

1 Pursuant to Section 11517(c) of the Government Code of the State of California,
2 Respondent and her attorney were served with notice of my determination to not adopt the
3 Proposed Decision of the ALJ along with a copy of said Proposed Decision. Respondent was
4 notified that I would decide the case upon the record, the transcript of the proceedings held on
5 March 7, 2018, and upon any written argument offered by Respondent and Complainant².

6 On June 25, 2018, Respondent submitted Respondent's argument for my
7 consideration with the following additional documents: (1) letter from Gary Acosta dated May
8 23, 2018; (2) letter from Sister Sonora Martinez; (3) letter from Jay H. Aviron dated May 23,
9 2018; (4) letter from Robert Gomez dated May 23, 2018; (5) a motion filed on May 24, 2018, in
10 *People of the State of California vs. Xiomara E. Sandoval*, Case No. 6MN06128; and (6) a
11 document from the California Department of Motor Vehicles (DMV), which are all not part of
12 the hearing record³.

13 On June 28, 2018, argument was submitted on behalf of Complainant.

14 On July 12, 2018, the Department received Respondent's additional argument
15 with the following additional documents: (1) Order for Dismissal filed July 6, 2018, Minute
16 Order printed July 6, 2018, and a printout of the Criminal Case Summary in *People of the State*
17 *of California vs. Xiomara E. Sandoval*, Case No. 6ES01015; and (2) Order for dismissal dated
18 July 5, 2018, and a printout of the Criminal Case Summary in *People of the State of California*
19 *vs. Xiomara E. Sandoval*, Case No. 6MN0612, which are not part of the hearing record.

20 I have given careful consideration to the record in this case including the
21 transcript of the proceedings of March 7, 2018. I have also considered the argument submitted on
22 behalf of Respondent on June 25, 2018, and July 12, 2018, and the argument submitted by
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24 ² Pursuant to Gov't Code section 11517, subdivision (c)(2)(E), the agency may reject the proposed decision, and
25 decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without
26 taking additional evidence, and shall afford the parties the opportunity to present written argument. Here, the agency
27 provided notice that the Commissioner would decide the case upon the record, the transcript of the proceedings held
on March 7, 2018, and upon written argument. The Commissioner, however, did not provide notice of taking
additional evidence.

³ The record was closed and the matter was submitted on March 7, 2018.

1 Complainant on June 28, 2018. Although untimely, I considered Respondent's additional
2 evidence.

3 The following shall constitute the Decision of the Real Estate Commissioner in
4 this proceeding:

5 FACTUAL FINDINGS

6 The Factual Findings in the ALJ's Proposed Decision, pages 2 through 6
7 paragraphs 1 through 20, dated March 28, 2018, are hereby adopted as part of this Decision.

8 21. Respondent has paid all fines and fees associated with both the 2016 and 2017
9 convictions. Respondent's insurance company paid for the repair of the other car damaged by the
10 hit and run. The repair cost was approximately \$650.

11 22. Respondent testified that she has not consumed alcohol for approximately one
12 year.

13 23. There were omissions and inconsistencies between what Respondent told the
14 police about the incident resulting in her 2016 conviction and Respondent's testimony at the
15 evidentiary hearing.

16 24. Complainant established that the actual costs of investigation and prosecution
17 of this matter was \$1,856.40.

18 LEGAL CONCLUSIONS

19 1. Cause exists to suspend or revoke Respondent's real estate salesperson
20 license under California Business and Professions Code ("Code") sections 490, subdivision (a)
21 and 10177, subdivision (b), for convictions of crimes that are substantially related to the
22 qualifications, functions or duties of a real estate licensee

23 2. Respondent's convictions are substantially related to the qualifications,
24 functions, or duties of a real estate licensee pursuant to Title 10, Chapter 6 of the California
25 Code of Regulations ("Regulations"), section 2910, subdivisions (a)(8) (an unlawful act with
26 the intent or threat of doing substantial injury to the person or property of another) and (a)(10)
27 (conduct which demonstrates a pattern of repeated and willful disregard of law).

1 3. Cause to issue a restricted real estate salesperson license to Respondent was
2 not established as discussed below.

3 4. The Department has established criteria for rehabilitation to evaluate the
4 rehabilitation of a licensee against whom an administrative disciplinary proceeding for
5 revocation or suspension of the license has been initiated on account of a crime committed by the
6 licensee. The criteria are set forth at Section 2912, Title 10, Chapter 6, California Code of
7 Regulations.

