

**FILED**

DEC 18 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-42695 LA
ROBERT GONZALEZ VIRAMONTES,	}	OAH No. 2023080873
Respondent.	}	

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DECISION

The Proposed Decision dated November 29, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision.

Page 2, paragraph 1, last sentence, "The Department denied the application" shall be deleted.

Pages 2-3, paragraph 6, "The 2016 DRE Decision adopted the September 14, 2016, Proposed Decision the OAH ALJ in DRE Case No. H-40061- LA . . ." shall be amended to "The 2016 DRE Decision adopted the September 14, 2016, Proposed Decision of the OAH ALJ in DRE Case No. H-40061-LA . . ."

Page 3, paragraph 7, "The 2016 Decision . . ." shall be amended to "The 2016 DRE Decision . . ."

Page 4, paragraph 9, "In addition, Respondent received an order debarment," shall be amended to "In addition, Respondent received an of order debarment."

Page 5, paragraph 10(E), ". . . cause existed under Financial Code section 221091.1, subdivision (a)(1), (2), and (3), to deny Respondent's California financial lending application" shall be amended to ". . . cause existed under Financial Code section 22109.1, subdivisions (a)(1), (2), and (3), to deny Respondent's California financial lending application."

Page 6, paragraph 10(F), “. . . grounds for revocation to revoke Respondent’s MLO . . .” shall be amended to “. . . grounds for revocation of Respondent’s MLO license . . .”

Page 8, paragraph 15, “However, he blamed the DFPI for lying omission . . .” shall be amended to “However, he blamed the DFPI for the omission . . .”

Page 10, paragraph 5, “. . . proceeding seven years . . .” shall be amended to “. . . preceding seven years . . .”

The application for a real estate salesperson license is denied. The earliest date on which the applicant may reapply for a license is one year from the effective date of this Decision. If and when application is again made for this license, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

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.

This Decision shall become effective at 12 o'clock noon on Jan. 08, 2024.

IT IS SO ORDERED 12/11/23

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER



*for Doug McCauley*

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

**In the Matter of the Second Amended Statement of Issues**

**Against:**

**ROBERTO GONZALEZ VIRAMONTES,**

**Respondent.**

**Agency Case No. H-42695-LA**

**OAH No. 2023080873**

**PROPOSED DECISION**

Irina Tentser, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on November 2, 2023.

Laurence D. Haveson, Counsel, appeared on behalf of Jason Parson (Complainant), a Supervising Special Investigator for the Department of Real Estate (DRE or Department).

Roberto Gonzalez Viramontes (Respondent) appeared on his own behalf.

Testimonial and documentary evidence was received. The record was closed and the matter was submitted for decision on November 2, 2023.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On December 16, 2022, Respondent signed and thereafter submitted to the Department an application for a real estate salesperson license (application). The Department received the application on December 20, 2022. The Department denied the application.

2. On November 2, 2023, Complainant filed the Second Amended Statement of Issues, the operative pleading in this matter, while acting in his official capacity.

3. Respondent timely filed a Notice of Defense on Application requesting a hearing.

### **Respondent's Previous License History**

4. From April 12, 1991, to January 17, 1995, Respondent was previously licensed by the Department, as a real estate salesperson, License ID 01107842.

5. From January 18, 1995, to November 10, 2016, Respondent was also licensed as a real estate broker by the Department, License ID 01107842.

### **Respondent's Prior License Discipline**

#### **2016 DRE DECISION**

6. Respondent's real estate broker license was revoked by the decision of the Real Estate Commissioner (2016 DRE Decision), effective November 10, 2016. The

2016 DRE Decision adopted the September 14, 2016, Proposed Decision the OAH ALJ in DRE Case No. H-40061-LA (OAH case number 2016010248), revoking Respondent's real estate broker's license based on findings Respondent violated Business and Professions Code sections 10085.5, 10145, 10148, subdivision (a), 10176, subdivisions (a), (e), and (i), and 10177, subdivisions (d) and/or (g). (All further section references are to the Business and Professions Code unless otherwise indicated.)

