

**BEFORE THE
BUREAU OF HOUSEHOLD GOODS AND SERVICES
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues against:

SEAN CHOQUETTE, Respondent

Agency Case No. A1 2018-1459

OAH No. 2019071111

PROPOSED DECISION

Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on August 12, 2019, in Sacramento, California.

Katelyn E. Docherty, Deputy Attorney General, appeared on behalf of Nicholas Oliver (complainant), Bureau Chief, Bureau of Household Goods and Services (Bureau), Department of Consumer Affairs, State of California.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 12, 2019.

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 18, 2018, respondent submitted an application to the Bureau for an Electronic Service Dealer Registration (registration). On March 7, 2019, the Bureau denied respondent's application based upon his history of criminal convictions. Respondent appealed the Bureau's denial of his application.

2. On July 10, 2019, complainant signed and subsequently filed the Statement of Issues in his official capacity. The Statement of Issues alleged that respondent's criminal convictions are substantially related to the qualifications, functions, and duties of an Electronic Service Dealer, constituting grounds for the denial of respondent's application.

Convictions

3. On February 14, 2014, in Madera County Superior Court, Case No. MCR047237, respondent was convicted, upon a plea of guilty, of violating Penal Code section 422 (willfully threaten to commit crime which will result in death or great bodily injury to another), a misdemeanor. The court denied probation, sentenced respondent to 365 days in county jail with 160 days credit for time served, and ordered respondent to pay court fees and fines. Respondent was eligible to apply for work furlough and county parole. The court records did not indicate whether respondent is currently on probation or parole.

4. The circumstances of respondent's conviction are that on September 14, 2013, officers were dispatched to a domestic violence incident regarding a suspect swinging a sword and threatening to kill the victim. They arrived on scene, where the

victim stated to officers that she and respondent were in a dating relationship and have one child. They had an argument, and respondent grabbed the victim by her shoulders and shook her. As he was doing so, respondent stated that he was going to kill her. He then grabbed his three-foot sword and started swinging it in the air, threatening to use the sword to kill her. Respondent told the victim that if she called the police, he would kill her with the sword, then kill the police. Later that night the victim called the police to report the incident. Respondent learned that the victim called the police and grabbed his sword, leaving in his vehicle.

Respondent was arrested two days later. He told police that he applied lice medication to his son's body, and the victim became upset, telling respondent that he was delusional. Respondent felt disrespected because the victim yelled at him. He decided to pack some things and leave the residence. Respondent told the victim he felt like killing her but denied threatening her with a sword. He told police that he wanted to kill himself by driving off the San Joaquin River Bridge. He said this because the victim called the police. Respondent stated to police that he said a lot of things he did not mean.

5. On February 2, 2005, in the Second Judicial District Court, County of Bernalillo, State of New Mexico, Case No. CRCR-05-00445, respondent was convicted, upon pleas of guilty, of violating New Mexico Criminal Code sections 30-28-1 and 30-2-14 (attempt to commit a felony, second degree murder), a third degree felony; section 30-3-5(A) and (C) (aggravated battery with a deadly weapon), a third degree felony; section 30-3-2(c) (aggravated assault with intent to commit a felony), a fourth degree felony; section 33-3-2(A) (aggravated assault-deadly weapon), a fourth degree felony; section 30-16-20(A) (shoplifting over \$250), a fourth degree felony, section 30-22-5 (tampering with evidence), a fourth degree felony; and section 30-4-3 (false

imprisonment), a fourth degree felony. The court sentenced respondent to 13.5 years in prison. The court suspended seven and one-half years of respondent's sentence, and placed respondent on supervised probation, concurrent with parole, for five years after release. Special conditions of probation included: no contact with the victim or his family; payment of restitution; and completion of supervision or counseling, including an in-patient treatment program as approved by the probation department. On March 27, 2014, the court revoked respondent's parole, and ordered him to serve 248 days in prison.