8 5. Application of the Criteria for Rehabilitation as set forth in Regulation 2912
9 reveals that Respondent has not met many of the applicable criteria:

10 (a) The time that has elapsed since commission of the act(s) or offense(s):

11 (1) The passage of less than two years after the most recent criminal
12 conviction or act of the licensee that is a cause of action in the
13 Department's Accusation against the licensee is inadequate to demonstrate
14 rehabilitation.

15 (2) Notwithstanding subdivision (a)(1), above, the two year period may be
16 increased based upon consideration of the following:

17 (A) The nature and severity of the crime(s) and/or act(s) committed
18 by the licensee.

19 (B) The licensee's history of criminal convictions and/or license
20 discipline that are "substantially related" to the qualifications,
21 functions, or duties of a real estate licensee.

22 (b) Restitution to any person who has suffered monetary losses through
23 "substantially related" acts or omissions of the licensee, or escheat to the State of these monies or
24 other properties if the victim(s) cannot be located.

25 (c) Expungement of the conviction(s) which culminated in the administrative
26 proceeding to take disciplinary action.

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

3 (e) Successful completion or early discharge from probation or parole.

4 (f) Abstinence from the use of controlled substances and/or alcohol for not less
5 than two years if the criminal conviction was attributable in part to the use of a controlled
6 substance and/or alcohol.

7 (g) Payment of any fine imposed in connection with the criminal conviction that
8 is the basis for revocation or suspension of the license.

9 (h) Correction of business practices responsible in some degree for the crime or
10 crimes of which the licensee was convicted.

11 (i) New and different social and business relationships from those which existed
12 at the time of the commission of the acts that led to the criminal conviction or convictions in
13 question.

14 (j) Stability of family life and fulfillment of parental and familial responsibilities
15 subsequent to the criminal conviction.

16 (k) Completion of, or sustained enrollment in, formal educational or vocational
17 training courses for economic self-improvement.

18 (l) Significant and conscientious involvement in community, church or privately-
19 sponsored programs designed to provide social benefits or to ameliorate social problems.

20 (m) Change in attitude from that which existed at the time of the commission of
21 the criminal acts in question as evidenced by any or all of the following:

22 (1) Testimony and/or other evidence of rehabilitation submitted by the
23 licensee.

24 (2) Evidence from family members, friends or other persons familiar with
25 the licensee's previous conduct and with subsequent attitudes and behavioral patterns.

26 (3) Evidence from probation or parole officers or law enforcement
27 officials competent to testify as to applicant's social adjustments.

1 (4) Evidence from psychiatrists, clinical psychologists, sociologists or
2 other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

3 (5) Absence of subsequent felony or misdemeanor convictions that are
4 reflective of an inability to conform to societal rules when considered in light of the conduct in
5 question.

6 6. Application of the Criteria for Rehabilitation as set forth in Regulations section
7 2912 reveals that Respondent meets few of the criteria for rehabilitation. Less than two (2) years
8 have passed since Respondent's 2017 conviction for driving without a valid driver's license. No
9 evidence of expungement or Respondent's efforts at expungement was presented at the hearing.
10 Respondent was still on probation for both her 2016 and 2017 convictions, and was set to remain
11 on probation for both convictions until 2019. Respondent has abstained from using alcohol for
12 only one (1) year. Respondent did not present any evidence of further education beyond those
13 required to continue to hold a real estate license. Although it appears Respondent is remorseful
14 for her actions, mere remorse does not demonstrate rehabilitation. A truer indication of
15 rehabilitation is sustained conduct over an extended period of time. In re Menna (1995) 11
16 Cal.4th 975, 991.

17 7. Respondent submitted additional documents after the matter was closed on
18 March 7, 2017. On July 6, 2018, Respondent's 2016 convictions for DUI and hit and run with
19 property damage were dismissed pursuant to Penal Code section 1203.4. On July 5, 2018,
20 Respondent's 2017 conviction for driving without a valid driver's license was dismissed
21 pursuant to Penal Code section 1203.4. I have considered Respondent's argument and the
22 additional documents.

23 8. The Real Estate Law and the disciplinary procedures are designed to protect the
24 public. Consumers rely upon real estate licensees' integrity to represent their interests. Ring v.
25 Smith (1970) 5 Cal.App.3d 197, 205; Golde v. Fox (1976) 98 Cal.App.3d 167, 177. Honesty and
26 integrity are deeply and daily involved in various aspects of real estate practice and are qualities
27 which bear on the fitness, qualifications, functions and duties of a real estate licensee. Golde v.