7. The 2016 Decision found Respondent's real estate broker's license was subject to revocation based on: his failure to maintain records pertaining to real estate transactions; failure to produce records and make them available for inspection; failure to pay over loan proceeds and other monies entrusted to Respondent or a corporate broker for which Respondent was the designated officer, constituting conversion of these funds; taking advanced fees when Respondent had no approved advanced fee agreement and failure to refund such fees on demand, which constituted conversion of those funds. (Exhibit 3, pp. A53-A54.)

8. Notably, the ALJ found Respondent's defense that an October 2013 fire in his office created the circumstances that led to his violation of his fiduciary duties, "amounted to an admission that he was grossly negligent . . ." and that "[Respondent's] breach of fiduciary duty amounts to constructive fraud." (Exhibit 3, p. A54.) The ALJ found Respondent's testimony at hearing, shifting blame for his fraudulent and grossly negligent conduct to the office fire not credible, taking a "distrustful view of Respondent's evidence." (*Id.* at p. A54.)

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**2020 DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION (DFPI)  
DECISION REVOKING RESPONDENT'S MORTGAGE LOAN ORIGINATOR (MLO)  
LICENSE AND DENYING RESPONDENT'S APPLICATION FOR A FINANCE LENDER  
LICENSE**

9. Respondent's mortgage loan originator (MLO) license was revoked, his application for a finance lender license was denied, and he was barred from any position of employment, management, or control of any finance lender, broker, or MLO, by the decision of the Commissioner of the DFPI (DFPI Commissioner), effective December 21, 2020 (2020 DFPI Decision). The 2020 DFPI Decision adopted the August 11, 2020, Proposed Decision of the OAH ALJ in OAH Case No. 2020010980. In addition, Respondent received an order debarment, for acts that, if done by a real estate licensee, would be grounds for the denial of an application for a California real estate license under sections 10176, subdivision (a)(substantial representation), 10176, subdivision (i) (fraud or dishonest dealing), 10177, subdivision (a) (procured license by fraud, misrepresentation, deceit, or material misstatement), and 10177, subdivision (j) (fraud or dishonest dealing).

10. The 2020 DFPI Decision adopted the following findings of the ALJ:

A. Pursuant to the 2016 DRE Decision, Respondent converted trust funds and issued at least five checks for proceeds to consumers from real estate transactions, drawn on bank accounts that had insufficient funds to cover the checks. Respondent, on at least one occasion, placed the proceeds of a loan refinancing into a non-trust account, and the funds were seized by tax authorities. In addition, Respondent took an advance fee for loan costs for a refinancing transaction. However, Respondent never refinanced the loan and refused to refund the fees to the consumer.

B. Respondent failed to disclose the 2016 DRE Decision revoking his real estate broker license on the May 2017 application he filed for an MLO license with the DFPI under the California Financial Law (CFL), Financial Code section 22105.1, using form MU4 through the Nationwide Mortgage Licensing System & Registry (NMLS), and in his subsequent MU4 and MU2 applications.

C. On Respondent's June 2017 application for a finance lending license using form MU1, Respondent falsely answered "No" to regulatory disclosure questions about prior discipline imposed by state regulatory agencies, failed to disclose the 2016 DRE Decision revoking Respondent's real estate broker's license, and falsely answered "No" to whether the applicant or a control affiliate had been subject to a bankruptcy petition. In fact, Respondent had initiated bankruptcy proceedings in 2012, 2013, and 2015, and had received a Chapter 7 bankruptcy discharge in 2015.

D. The 2016 DRE Decision established Respondent committed acts involving dishonesty, fraud, or deceit reasonably related to the qualifications, functions, or duties of a person engaged in the real estate business in accordance with provisions of the CFL. Accordingly, cause existed under Financial Code section 22169 to bar Respondent from any position of employment, management, or control of any finance lender, broker, or mortgage loan originator.

E. The 2016 DRE Decision is evidence Respondent has not demonstrated such financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination he will operate honestly, fairly, and efficiently consistent with the purposes of the CFL. Accordingly, cause existed under Financial Code section 221091.1, subdivision (a)(1), (2), and (3), to deny Respondent's California financial lending application.

