functions, duties, and responsibilities of a licensed real estate salesperson and cannot serve as grounds for denial of his application. The effect of license discipline by another agency of this or another state is governed, however, by Business and Professions Code sections 10177, subdivisions (f) and (j), which will be applied in determining this matter.

license in 2013 after respondent again passed the licensing exam and paid both the CSLB costs incurred in the revocation proceeding and restitution to the complaining party.

10. With respect to the 2011 arrest warrant issued in the hit-and-run conviction case, respondent testified that he only learned of the warrant when he reported to the Pasadena Police Department in September 2014 that a parking lot attendant had vandalized his car, whereupon the police arrested respondent.

a. In a Pasadena Police Department report, an officer wrote that, on September 27, 2014, he and his partner responded to a report of alleged vandalism at a parking structure. The officer observed a damaged drop arm gate at the parking structure. After investigating, the officer located respondent and spoke to him by telephone. Respondent said he had entered the parking structure behind another car and did not receive a ticket to park in the structure. He turned around and drove back to the booth, asking to exit; the attendant told him he would have to pay the maximum amount, \$6. Respondent told the police officer he then tried to drive around the arm gate, but the attendant forced the gate down onto his car, damaging the car. Respondent offered to come to the police station to have the damage photographed. The officer wrote that he viewed a security video of the incident that was at variance with respondent's account. The video showed respondent trying to drive around the gate arm but, when the attendant held the arm where it was, in the down position, respondent drove right through the arm, breaking it. When respondent appeared at the police station to have the damage to his car photographed, the officer arrested him because of the outstanding 2011 warrant for \$50,000 for his hit-and-run conviction.

b. Respondent's decision to try to force his way out of the parking structure rather than pay the \$6 fee and then contest the charge is consistent, in its inappropriate means of expressing pique, with his decision to give vent to his road rage and cut off another driver. In mitigation, however, though for the latter display respondent was convicted of a hit-and-run violation, implying there was some contact between the two cars, the court did not treat the incident as a particularly grave matter. The court ordered restitution but did not specify any amount to be paid, found respondent guilty only of a misdemeanor, and placed respondent on informal probation.

11. In December 2016, respondent obtained a Bachelor of Science degree in Policy, Planning and Development and in Real Estate Development, and a Master of Science degree in Global Supply Chain Management, from the University of Southern California, where he was a member of various honor societies. He is currently pursuing a doctorate in law and policy in the College of Professional Studies at Northeastern University.

12. Respondent served in the unpaid position of councilmember on the Altadena Town Council from 2011 to 2017.

13. Respondent offered in evidence character reference internet posts from fellow graduate students and Altadena Town Councilpersons. The posts attest to respondent's passion about community needs, work ethic, creativity, teamwork, integrity, dependability, and honesty.

LEGAL CONCLUSIONS

1. The real estate commissioner “has full power to regulate and control the issuance and revocation . . . of all licenses to be issued . . .” (Bus. & Prof. Code, § 10071.) “Protection of the public shall be the highest priority for the Department of Real Estate in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.” (Bus. & Prof. Code, § 10050.1.)

2. The Department may deny a license if the applicant has been convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee, “irrespective of . . . a subsequent order under Section 1203.4 of the Penal Code . . . dismissing the accusation,” except that the Department may not deny a license *solely* on the basis of a conviction that has been dismissed under Penal Code section 1203.4. (Bus. & Prof. Code, §§ 475, subd. (a)(2), 480, subd. (a)(1), and 10177, subd. (b)(1); see also Cal. Code Regs., tit. 10, § 2911, subd. (a)(1)(B)(ii) [no rehabilitation showing required if *sole basis for denial* is an expunged conviction].) A conviction after a plea of *nolo contendere* is a conviction for purposes of denying a license application. (Bus. & Prof. Code, § 480, subd. (a)(1).) An applicant’s convictions stand as “conclusive proof” of guilt of the offenses charged; he or she is not permitted to impeach those convictions in an administrative license discipline proceeding. (See *Arneson v. Fox* (1980) 28 Cal.3d 440, 452.) A conviction is substantially related to the qualifications, functions, or duties of a real estate licensee if it involves, among other things, fraudulently taking or retaining funds belonging to another; uttering a false statement; employing fraud, deceit, falsehood, or misrepresentation to achieve an end; committing an unlawful act with the intent of obtaining a financial benefit or of doing substantial injury to another; and conduct demonstrating a pattern of repeated and willful disregard of the law. (Cal. Code Regs., tit. 10, § 2910, subd. (a).)