1 Fox (1976) 98 Cal.App.3d 167, 176. Respondent, while on probation for her 2016 convictions,
2 again violated the law and was convicted in 2017. Moreover, the inconsistencies between what
3 Respondent told the police about the incident that led to her 2016 convictions and Respondent's
4 testimony at the hearing suggests that she falls short of an attitude of complete candor that is
5 associated with full rehabilitation. Furthermore, Respondent's probation was only recently
6 terminated in July 2018. Her rehabilitation to date is insufficient to overcome these concerns.
7 Given these considerations, the public would be adequately protected with issuing respondent a
8 restricted license for three (3) years.

9 ORDER

10 All licenses and licensing rights of Respondent XIOMARA E. SANDOVAL
11 under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson
12 license shall be issued to Respondent pursuant to Section 10156.5 of the Business and
13 Professions Code if Respondent makes application therefor and pays to the Department of Real
14 Estate the appropriate fee for the restricted license within 90 days from the effective date of this
15 Decision. The restricted license issued to Respondent shall be subject to all of the provisions of
16 Section 10156.7 of the Business and Professions Code and to the following limitations,
17 conditions and restrictions imposed under authority of Section 10156.6 of that Code:

18 1. The restricted license issued to Respondent may be suspended prior to hearing
19 by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of
20 nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a
21 real estate licensee.

22 2. The restricted license issued to Respondent may be suspended prior to hearing
23 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that
24 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
25 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
26 license.

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1 3. Respondent shall not be eligible to apply for the issuance of an unrestricted real
2 estate license nor for the removal of any of the conditions, limitations or restrictions of a
3 restricted license until three (3) years have elapsed from the effective date of this Decision.

4 4. Respondent shall submit with any application for license under an employing
5 broker, or any application for transfer to a new employing broker, a statement signed by the
6 prospective employing real estate broker on a form approved by the Department of Real Estate
7 which shall certify:

8 (a) That the employing broker has read the Decision of the Commissioner
9 which granted the right to a restricted license; and

10 (b) That the employing broker will exercise close supervision over the
11 performance by the restricted licensee relating to activities for which a real estate license is
12 required.

13 5. Respondent shall, within nine months from the effective date of this Decision,
14 present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the
15 most recent issuance of an original or renewal real estate license, taken and successfully
16 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate
17 Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the
18 Commissioner may order the suspension of the restricted license until the Respondent presents
19 such evidence. The Commissioner shall afford Respondent the opportunity for a hearing
20 pursuant to the Administrative Procedure Act to present such evidence.


21 6. Respondent shall notify the Commissioner in writing within 72 hours of any
22 arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post
23 Office Box 137013, Sacramento, CA 95813-7013. The letter shall set forth the date of
24 Respondent's arrest, the crime for which Respondent was arrested and the name and address of
25 the arresting law enforcement agency. Respondent's failure to timely file written notice shall
26 constitute an independent violation of the terms of the restricted license and shall be grounds for
27 the suspension or revocation of that license.

1 7. Respondent shall pay \$1,856.40 to the Department of Real Estate for the
2 reasonable costs associated with investigation and prosecution of this case within 60 days of the
3 effective date of this Decision.

4 This Decision shall become effective at 12 o'clock noon on SEP 26 2018

5 IT IS SO ORDERED August 29, 2018.

6
7 DANIEL J. SANDRI
8 ACTING REAL ESTATE COMMISSIONER

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BUREAU OF REAL ESTATE

By Zi-Ju

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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|------------------------------------|---|-----------------------|
| In the Matter of the Accusation of |) | CalBRE No. H-40807 LA |
| |) | |
| XIOMARA E. SANDOVAL, |) | OAH No. 2017110155 |
| |) | |
| Respondent. |) | |

NOTICE

TO: XIOMARA E. SANDOVAL, Respondent, and FRANK M. BUDA , his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated March 28, 2018, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated March 28, 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 Wednesday, March 07, 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 Wednesday, March 07, 2018, at the Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for good

1 cause shown.

2 Written argument of complainant to be considered by me must be submitted within
3 15 days after receipt of the argument of respondent at the Los Angeles Office of the Bureau of Real
4 Estate unless an extension of the time is granted for good cause shown.

5 DATED: April 27, 2018.

6 WAYNE S. BELL
7 REAL ESTATE COMMISSIONER

8
9 By *Daniel J. Sandri*
10 DANIEL J. SANDRI
11 Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

XIOMARA E. SANDOVAL,

Respondent.

Case No. H-40807 LA

OAH No. 2017110155

PROPOSED DECISION

James Michael Davis, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on March 7, 2018, in Los Angeles, California.

Amelia V. Vetrone, Staff Attorney, represented Maria Suarez (complainant), Supervising Investigator of the Bureau of Real Estate (Bureau).

Frank M. Buda, Esq. represented Xiomara E. Sandoval (respondent), who was present at the hearing.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision on March 7, 2018.

SUMMARY

The complainant brings this Accusation, arising from two recent traffic-related convictions, one involving drinking and driving, to discipline respondent's real estate salesperson license. Complainant must prove her claim by clear and convincing evidence. Respondent questions whether cause for discipline exists, and alternatively argues a restricted license is appropriate, based respondent's otherwise unblemished 17-year professional record and her thorough rehabilitation. Cause for discipline exists and respondent's testimonial evidence of rehabilitation is undercut by credibility gaps and the recency of her convictions. With the expressed full support and supervision of her broker, a restricted license adequately protects the public and is accordingly ordered.

FACTUAL FINDINGS

Jurisdiction and Parties

1. Complainant made the Accusation while acting in her official capacity.
2. Respondent is presently licensed as a real estate salesperson (license no. 01308913). Respondent received her initial conditional real estate salesperson license in April 2001 and her license has remained active since that date. Her current license expires in April 2021. Other than the instant Accusation, respondent has had no other disciplinary proceedings.

2016 Conviction

3. On May 20, 2016, in the Superior Court of California, County of Los Angeles, respondent pled nolo contendere to, and was convicted of violating Vehicle Code sections 23152, subdivision (a)(Driving with Blood Alcohol Above .08 percent)(DUI) and 20002, subdivision (a) (Hit and Run Property Damage) (collectively "2016 Conviction"), both misdemeanors.
4. The court suspended imposition of the sentence and respondent was placed on a 36-month summary probation under, inter alia, the following terms and conditions: pay fines totaling \$2047, enroll within 21 days in a three-month, first-offender DUI program (AB 541)¹, to not drive a motor vehicle without a valid driver's license and to perform 10 days of community labor. Having complied with all other aspects of her sentence, respondent is still on probation.
5. The facts and circumstances leading to the 2016 Conviction were gleaned from the police report and respondent's testimony, and are as follows. On December 7, 2015, respondent attended a friend's birthday party at a club. While at the party, she drank approximately three glasses of wine over a two-hour period.² Respondent left the club and, after dropping off her friend in La Puente, turned up the volume of her car stereo. She was listening to loud Salsa music. On the way home, she sideswiped another car, causing minor damage to both vehicles. Oblivious to the accident, respondent continued driving. The other driver followed, trying, without success, to get her to pull over. Respondent arrived home at approximately 10:20 p.m. Shortly after her arrival home, the other driver appeared, followed by the police soon thereafter. The woman in the other car was screaming that respondent damaged her car. Respondent testified she had no recollection of having any contact with the woman's car but that evening she noted minor damage to both vehicles. Respondent testified that when she was confronted by the police, she panicked. She did not know of the accident at the time but in her fear, she told the police several different stories, each laying blame for the incident on someone other than her; her first two versions of the

¹ Respondent's failure to register for this course is alleged to have prevented her driver's license reinstatement, resulting in her second conviction, discussed below.

² At the time, respondent weighed approximately 120 pounds.

event had someone else driving her car during the hit and run and in the last version, respondent alleged the other driver was trying to frame her. She testified that she knows she should have been truthful to the police officer.

6. Respondent was charged with four counts: (1) Driving under the Influence of an Alcoholic Beverage (Veh. Code, § 23152, subd. (a)); (2) DUI (Veh. Code, § 23152, subd. (b)); (3) Hit and Run Driving Resulting in Property Damage (Veh. Code, § 20002, subd. (a)); and (4) Driving a Motor Vehicle Without a Valid Driver's License (Veh. Code, § 12500, subd. (a)). Pursuant to a plea agreement, respondent pled nolo contendere to DUI and hit and run. The court dismissed the charges of Driving under the Influence of an Alcoholic Beverage and Driving a Motor Vehicle Without a Valid Driver's License.

7. Respondent testified that although she paid all fines associated with her 2016 Conviction, she neglected to register for her AB 541 class, which required completion before her driver's license would be reinstated. Respondent said she did not know that failing to register for the class would suspend her license. She concedes that not registering for the course was her fault.

8. Respondent argues that the hit and run conviction requires intent, to serve as a basis for license discipline and respondent testified that she was unaware that the accident occurred. Thus, she lacked the requisite intent. As discussed below, by statute, her nolo contendere plea and conviction provide the basis for discipline.

2017 Conviction

9. On March 15, 2017, in the Superior Court of California, County of Los Angeles, respondent pled nolo contendere to, and was convicted of a violation of Vehicle Code section 12500, subdivision (a) (Driving without a Valid Driver's License) (2017 Conviction), a misdemeanor. The court again imposed a suspended sentence with a 24-month summary probation, and the option of assessments and fees totaling \$1384 or two days of community labor. Respondent has completed all substantive terms of this probation; however, probation will continue until March 2019.

10. The facts and circumstances leading to the 2017 Conviction are as follows. On July 6, 2016, Huntington Park sheriffs pulled respondent over for unknown reasons. Upon checking her driver's license, they discovered it was suspended. Thereafter, respondent was charged with four counts of driving without a valid driver's license. Three of the four counts related to the more serious misdemeanor of knowingly driving on a suspended or revoked license. (See Veh. Code §§ 14601.5, subd. (a); 14601.1, subd. (a); and 14601.2, subd. (a).) These three counts were dismissed pursuant to respondent's plea agreement.

Mitigation, Aggravation and Rehabilitation

11. As of August 24, 2016, court records indicate respondent was registered for the AB 541 course. (Exhibit 3.) Respondent currently holds a valid California driver's license.

12. Respondent has been a licensed real estate salesperson since 2001. She enjoys an elevated status at her current place of employment, having received numerous awards for being the highest commission seller during the last five years.

13. Respondent actively participates in numerous committees at her real estate office and belongs to a number of professional real estate organizations. She serves as a mentor to more junior real estate salespersons and routinely conducts workshops to assist new home buyers.

14. Respondent, who is single and 42 years old, is responsible for supporting her mother, her 23-year-old son and her son's daughter and has been supporting them since prior to the incidents leading to this Accusation. According to her mother's testimony, respondent is a good daughter and mother who truly regrets her recent convictions. She also helps those less fortunate. For example, she has bought toiletries and food gift cards and, without fanfare, distributed them to the local homeless population.

15. Respondent works at Century 21 Realty Masters and has worked there since 2001. Her broker, Arnulfo Ruiz, testified convincingly regarding her character, work ethic, integrity and honesty. Likewise, the president of Century 21 Realty Masters, Juan Jose Lopez, testified regarding her fine qualities as a person and her outstanding professionalism in real estate sales.

16. Both Mr. Ruiz and Mr. Lopez testified that respondent promptly informed them of her convictions and further conveyed to them her deep remorse over the same. Mr. Ruiz agreed to provide respondent a higher level of supervision should she be permitted to continue in real estate sales under a restricted license. Mr. Lopez stated that he wished to retain her as an employee.

17. Respondent submitted five character letters in addition to letters provided by Messrs. Ruiz and Lopez. All letters but the letter from Ms. Acosta with the Montebello District Board of Realtors, Inc, and Ms. Trujillo, Vice President of Lincoln Escrow, Inc., stated that respondent informed them of her 2016 and 2017 convictions. Significantly, one character letter was from a client, Jaime Noble, who respondent immediately told about the 2016 and 2017 convictions. According to Mr. Noble, respondent divulged her convictions because she wanted him to make an informed hiring decision. Even though respondent was unable to close a home sale for Mr. Noble, his letter still vouched for her in glowing terms. (Exhibits A and B.)

18. Respondent claims she was charged with driving without a valid license during her first incident because she mistakenly provided the police an expired license. However, she was not charged with failing to provide a valid driver's license, an infraction under Vehicle Code

section 12951; she was charged with not possessing a valid driver's license. (Veh. Code, § 12500, subd. (a).) Based on the police report, her testimony in this regard was not credible. The inference is that she testified as she did to make the subsequent charge of driving with an expired license appear more benign.