F. The 2016 DRE Decision is a disciplinary order under Financial Code section 22705.1, subdivision (a), and constitutes a fact or condition that, had it been disclosed at the time of Respondent's original 2017 MLO license application, reasonably would have warranted the DFPI Commissioner's denial of the application, and is therefore grounds for revocation to revoke Respondent's MLO pursuant to Financial Code section 22714, subdivision (a)(3), for Respondent's violation of California Code of Regulations, title 10 (Regulations), sections 1422.6 and 1409.1, subdivisions (a) and (c).

### **2021 DEPARTMENT DECISION DENYING RESPONDENT'S REAL ESTATE SALESPERSON APPLICATION**

11. On August 26, 2019, Respondent filed an application for a Department real estate salesperson license (2019 application). On May 11, 2021, the Department filed a Statement of Issues against Respondent in DRE Case No. H-41985-LA, regarding his 2019 application.

12. Respondent's 2019 application was denied by the decision of the Real Estate Commissioner (2021 DRE Decision), effective October 25, 2021. The 2021 DRE Decision adopted the August 11, 2021, Proposed Decision of the OAH ALJ, denying Respondent's 2019 application. In the Proposed Decision, the ALJ found cause existed, pursuant to Section 10177, subdivisions (f) and (j), to deny Respondent's 2019 application because (1) Respondent's MLO license was revoked by the DFPI in the 2020 DFPI Decision, which made findings Respondent violated the law, and (2) Respondent engaged in fraud or dishonesty as a real estate broker, as detailed in the 2016 DRE Decision. Further, the ALJ found Respondent did not establish he was rehabilitated and qualified for licensure. (Cal. Code Regs, tit. 10, § 2911.)



13. In describing Respondent's hearing testimony, the ALJ found:

[R]espondent did not take responsibility for his past misconduct. He testified that his real estate broker license was revoked because of missing paperwork, which was caused by a fire, and because the ALJ "did not consider his explanation." Further, Respondent denied ever taking any advance fees and he denied failing to disclose the revocation of his broker license in his application to the DFPI. Respondent also stated that, even if he did not include information regarding the revocation of his real estate broker license, the Department and DFPI "know about each" and therefore his failure to disclose information should not have been an issue.

(Exh. 5, p. A104.)

## **Hearing**

### **RESPONDENT'S TESTIMONY**

14. Respondent testified in support of his current application. Respondent made many of the same unpersuasive assertions he had made in support of his 2019 application during the 2021 hearing. Specifically, Respondent again falsely asserted the ALJ failed to consider the fire at his office when revoking his real estate broker license in 2016. Respondent also denied taking advance fees.

15. While contrary to his 2021 hearing testimony, at this hearing Respondent admitted he failed to disclose the revocation on his MLO application in 2017, and he

characterized the willful falsehood as an “unfortunate mistake.” However, he blamed the DFPI for lying omission, testifying the DFPI did not do its “due diligence,” and he “figured [the DFPI] would catch it.” Respondent’s testimony continues to indicate he does not take responsibility for his past misconduct.

16. Respondent testified he is entitled to a second chance because of the passage of time since the misconduct that led to his DRE broker license revocation and to the 25 years he held his broker’s license without discipline before its revocation in 2016. He asserts that if his application is granted, he will not pose a danger to the public as a salesperson because he would not handle any moneys from real estate transactions and would not be responsible for the management of trust accounts.

17. Respondent testified his sole source of income is his work as a self-employed construction handyman. Respondent has been married since 2005. He testified his wife is retired and receives In-Home Support Services (IHSS) income for the care of her adult daughter. Respondent asserted he provides the principal financial support for his family and helps care for his 37-year-old stepdaughter, who suffers from epileptic seizures. Respondent is not a member of any community or social group. He attends church weekly and is close with his mother and siblings. He testified he is in contact with former DRE licensees whom he supervised when he was a licensed DRE broker, but provided no character reference letters from any current or past business associates. Respondent has not enrolled in or completed any formal education or vocational training courses for economic self-improvement.

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## LEGAL CONCLUSIONS

1. The Real Estate Commissioner “has full power to regulate and control the issuance and revocation . . . of all licenses to be issued . . . .” (§ 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.” (§ 10050.1.)

2. The applicant has the burden of proof to show he meets the qualifications for issuance of a real estate salesperson license. (Gov. Code, § 11504; *Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205; *Coffin v. Alcoholic Beverage Control Appeals Bd.* (2006) 139 Cal.App.4th 471, 476.) The standard of proof is the preponderance of the evidence. (Evid. Code, § 115.) Respondent has not met his burden he is entitled to be issued a salesperson license.