3. The Department may deny a license if the applicant has committed an act involving dishonesty, fraud, or deceit with the intent to substantially benefit the applicant or injure another (Bus. & Prof. Code, §§ 475, subd. (a)(3), 480, subd. (a)(2), and 10177, subd. (b)(1)), or has acted in a manner that would have warranted the denial of his or her real estate license application, or has had a license issued by another California agency revoked after being afforded an opportunity for a hearing for acts that, if done by a real estate licensee, would be grounds for revocation of the real estate license. (Bus. & Prof. Code, § 10177, subd. (f).)

4. Cause exists to deny respondent’s real estate salesperson license application under Business and Professions Code sections 475, subdivision (a)(2) and (3), 480, subdivision (a)(1) and (2), and 10177, subdivisions (b)(1), on the ground that respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee, based on Factual Finding 8. Just over four years ago, respondent was convicted of hit-and-run driving, a misdemeanor. The essence of the crime is dishonesty and it is, therefore, substantially related to the qualifications, functions, or duties of a licensed real estate salesperson. (See *Brandt v. Fox* (1979) 90 Cal.App.3d 737, 746 [substantial relationship must be established by evidence].) About 26 and 27 years ago, respectively, respondent was convicted of giving false

information to a police officer and carrying a loaded firearm in a public place. These two misdemeanor convictions, remote in time from this hearing and not having been followed by any pattern of related acts or convictions in the intervening years, cannot be found to be substantially related to licensure today.

5. Cause exists to deny respondent's real estate salesperson license application under Business and Professions Code sections 475, subdivision (a)(1), 480, subdivision (d), and 10177, subdivisions (a), on the ground that respondent held a license that was disciplined by another agency of the state, the CSLB, based on Factual Findings 3 and 4. Among other things, respondent departed from accepted standards for licensees, failed to complete his work for the agreed-upon price, and violated contract forms, acts that, if done by a real estate licensee, would be grounds for license denial or discipline by the Department.

6. Cause for denial of respondent's application having been established, respondent bears the burden of proving that he is sufficiently rehabilitated from his convictions, and from the acts he committed leading to his CSLB license discipline, to warrant licensure. (See *Martin v. Alcoholic Beverage Control Appeals Bd.* (1950) 52 Cal.2d 259, 264-265.) The "more serious the misconduct and the bad character evidence, the stronger the applicant's showing of rehabilitation must be." (*In re Gossage* (2000) 23 Cal.4th 1080, 1096.)

7. The criteria for assessing the rehabilitation of a license applicant include the time that has passed since the applicant's acts or offenses, any restitution the applicant has made, expungement of convictions, successful completion of or early discharge from probation, payment of fines and monetary penalties imposed in connection with a criminal conviction, stable family life and fulfillment of familial responsibilities, completion of educational courses taken for economic self-improvement, correction of business practices, significant involvement in programs designed to provide social benefits, new social and business relationships, and changes in attitude as reflected by, for example, testimony or other evidence of rehabilitation, and evidence from family members, friends, or others, and absence of subsequent criminal convictions. (Cal. Code Regs., tit. 10, § 2911.)

8. Applying the rehabilitation criteria, decades have passed since the first two of respondent's convictions. He completed probation for his most recent conviction, which has been expunged. Though respondent's most recent conviction occurred four years ago, it was based on an offense committed seven years ago. More recently, respondent was involved in an incident involving the inappropriate display of anger when he crashed through a parking structure gate arm. Respondent has been diligently and successfully pursuing his education goals. Though deference is shown to the CSLB's decision to revoke respondent's contractor's license in 2006, deference must also be shown, in considering evidence of respondent's rehabilitation, to the CSLB's determination that respondent was sufficiently rehabilitated to be reissued a contractor's license in 2013. And respondent paid restitution to the complaining party as a condition of the reissuance of his license. Respondent's fellow students and colleagues posted strong statements regarding his character and integrity.

9. All relevant factors having been considered, respondent established that he is, at this time, sufficiently rehabilitated from his convictions and from the acts leading to his CSLB license discipline to justify granting him a restricted real estate salesperson license, which would sufficiently protect the public, based on Factual Findings 3 through 11.

ORDER

Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent under Business and Professions Code section 10156.5. The restricted license issued to the respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions, and restrictions imposed under authority of Business and Professions Code section 10156.6:

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 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 that 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.

4. Respondent shall, within 180 days of the effective date of this decision, enroll in and successfully complete an anger management course approved by the Department of

Real Estate, and shall upon request provide documentation of his successful completion of that course to the Department of Real Estate.

DATED: December 31, 2018

DocuSigned by:

Howard W. Cohen

HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings