

under the influence of alcohol or drugs, homicide or feticide by vehicle, fleeing the scene of an accident, attempting to elude a police officer, or impersonating a law enforcement officer?"
Exhibit R-2.

4.

On or about January 3, 2007, Petitioner pled guilty in the Superior Court of Gwinnett County, Georgia, under the First Offender Act to the felony criminal offense of Violation of Georgia Controlled Substances Act: Possession of Cocaine. Petitioner was sentenced according to the terms of the First Offender Act to three years of probation, payment of a fine in the amount \$1,000.00, and twenty hours of community service. State of Georgia v. Eduardo Jesus Matos, Criminal Action Number 05-B-4998-4, Superior Court of Gwinnett County, Georgia. *Testimony of Petitioner; Exhibit R-3.*

5.

On August 11, 2009, the Gwinnett County Superior Court determined Petitioner had satisfied the conditions imposed under the First Offender Act and issued to Petitioner an Order of Discharge. *Testimony of Petitioner; Exhibits R-3.*

6.

Petitioner described the circumstances of his arrest and conviction as follows. In 2005 Petitioner worked part-time as a DJ in a sports bar. On or about March 13, 2005, Petitioner was taking a co-worker home from the sports bar when he was stopped by a police officer for an improper lane change. The police officer found drugs on Petitioner's co-worker, and charged both individuals with Possession of Cocaine. Petitioner immediately submitted to a drug screen, which was negative. Petitioner was very concerned about the charge because at the time he was battling his ex-wife for custody of his son, and decided that a First Offender Plea would be in his best interest. His ex-wife reported the First Offender Plea to the Commission, and the Commission revoked his license. *Testimony of Petitioner; Exhibit P-1.*

7.

Petitioner is forty nine years old. He was born in Peru and moved to the United States as a child. After his family moved to Georgia, Petitioner attended Sequoyah High School and Georgia Perimeter College. Petitioner eventually obtained several licenses from the Commission. He worked in the real estate industry for many years and never received any complaints regarding

his work or conduct. Currently, Petitioner has full custody of his eleven year old son and is a DJ for weddings and corporate events. *Testimony of Petitioner.*

8.

Several character witnesses testified on Petitioner's behalf. Jane Pineiro is a Special Education teacher for the Gwinnett County School System. She has known Petitioner for seven years because her son and Petitioner's son are friends. Ms. Pineiro has observed that Petitioner is a hard-working and loving parent, who always attends his son's school functions. In her opinion Petitioner has an excellent reputation in the community and is a person of integrity who would be competent to conduct real estate transactions. She believes he "would be a great realtor." Ms. Pineiro feels comfortable letting Petitioner care for her son and property, and noted that she has never seen Petitioner drink alcohol at any function, including parties or social events. *Testimony of Jane Pineiro.*

9.

Juan Diego-Garcia owns a commercial painting company with ten employees, and his wife is a real estate agent. He has known Petitioner for twenty five years, and would allow Petitioner to care for his child, borrow money, or take care of his property. He believes Petitioner is trustworthy, honest and competent to act as a real estate licensee. Mr. Diego-Garcia has observed that Petitioner enjoys discussing the real estate business with his wife. Mr. Diego-Garcia also knows Petitioner as "great father" and was surprised when Petitioner told him about his arrest. *Testimony of Juan Diego-Garcia.*

10.

Joseph Randall George is a real estate investor who met Petitioner at a real estate training. From what he has observed, Petitioner is trustworthy, honest and competent to act as a real estate licensee, and Mr. George would hire him as a realtor and trust him to handle his funds. Mr. George commented that he knows Petitioner is a person of integrity because when Petitioner attended a real estate training that Mr. George was unable to attend, Petitioner did not share materials with Mr. George that were restricted to attendees. *Testimony of Joseph Randall George.*

11.

Joshua Alvarez is a real estate agent who has known Petitioner for thirty years. Petitioner was affiliated with his real estate company in the past. Based on his personal experience, he believes

Petitioner is honest, trustworthy and competent to handle real estate transactions. Petitioner had a good reputation in the real estate community as a trustworthy individual. *Testimony of Joshua Alvarez.*

12.

Petitioner currently seeks to regain his real estate license because he enjoyed the business and wants to provide a better income for his son. *Testimony of Petitioner.*

III. CONCLUSIONS OF LAW

1.

The Georgia Real Estate Commission has the "full power" to regulate the issuance of real estate salesperson's licenses. O.C.G.A. § 43-40-14.

2.

A single felony conviction may be sufficient grounds, in and of itself, for the denial of a license application. O.C.G.A. § 43-40-15(b)(2). A person who has a single conviction, such as Petitioner, is eligible to become an applicant for licensure only if:

- (A) Such person has satisfied all terms and conditions of any conviction such person may have had before making application for licensure or approval; . . . provided, further, that if such individual has been convicted of a single felony or a single crime of moral turpitude, at least two years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval;
- (B) No criminal charges for forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, a felony, a sex offense, a probation violation, or a crime involving moral turpitude are pending against the person; and
- (C) Such person presents to the commission satisfactory proof that the person now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such manner as to safeguard the interest of the public.

O.C.G.A. § 43-40-15(b)(1.2)(A) through O.C.G.A. § 43-40-15(b)(1.2)(C).

3.

In this matter, at least two years have passed since Petitioner satisfied all terms and condition of his sentence, and he has no criminal charges pending against him. Petitioner also has presented satisfactory proof that he bears the requisite reputation to overcome the underlying conviction. O.C.G.A. § 43-40-15(b)(1.2)(A), (B), (C).

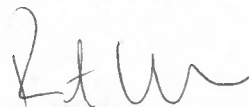
4.

Although a substantial amount of time has not passed following Petitioner's discharge, a review of the evidence presented makes clear that Petitioner's criminal conviction was inconsistent with his character. Petitioner bears a good reputation for integrity, honesty, and trustworthiness among his friends, fellow parents, and co-workers. Multiple individuals who know Petitioner from all walks of life testified that they would trust him with their possessions and even their children. Over the course of his career, Petitioner has never had any complaints filed against him, nor are there suggestive indications that he has a drug problem. Even knowing about the First Offender Plea, Witnesses also stated they would not hesitate to hire him as a realtor. The undersigned observed that Petitioner's demeanor was sincere, and he seemed to have a genuine desire to return to the real estate profession. Petitioner bears the burden of proof to show, by a preponderance of the evidence, that his application should be granted. OSAH Rules 616-1-2-.07(1) and 616-1-2-.21(4). Petitioner has met his burden. Accordingly, Petitioner has shown that he should be granted a real estate salesperson's license.

IV. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, Petitioner's application for a Real Estate Salesperson's license should be **GRANTED**.

This 10 day of November, 2012.



Ronit Walker
Administrative Law Judge