

FILED

SEP 30 2020

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
By B. Nicholas

* * *

In the Matter of the Accusation of:	}	DRE No. H-12376 SF
STACY COOPER GALLUZI,	}	OAH No. 2019040490
Respondent.	}	

DECISION

The Proposed Decision dated August 18, 2020, 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 Decision suspends or revokes one or more real estate licenses.

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.

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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 OCT 21 2020

IT IS SO ORDERED 9.25.20

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

FILED

SEP 23 2020

DEPARTMENT OF REAL ESTATE
By B. Nicholas

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

In the Matter of the Accusation Against:

STACY COOPER GALLUZI, Respondent.

Agency Case No. H-12376 SF

OAH No. 2019040490

PROPOSED DECISION

Administrative Law Judge Traci C. Belmore, State of California, Office of Administrative Hearings, heard this matter on July 21, 2020 by telephone.

Kyle T. Jones, Counsel, represented complainant Robin S. Tanner, Supervising Special Investigator, Department of Real Estate, State of California.

Attorney Jonathan Black, Weston Law Group PC, represented respondent Stacy Cooper Galluzi, who was present.

The record closed and the matter was submitted for decision on July 21, 2020.

FACTUAL FINDINGS

1. Respondent Stacy Cooper Galluzi is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions

Code, as a real estate broker. Respondent has been licensed as a broker since November 13, 2013, and her license is set to expire November 12, 2021.

2. On May 16, 2019, complainant Robin S. Tanner filed an accusation in her official capacity as Supervising Special Investigator. The accusation alleges that respondent is subject to discipline for attempting to procure a license renewal by fraud, misrepresentation or deceit; conviction of substantially related crimes; and failure to report those convictions.

Convictions

3. On December 12, 2017, in the Superior Court of California, County of Sonoma, respondent pled nolo contendere to violations of Vehicle Code section 23153, subdivision (a), driving under the influence of alcohol causing bodily injury (DUI with injury), and Penal Code section 273a, subdivision (a), abusing or endangering the health of a child (child endangerment), felonies. At sentencing on March 28, 2018, respondent's felony convictions were reduced to misdemeanors pursuant to Penal Code section 17, subdivision (b). Imposition of sentence was suspended, and respondent was placed on formal probation for four years with terms and conditions which included serving 120 days in county jail, a prohibition against the possession or consumption of alcohol, a three-year prohibition against driving any vehicle without an ignition interlock device installed, completing an 18-month DUI education program, and completing a 52-week parenting course. Respondent's probation is scheduled to end on March 27, 2022.

4. The above offenses occurred on April 24, 2017, when respondent was involved in a vehicle collision while driving with her child. The responding California Highway Patrol officer noticed that respondent had an odor of an alcoholic beverage

emanating from her breath in person and that her eyes were red and watery. Respondent refused to perform any field sobriety tests and told the officer she had not consumed any alcohol prior to driving.

Respondent's child was injured during the collision and taken to Santa Rosa Memorial Hospital and later transferred to Children's Hospital of Oakland. Respondent was arrested and charged with child endangerment and DUI with injury, felonies. As conditions of her pre-trial release on April 26, 2017, respondent was required to wear an alcohol monitoring device pending disposition of her charges and attend 90 Alcoholics Anonymous (AA) meetings.

5. Respondent was convicted on September 24, 2008, in the Superior Court of California, County of Sonoma, of a violation of Vehicle Code section 23013.5 reckless driving involving alcohol ("wet reckless"). On April 13, 2000, respondent was convicted in the Superior Court of California, County of Humboldt, of a violation of Penal Code section 490.1, petty theft. On January 8, 1998, respondent was convicted in the Superior Court of California, County of Humboldt, of a violation of Vehicle Code section 23103, reckless driving.¹

Failure to Disclose Pending Charges and Conviction

6. Respondent electronically submitted an application for renewal of her broker license on August 16, 2017. Question 17 asks: "ARE THERE CRIMINAL CHARGES PENDING AGAINST YOU AT THIS TIME, OR ARE YOU CURRENTLY AWAITING

¹ These three convictions were presented by the Department as factors in aggravation and are treated as such here.

JUDGMENT AND SENTENCING FOLLOWING ENTRY OF A PLEA OR JURY VERDICT?"

Respondent answered "NO." This statement was false.

7. Directly above the signature box on the application is a section titled "Broker Certification" that requires an applicant to certify under penalty of perjury that the answers and statements contained in the application are true and correct. It also states that the applicant is aware that there is an obligation to notify the Department,² either in writing or by filing a form with the Department, of any conviction within 30 days. Respondent electronically signed the application attesting that her answers were true and correct, and that she understood she was required to report a conviction within 30 days.