6. The circumstances of respondent's convictions are that on January 16, 2005, respondent entered a Best Buy with the intent to steal Xbox video games, sell the games, and buy methadone. Respondent concealed eight Xbox video games valued at over \$250 under his shirt and left the store without paying for the games. A Best Buy loss prevention employee attempted to detain respondent as he exited the store. Respondent stabbed the employee six times. Respondent fled the scene with his wife, who was with him at Best Buy. They ran into a vehicle driven by a friend. Respondent held a knife to the friend's neck and ordered him to drive away from the scene.

Respondent's Evidence

7. Respondent testified, explaining the circumstances of his 2014 conviction. During an argument, his girlfriend threatened to withhold their son from him. Respondent yelled at her. Respondent denied threatening his girlfriend, but admitted that he told her that he felt like killing her.

Respondent also explained the circumstances of his 2005 convictions. He had a "drug problem," and in the process of committing a crime, he "injured a security guard

very badly." Respondent had a knife, and the security guard grabbed him as he was leaving the store. Respondent stated that he stabbed the security guard three times in the arm, as well as parts on his body. Respondent was a heroin user, but claimed that he was "not on drugs that day."

8. On May 15, 2009, respondent obtained an Associate of Arts in Business Administration degree from Eastern New Mexico University. On August 25, 2009, he completed a course entitled, "Therapeutic Community Program II (Skills Development)" at Western New Mexico Correctional Facility in Grants, New Mexico. On October 30, 2009, he completed a course entitled, "Therapeutic Community Program III (Re-Entry)" at the same correctional facility. Respondent had "completed 2 out of 3 months" of that program.

9. On November 5, 2014, respondent completed a court-ordered 12-week Nurturing Parenting Program, and on December 8, 2014, respondent completed a court-ordered 12-week Anger Management Course, both at the Marjaree Mason Center. On December 20, 2017, respondent received his Bachelor of Science degree in Business Administration – Computer Information Systems Option, from California State University, Fresno.

10. After his release from county jail in 2014, respondent lived in a halfway house for one year. He admitted that he is a heroin addict, and his sobriety date is January 16, 2014. He attends weekly Narcotics Anonymous meetings in Fresno. He works the 12 steps, and is currently on Step 4 which requires the taking of personal inventory. He characterized heroin as "a powerful drug that creates a level of desperation that makes [users] dangerous." Respondent admitted that he has relapsed two or three times during his recovery.

11. Despite his relapses, respondent has managed to take on “more responsibility” for his job at Micronet, which requires him to handle customers’ bank accounts and private information, and their login usernames and passwords. Respondent explained that he “took over” Micronet in mid-November 2016. The company functions exclusively as a website development company, but at one time, it performed consumer electronics repair, requiring a service dealer registration.

12. Respondent asserted that since May 2014, he has been seeing a psychologist for his anxiety issues. He did not provide any further information about what he has learned. Respondent also admitted that he has anger management problems. He has learned to “see the whole picture, to see [the problem] from the other person’s perspective.” Aside from seeing another person’s point of view, respondent provided no other testimony on how he manages his anger.

13. Jorge Cruz is the owner of a software security company. Respondent is his Chief Information Officer (CIO). He testified telephonically on respondent’s behalf. Mr. Cruz met respondent in the Spring of 2016 when he was a Master of Business (MBA) student at California State University, Fresno. Mr. Cruz sponsored four or five students to work on his MBA project. Respondent was one of the students that worked on Mr. Cruz’s project. The project was called “Core Lock Mobile App.” It is a software application. Mr. Cruz described respondent as “one of the sharpest dudes I’ve come across at Fresno State.” Mr. Cruz trusts respondent. Mr. Cruz has entrusted his two youngest sons to interact with respondent to learn about robotics. Mr. Cruz has no concerns with respondent’s ethical practices in business. He stated that as his Chief Information Officer (CIO), respondent has “managed the operations in Nepal very well.”

14. Mr. Cruz was not aware of why he was testifying on respondent's behalf. He stated that respondent mentioned that he "did some time in jail," and "for the sake of our friendship, I did not ask." Mr. Cruz respected respondent's private life, and respondent respected his. Mr. Cruz did not know that respondent had been convicted of attempted murder, and did not have knowledge of respondent's other convictions. He did not express knowledge of respondent's heroin addiction.