3. Pursuant to section 10177, subdivision (f), the Department has the authority to deny an application for a real estate license if the applicant “[A]cted or conducted themselves in a manner that would have warranted the denial of their application for a real estate license, . . . had a license issued by another agency of this state, . . . revoked, . . . or received an order of debarment, for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license.”

4. Pursuant to section 10177, subdivision (j), the Department has the authority to deny an application for a real estate license if the applicant engaged in conduct that constitutes fraud or dishonest dealing.

5. Pursuant to sections 480, subdivision (a)(2), the Department has the authority to deny an application for a real estate license if the applicant has been "subjected to formal discipline by a licensing board in . . . California within the proceeding seven years from the date of application based on professional misconduct that would have been cause for discipline before the board for which the present application is made and that is substantially related to the qualifications, function, or duties of the business and profession for which the present application is made."

6. Cause exists, pursuant to section 480, subdivision (a)(2), in conjunction with section 10177, subdivisions (f) and (j), to deny Respondent's application for a salesperson license because Respondent's MLO license was revoked within the past seven years, based on, among other things, Respondent's fraud and dishonest dealing as a real estate broker. (Factual Findings 10A-10F.)

7. Because cause for denial of Respondent's application was established, Respondent bears the burden of proving sufficient mitigation and rehabilitation to warrant the granting of the license. (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.)

8. California Code of Regulations, title 10, section 2911, lists criteria developed by the Department to evaluate the rehabilitation of an applicant for purposes of issuance or reinstatement of a license. The criteria include:

- (1) The time that has elapsed since commission of the acts(s) or offense(s):

(A) The passage of less than two years after the most recent criminal conviction or act of the applicant that is a cause of action in the [Department's] Statement of Issues against the applicant is inadequate to demonstrate rehabilitation.

(B) Notwithstanding subdivision (a)(1)(A), above, the two-year period may be increased based upon consideration of the following:

(i) The nature and severity of the crime(s) and/or act(s) committed by the applicant.

(ii) The applicant's history of criminal convictions and/or license discipline that are "substantially related" to the qualifications, functions, or duties of a real estate licensee. However, no rehabilitation shall be required where the sole proven basis or bases for denial of an application is an expunged conviction as described in Business and Professions Code Section 480(c).

(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.

(3) Expungement of criminal convictions.

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

(5) Successful completion or early discharge from 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 Bureau action sought is attributable in part to the use of controlled substances and/or alcohol.

(7) Payment of the fine and/or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(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 Bureau action sought.

(9) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

(10) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

(11) Correction of business practices resulting in injury to others or with the potential to cause such injury.

(12) Significant or conscientious 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 Bureau action sought.

(14) Change in attitude from that which existed at the time of the conduct in question as evidenced by the following:

(A) Testimony and/or other evidence of rehabilitation submitted by the applicant.

(B) Evidence from family members, friends and/or other persons familiar with applicant's previous conduct and with his or her subsequent attitudes and/or behavioral patterns.

(C) Evidence from probation or parole officers and/or law enforcement officials competent to testify as to applicant's social adjustments.

(D) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(E) Absence of subsequent felony convictions, misdemeanor convictions, or other conduct that provides grounds to discipline a real estate licensee, which reflect an inability to

conform to societal rules when considered in light of the conduct in question.

9. Applying the foregoing criteria, Respondent failed to establish he is rehabilitated and qualified for licensure. Respondent's actions involve his willful falsehood to the DFPI regarding his 2016 Department broker license revocation, leading to his MLO license revocation and denial of his application for a financial lender license. Instead of acknowledging responsibility for his past misconduct, Respondent continues to minimize his fraud and deflect his accountability. Accordingly, Respondent has not provided evidence at hearing that he possesses the requisite change in attitude, honesty, and integrity such that the Department should grant his licensure. The paramount goal of public protection requires a denial of Respondent's application.

## ORDER

Respondent Roberto Gonzalez Viramontes' application for licensure as a real estate salesperson is denied.

DATE: **11/29/2023**

*Irina Tentser*

IRINA TENTSER

Administrative Law Judge

Office of Administrative Hearings