8. Respondent did not notify the Department of her pending felony charges or her subsequent misdemeanor convictions.

Respondent's Evidence

9. Respondent acknowledged that she made a mistake by marking "no" on her broker renewal application in response to the question regarding pending charges.

10. Respondent testified that she had marked "no" on the application on advice of counsel. Respondent retained counsel to represent her in the criminal matter and stated she had consulted him when filling out her broker renewal application. Respondent testified that counsel in her criminal case had advised her repeatedly that

² At the time respondent signed the renewal application the Department was known as the Bureau of Real Estate and it is referred to as the Bureau on respondent's renewal application.

the charges were "going away" because her blood alcohol concentration (BAC) was below the legal limit. Respondent also testified that she understood "pending" to mean an actual conviction and that she had not been convicted at the time she submitted her application. At the time respondent certified her application, she had been arrested, retained counsel to represent her, and been arraigned on felony charges of DUI with injury and child endangerment. Furthermore, she was wearing an alcohol monitoring device and attending 90 AA meetings, conditions of her pre-trial release, pending further criminal proceedings. Respondent's testimony that she did not believe charges were pending because counsel had advised her they were potentially being dismissed is not credible.

11. Respondent's testimony concerning her DUI with injury and child endangerment offenses was not credible. Respondent admitted she had been drinking but insists she was not impaired and cites her BAC level of 0.078 percent as evidence that she was not impaired. Respondent's blood sample was taken more than two hours after the collision, indicating that her BAC was higher at the time she was driving and involved in the collision, and rendering her explanation unpersuasive. She provided no evidence regarding the collision other than acknowledging that it happened. Respondent testified she has no recollection of speaking to the officer that night.

12. In respondent's written statement about her misdemeanor convictions for DUI with injury and child endangerment, she denies any injuries occurred, saying both she and her child were "thankfully unharmed." Her explanation for the behavior underlying the conviction was that she was driving home from her parents' home and was involved in an accident, and her daughter was with her, and she stated a second time that her daughter was not injured. These statements are inconsistent with the elements of the crime for which respondent was convicted (DUI with injury to another).

13. Regarding the failure to timely report her conviction, respondent said she had just been a little late in reporting her conviction. Respondent signed conviction detail reports on May 7, 2018, more than 30 days after her conviction. A search conducted by the Department's custodian of records of respondent's license on February 25, 2019, showed no notification had been filed with the Department of the charges or convictions. Respondent blamed counsel for her failure to disclose her convictions, stating she was waiting for paperwork before submitting her conviction detail report.

14. Respondent provided sign-in sheets for attendance at 96 AA meetings beginning July 16, 2017 and ending March 4, 2018 (shortly before the date of her sentencing), satisfying the pre-trial release condition of attending 90 AA meetings.

15. Respondent submitted seven letters of support. With the exception of one, the authors gave no indication that they were aware of respondent's criminal convictions. Michael Kesecker, a client, in an undated letter, wrote commending respondent's professionalism. Ardath Albee, a client, wrote mainly of her experience with respondent as a real estate agent. Denise Van Gerpen's letter, dated July 16, 2017, consisted primarily of praise for respondent as a mother. Fran Judd, respondent's former employer, wrote an undated letter to the judge in respondent's criminal case. Ginni Hassrick and Beth Stone wrote letters of recommendation for respondent's admission to an academic program. Stone's letter is dated January 5, 2004; Hassrick's is not dated. William Green's letter dated February 26, 2002, is a letter of recommendation to the Humboldt Child Care Council. Respondent also submitted a thank-you e-mail she received for years of service as a real estate professional from Tina Cervin dated July 16, 2019.

Costs

16. In connection with the investigation and enforcement of this accusation, complainant requests an award of costs in the total amount of \$1,831. These costs reflect \$311.50 in legal services and \$1,519.50 in investigator services. The request is supported by declarations that comply with the requirements of California Code of Regulations, title 1, section 1042. These costs are reasonable.