15. Respondent submitted a letter dated October 6, 2014, from Andy Lujan, Director of A. Lujan Recovery Programs, Inc. which was received in evidence and considered to the extent permitted by Government Code section 11513, subdivision (d).¹ Mr. Lujan confirmed that respondent was assessed and accepted into A. Lujan Recovery Programs and Sober Living Home in Fresno, California. He described respondent as a role model, providing mentoring to new clients, and "living by example." Respondent attended all required program meetings, attended anger management classes, and saw a therapist at Marjaree Mason Center in Fresno. Respondent regularly participated in meditation groups. At the time the letter was written, respondent was employed full-time at Civilized Technologies in Fresno. Respondent's focus was his sobriety and providing support for his son. Respondent submitted to random drug testing, and the drug tests were all negative. Respondent attended five community-based 12-step meetings, and five in-house meetings per week.

¹ Government Code section 11513, subdivision (d), provides, in pertinent part, that "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."

16. On April 5, 2017, the Madera County Superior Court granted respondent full custody of his son. The court ordered respondent to immediately enroll his son in counseling with a licensed therapist, or through a counseling center.

Discussion

17. When evaluating the rehabilitation of an applicant, the Bureau considers the following criteria: (1) the nature and severity of the crimes; (2) evidence of any acts committed subsequent to the crimes; (3) total criminal record; (4) time that has elapsed since the commission of the crimes; (5) the extent to which the applicant has complied with terms of probation or parole; and (6) evidence of rehabilitation submitted by the applicant. (Cal. Code Regs., tit. 16, § 2768, subd. (b).)

18. The nature of respondent's crimes were serious and posed a danger to others. In 2005, he stole video games to get money to pay for methadone. When the loss prevention employee attempted to stop him while leaving the store, he stabbed the employee six times, and promptly left the crime scene. Respondent asserted at hearing that he had not taken heroin that day, but he admitted that he was a heroin addict, and was "sick." While he was on probation, respondent committed another crime on September 14, 2013, when he engaged in a domestic violence altercation with the mother of his child. Respondent swung a sword and threatened to kill her because he felt disrespected. Respondent admitted to having an anger management problem. It is not known whether respondent continues to be on probation for this offense. Nevertheless, it is well-established that rehabilitative efforts when a person is on criminal probation are accorded less weight, "[s]ince persons under the direct supervision of correctional authorities are required to behave in an exemplary fashion ..." (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

19. Respondent did not appear to acknowledge the seriousness or wrongfulness of his actions. With respect to his 2005 convictions, respondent attributed his actions to being "sick." He expressed no remorse for his victim, or any insight into stealing store goods for his own personal gain. Similarly, while it is commendable that respondent admitted to this anger management problem, and has completed court-ordered counseling to address it, he expressed no remorse for his victim in the 2013 incident, how it may have affected his son, and very little insight or testimony about how he currently manages his anger. Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal. 3d 933, 940.)

20. Respondent did not comply with probation following his 2005 conviction in New Mexico. There, the court revoked his probation on March 27, 2014, and ordered him to serve 248 days dating back to September 18, 2013. Respondent explained that he relapsed while in jail in 2014.

21. Respondent has demonstrated some rehabilitation since his release from incarceration in 2014. He is employed as the CIO for Micronet, received his bachelor's degree in 2017, and was granted full custody of his son. However, it is troubling that respondent has relapsed two or three times during his recovery with a powerfully addictive drug such as heroin. Respondent's sobriety date is January 16, 2014, and he attends weekly Narcotics Anonymous meetings. He does not have a sponsor, and he does not appear to have solid supports in place to help him maintain his sobriety.

22. Also concerning is the testimony of respondent's only character witness, Mr. Cruz. He spoke highly of respondent's work ethic, but had no idea that respondent was convicted of attempted murder and additional crimes. He did not express knowledge of respondent's 2014 willful threat conviction involving the mother of his

child, nor did he express knowledge of respondent's heroin addiction. Mr. Cruz has known respondent for a short period of time. His testimony was given little weight.

23. Respondent has not provided the Bureau with adequate assurances that he can interact safely with the public. He has a history of violent behavior, has served over six years in prison, and is a heroin addict with a sobriety date of January 16, 2014. While respondent may argue that his five years of sobriety is significant, respondent has been an addict for a much longer time, and he has relapsed several times. He has not demonstrated prolonged, active commitment to his sobriety. Electronic Service Dealers work with clients and have access to personal information stored on their computers. A substantial degree of calm, self-control, honesty, and integrity, as well as sustained sobriety, is paramount. Given respondent's serious criminal history of attempted murder, aggravated assaults, theft, false imprisonment, violence towards the mother of his child, and his history of heroin addiction, denial of his application is appropriate at this time.

LEGAL CONCLUSIONS

1. In a proceeding involving the issuance of a license, the burden of proof is on an applicant to show eligibility. (*Coffin v. Dept. of Alcoholic Beverage Control* (2006) 139 Cal.App.4th 471, 475; *Martin v. Alcoholic Beverage Control Appeals Bd.* (1959) 52 Cal.2d 259, 265.) In administrative proceedings, as in civil actions, the party asserting the affirmative generally has the burden of proof by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

2. Business and Professions Code section 480 provides, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere ...

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made.

3. Business and Professions Code section 9841 provides, in pertinent part:

(a) The director may deny, suspend, revoke, or place on probation the registration of a service dealer for any of the following acts or omissions done by himself ... related to the conduct of his ... business:

(7) Conviction of a crime that has a substantial relationship to the qualifications, functions and duties of a registrant under this chapter, in which event the record of the conviction shall be conclusive evidence thereof.

4. California Code of Regulations, title 16, section 2767, includes the substantial relationship criteria which must be considered to determine whether an act or crime is substantially related to the qualifications, functions and duties of a licensee. Section 2767 provides, in pertinent part:

For the purposes of denial ... of the registration of a repair service dealer ... a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a service dealer if to a substantial degree it evidences present or potential unfitness of a service dealer to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare.

Substantial Relationship

5. Whether an applicant's convictions are substantially related to his or her qualifications is a question of law. (*Donaldson v. Department of Real Estate* (2005) 134 Cal.App.4th 948, 954.) The crimes of which respondent was convicted involved acts of violence causing injuries to others. These offenses, and the character deficits they reflect, are antithetical to the necessary qualifications of integrity and maturity required of Electronic Service Dealers. They evidence, to a substantial degree, potential unfitness to perform the duties authorized by an Electronic Service Dealer registration in a manner consistent with the public health, safety and welfare. Thus, respondent's convictions are substantially related to the qualifications, functions, and duties of an Electronic Service Dealer, pursuant to Business and Professions Code sections 9841, subdivision (a)(7), and 480, subdivision (a)(1)(B).

Cause for Denial

6. Cause for denial of respondent's application for an Electronic Service Dealer Registration was established pursuant to Business and Professions Code sections 9841, subdivision (a)(7), and 480, subdivision (a)(1)(B), and California Code of

Regulations, title 16, section 2767, as set forth in Factual Findings 3 through 6, and Legal Conclusion 5.

Rehabilitation

7. If legal grounds exist to deny respondent's application, then he bears the burden to prove that he has achieved substantial rehabilitation and is fit for licensing. (See *In re Gossage* (2000) 23 Cal.4th 1080.) As set forth in Factual Findings 17 through 23, respondent has not demonstrated substantial rehabilitation sufficient to warrant the issuance of an Electronic Service Dealer Registration at this time.

ORDER

Respondent Sean Choquette's application for an Electronic Service Dealer Registration is DENIED.

DATE: August 27, 2019

DocuSigned by:
Danette C. Brown
ACEA0DD79CC44EF...
DANETTE C. BROWN

Administrative Law Judge
Office of Administrative Hearings