LEGAL CONCLUSIONS

1. The burden of proof is on the complainant to show cause for discipline by clear and convincing evidence. (*Small v. Smith* (1971) 16 Cal.App.3d 450,457; Evid. Code, § 500.) The burden is on respondent to show rehabilitation by a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

2. Business and Professions Code section 10177, subdivision (a), authorizes the Real Estate Commissioner (Commissioner) to discipline a licensee who either procures or attempts to procure a license renewal by misrepresentation, fraud, deceit, or by making a material misstatement of fact in an application for license renewal. Respondent replied negatively to the question about pending charges on her broker license renewal application, a material misstatement of fact. (Factual Finding 6.) Cause exists to discipline respondent's license pursuant to Business and Professions Code section 10177, subdivision (a).

3. Business and Professions Code sections 490 and 10177, subdivision (b) authorize the Commissioner to suspend or revoke the license of a licensee who has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a licensee. California Code of Regulations, title 10, section 2910, sets forth

the criteria to be used when determining whether a crime or act is substantially related to the qualifications, functions, or duties of a real estate licensee. Committing an unlawful act with the threat that it will do substantial injury to the person of another is substantially related. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Respondent's convictions for DUI with injury and child endangerment (Factual Finding 3) are substantially related to the qualifications, functions, or duties of a real estate licensee.

Respondent's convictions for DUI with injury and child endangerment are also substantially related as being conduct which demonstrates a pattern of repeated and willful disregard of law. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10).) Respondent has been convicted of driving violations on three occasions, two of which involved alcohol. (Factual Findings 3 through 5.) That respondent has repeatedly driven in an unsafe manner and while impaired evinces a pattern of repeated and willful disregard for the law.

Cause exists to discipline respondent's license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b).

4. Business and Professions Code section 10186.2 establishes the duty of a licensee to report any conviction of a misdemeanor or felony to the Department within 30 days, and provides that failure to do so constitutes cause for discipline. Business and Professions Code section 10177, subdivision (d), authorizes the Commissioner to impose license discipline for willful disregard or violation of the Real Estate Law. As set forth in Factual Findings 8 and 12, respondent failed to notify the Department of her convictions for DUI with injury and child endangerment. Consequently, cause exists to suspend or revoke respondent's license under Business and Professions Code sections 10177, subdivision (d), and 10186.2.

5. The goal of license discipline proceedings is not punishment but rather to protect the public. (Bus. & Prof. Code, § 10050.1.) Having established that cause for discipline exists, the question is what level of discipline is required to protect the public.

6. The criteria for evaluating rehabilitation of a licensee who has been convicted of a crime are set forth in California Code of Regulations, title 10, section 2912, and have been considered. The relevant criteria include: the nature and severity of the crime or act, the licensee's criminal history, the time that has elapsed since the commission of the acts, abstinence from the use of alcohol for at least two years after the conviction, compliance with probation, change in attitude, and significant and conscientious involvement in community programs. Of the many rehabilitation criteria, a change in attitude is "arguably the most important in predicting future conduct." (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.)

7. Respondent is currently on probation for her most recent convictions. Respondent submitted no evidence of rehabilitation. She has not, for example engaged in any treatment or community service apart from the AA meetings and classes ordered by the criminal court. More importantly, she has not accepted responsibility for any of her misconduct, claiming she wasn't impaired and that her daughter was not injured despite visits to two different hospitals. Respondent may not impeach or collaterally attack her conviction under the guise of explaining her offense. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

Respondent attempted to place the blame for the false answer on her renewal application on her attorney. At the time respondent certified her broker renewal application, she had retained a lawyer, been arraigned on a criminal complaint, and had been granted pre-trial release with the condition that she wear an alcohol

monitoring device. Respondent's testimony that she did not believe she had charges pending was not credible. Fully acknowledging the wrongfulness of one's actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

Respondent made a false statement on her broker renewal application (Factual Finding 6), has been convicted of crimes substantially related to the qualifications, functions, or duties of a real estate licensee (Factual Finding 3), and failed to report her conviction to the Department (Factual Findings 7 and 8). She has failed to accept responsibility for her misconduct, and has provided no evidence of rehabilitation. Given these circumstances it would be against the public interest to allow respondent to retain her license, even on a restricted basis.

Costs

8. Business and Professions Code section 10106 authorizes the Department to recover its reasonable costs of investigation and enforcement in disciplinary proceedings. Based on Factual Finding 16, respondent is ordered to pay \$1,831 pursuant to this section.

ORDER

1. All licenses and licensing rights of respondent Stacy Cooper Galluzi under the Real Estate Law are revoked.

2. Respondent shall pay the Department's costs associated with the investigation and enforcement of this proceeding in the amount of \$1,831.

DATE: August 18, 2020

DocuSigned by:
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TRACI C. BELMORE

Administrative Law Judge

Office of Administrative Hearings