19. Her improbable explanation regarding her initial expired driver's license, raises doubts regarding whether the reason she received her second charge of driving with an expired license was her failure to register for her AB 541 course. Her court paperwork explicitly indicates that reinstatement of her license was contingent upon completion of the three-month AB 541 course.

20. With regard to not timely registering for the AB 541 course, respondent was in a difficult place emotionally at that time. Her boyfriend of many years had given her an ultimatum: move with him to Chicago or the relationship was over. After much soul-searching, she called off the relationship but it affected her deeply.

21. Respondent has paid all fines and fees associated with both the 2016 and 2017 convictions. Further, respondent's insurance company has paid for the repair of the other car damaged by the hit and run. The repair cost was approximately \$650. The relatively minor cost associated with the body damage repair indicates the accident was not significant.³ This evidence supports respondent's testimony that she did not realize that she had been in a collision.

22. There were omissions and inconsistencies between what respondent told the police about the incident leading to the 2016 Conviction and respondent's testimony at the evidentiary hearing. At the hearing, she characterized her misstatement to the police as a single untruth, while the police report details three different dishonest stories regarding the hit and run accident.

23. California Code of Regulations, title 10, section 2910 lists the type of conduct that is substantially related to the qualifications, functions and duties of a real estate salesperson licensee. However, the list is not exclusive and the regulation does not foreclose other types of conduct from being found to be substantially related to the qualifications, functions and duties of a real estate licensee, based on the appropriate factual analysis of the actual conduct and that expected of a real estate licensee.

24. Driving safely and in conformance with relevant laws is essential to the public safety. A real estate salesperson necessarily spends a large amount of time on the road, especially one who works in the Los Angeles area. Real estate licensees occupy a position of trust relative to their clients. The exercise of poor judgment with regard to lawfully operating a motor vehicle is conduct substantially related to the qualifications, functions and duties of a real estate salesperson.

³ The presiding officer's experience and specialized knowledge may be used in evaluating evidence. (Gov. Code, § 11425.50, subd. (c).)

Here, respondent's two traffic-related convictions within a one year period show poor judgment with regard to her operation of a motor vehicle.

25. Respondent has made laudable progress in gaining insight into the effect her behavior has had on her personally, her family, her employer and her colleagues. But, in addition to non-credible testimony and dishonesty with the police, court records indicate that on November 29, 2016, she failed to appear at criminal court without reasonable justification. This resulted in the issuance of a bench warrant. (Exhibit 3.) Respondent is still on probation and it will take some time after the conclusion of her probation to ascertain whether a positive change of character has permanently taken hold. Respondent has successfully completed more than 1000 transactions over her 17-year real estate sales career. Given the nature of the convictions and the professed strong support of her employer, granting respondent a restricted license for three years under appropriate terms and conditions would adequately protect the public.

26. Complainant established that the actual cost of investigation and prosecution of this matter was \$1856.40. (Exhibits 6 and 7.) The reasonableness of such costs is discussed below.

LEGAL CONCLUSIONS

Relevant Law and Analysis

1. These proceedings are brought under the provisions of Business and Professions Code section 10100 et seq. and Government Code sections 11500 through 11528.

2. Complainant has the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853; *Small v. Smith* (1971) 16 Cal.App.3d 450.)

3. The Bureau may suspend or revoke the license of a real estate licensee who has entered a plea of guilty or nolo contendere to a crime substantially related to the qualifications, functions or duties of a real estate licensee. (Bus. & Prof. Code, § 10177, subd. (b)(1).)

4. The Bureau may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession related to the license. (Bus. & Prof. Code, § 490, subd. (a).) A "conviction" within the meaning of section 490 includes, inter alia, a nolo contendere plea. (*Id.* at subd. (c).)

5. When considering whether a license should be suspended or revoked on the basis of a conviction, the crime shall be deemed to be substantially related to the qualifications, functions, or duties of a licensee within the meaning of the Business and Professions Code section 490 when, among other matters, the crime involves doing an unlawful act with the threat of doing

substantial injury to the person or property of another. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Similarly, "[c]onduct which demonstrates a pattern of repeated and willful disregard of the law" (*id.* at subd. (a)(10)) is another independent basis for suspension or revocation.

6. Respondent's convictions are substantially related to the qualifications, functions or duties of a real estate licensee in that the two criminal convictions regarding safe operation of a motor vehicle over a span of one year denote a pattern of repeated and willful disregard of the law. Further, respondent driving with her blood alcohol content above the legal limit raises a threat of doing substantial injury to persons or property, a threat, which, here, manifested in a hit and run accident.⁴

7. Cause exists, under Business and Professions Code sections 490 and 10177, subdivision (b), to suspend or revoke respondent's real estate salesperson license in that she has been convicted of crimes and committed acts that are substantially related to the qualifications, function, or duties of a real estate licensee. (Factual Findings 3-10, 24.)

8. When legal cause exists for complainant to discipline the licensee, as is the case here, the burden shifts to the licensee to demonstrate mitigation or rehabilitation, to show that a lesser penalty is warranted. (See *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 315.)

9. California Code of Regulations, title 10, section 2912 sets forth criteria for rehabilitation when a real estate license revocation or suspension is contemplated for a criminal conviction. The relevant criteria and their applicability to this Accusation are as follows:

(a) *The time that has elapsed since commission of the act(s) or offense(s):*

(1) *The passage of less than two years after the most recent criminal conviction or act of the licensee that is a cause of action in the Bureau's Accusation against the licensee is inadequate to demonstrate rehabilitation.*

Respondent's last conviction occurred approximately one year ago.

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

(A) *The nature and severity of the crime(s) and/or act(s) committed by the licensee.*

⁴ Respondent's argument that her single DUI conviction is not substantially related to the qualifications, functions or duties of a real estate licensee focuses too narrowly on subdivision (11). In addition to subdivision (8), discussed *supra*, safe operation of a motor vehicle is a non-enumerated act with a nexus to the qualifications, functions or duties of a real estate licensee. (Factual Findings 23 and 24.)

The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Here, the crimes respondent committed were misdemeanors and do not warrant a period greater than two years. Nevertheless, since respondent is still serving probation for her two convictions, some of her rehabilitation progress could reasonably be discounted as merely complying with her probation. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Considering respondent's convictions occurred in 2016 and 2017 and some less-than-credible testimony at the March 7, 2018 evidentiary hearing, insufficient time has passed to establish respondent's full rehabilitation.

(B) The licensee's history of criminal convictions and/or license discipline that are "substantially related" to the qualifications, functions, or duties of a real estate licensee.

Although respondent was discipline-free for the first 15 years of her license, the last two years have been a significant departure from her earlier performance. Respondent's first conviction for DUI and hit and run would be sufficient cause for the Bureau to bring disciplinary proceedings. Less than a year later, respondent was convicted of driving without a valid license, a dismissed count in her first complaint. Collectively, this indicates respondent is not fully rehabilitated.

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee, or escheat to the State of these monies or other properties if the victim(s) cannot be located. .

The victim of the accident did not pursue restitution through the court. However, respondent's insurance company paid approximately \$650 to repair the other car's hit and run body damage. (Factual Finding 21.)

(c) Expungement of the conviction(s) which culminated in the administrative proceeding to take disciplinary action.

No evidence of expungement or respondent's efforts at expungement was presented at the hearing.

(e) Successful completion or early discharge from probation or parole.

Respondent is still on summary probation. No evidence was introduced of it being completed or otherwise truncated.

(f) Abstinence from the use of controlled substances and/or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance and/or alcohol.

Respondent testified that she has not consumed alcohol for approximately one year. This testimony is credible but it implies that respondent's 2016 Conviction did not result in an immediate cessation of her drinking. Nevertheless, substance abuse is not the behavior in need of rehabilitation; the inquiry analyzes respondent's rehabilitation, with the focus on any change in character regarding her veracity. (Factual Findings 18, 19 and 22.)

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

Respondent has paid all fines associated with both convictions. (Factual Finding 21.)

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

Respondent is the sole source of income for her child, her grandchild and her mother. This situation existed prior to her criminal convictions as well. (Factual Finding 14.) Therefore, respondent has an urgent interest to maintain her livelihood, which should positively affect her future behavior. This contention is supported by her decision to decline her boyfriend's ultimatum to move to Chicago in favor of maintaining family stability and the fulfillment of her family commitments. (Factual Finding 20.)

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

Respondent has been active in training to support her future career advancement. She has also devoted professional time to mentor newer people in the office. (Factual Finding 13.)

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

(1) Testimony and/or other evidence of rehabilitation submitted by the licensee.

Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) In assessing whether a real estate licensee is fully rehabilitated, the findings must be based on a determination of a licensee's rehabilitation progress and not the underlying offense. (*Singh v. Davi* (2012) 211

Cal.App.4th 141.) Among the rehabilitation criteria, a licensee's change in attitude since the offense is a particularly important consideration. (*Ibid.*)

Respondent testified convincingly regarding her remorsefulness over these convictions. She has also presented testimony from her mother and co-workers that corroborated her change in attitude from the behavior that gave rise to her convictions. However, respondent's subsequent behavior belies her assertion of change. Respondent testified that her license during the first traffic stop was current but that she mistakenly was carrying and provided to the police, an expired license.⁵ The charging documents however reflect that her license was expired under Vehicle Code section 12500, subdivision (a), which is a misdemeanor.⁶ There is presumption of the correctness of official action. (*City of South Pasadena v. City of San Gabriel* (1933) 134 Cal.App. 403, 417.) Accordingly, respondent's testimony in this regard is not credible. (Factual Finding 18.) This in turn undercuts the credibility of respondent's explanation for her 2017 Conviction. (Factual Finding 19.)

Further, the omissions and inconsistencies between respondent's testimony and what she told the police regarding the hit and run accident are not trivial. (Factual Finding 22.) Collectively, respondent's testimony suggests that although she may be making progress toward rehabilitation, she falls short of an attitude of complete candor that is associated with full rehabilitation. (Factual Findings 18, 19, 22 and 25.)

(2) Evidence from family members, friends and/or other persons familiar with the licensee's previous conduct and with subsequent attitudes and/or behavioral patterns.

"While letters of recommendation are admissible in proceedings of this character, neither such letters nor the testimony of witnesses as to the good character of petitioner, however numerous or laudatory, can overcome the direct and positive evidence as to petitioner's character." (*Wetlin v. State Bar of California* (1944) 24 Cal.2d 862, 869.) As discussed above, respondent presented evidence from her mother, her broker, the president of her company and character letters, all addressing her character and professionalism. The testimony of Mr. Ruiz and Mr. Lopez regarding her rehabilitation, character and professionalism was compelling. (Factual Finding 15.)

⁵ If that was true, respondent should have been cited under Vehicle Code section 12951. Section 12951, an infraction, proscribes driving without an operator's license in one's immediate possession, although the operator has been issued and holds a valid license. (*Gail v. Municipal Court, Downey Judicial Dist., Los Angeles County* (1967) 251 Cal.App.2d 1005.)

⁶ "[T]he board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline...." (Bus. & Prof. Code, § 493.)

However, it is appropriate to consider potential bias in their testimony based on their rational interest in retaining their top-producing salesperson. Moreover, greater weight is given to the evidence of respondent's rehabilitation progress through her own actions and testimony than the prepared letters and testimony of her supporters.

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

Respondent presented no evidence from her probation officers or law enforcement.

(5) 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.

The first conviction would have been sufficient grounds to discipline. However, respondent was found to be driving without a valid license less than a year later. Her testimony explaining how these events occurred suggests that despite her and other's testimony to the contrary, at this time, she has not sufficiently rehabilitated from behavior that occurred just one year ago. (Factual Finding 19.)

Disposition

10. Based on her demeanor while testifying, respondent presented herself convincingly as remorseful for her past behavior. However, upon closer examination, her behavior is inconsistent with full rehabilitation. Thus, complainant stated a well-founded concern that respondent's recent criminal conduct poses a potential risk to individuals who might place their trust in her for a real estate transaction. Based on all of the facts and circumstances of this case and the application of the relevant criteria for rehabilitation, the respondent needs additional time to demonstrate rehabilitation through her actions. (Factual Findings 3 -25.) At this time, the public would be adequately protected with issuing respondent a restricted license for three years.

11. As detailed in Factual Finding 26, the actual costs of investigation and prosecution of this matter were \$1856.40 and respondent is subject to an order directing her to pay such costs in accordance with California Business and Professions Code section 10106, if such costs are reasonable. In assessing reasonableness, some of the factors to be considered are respondent's financial ability to pay and whether the scope of the investigation was appropriate to the alleged misconduct. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.)

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12. Because complainant's scope of investigation appears narrowly tailored to the relevant factors of the case and respondent presented no evidence of financial hardship, the costs sought are reasonable. Accordingly, complainant's costs are appropriately chargeable to respondent.

ORDER

All licenses and licensing rights of respondent Xiomara E. Sandoval under the Real Estate Law are revoked however, a restricted real estate salesperson license shall be issued to respondent pursuant Business and Professions Code section 10156, if respondent makes application therefor and pays to the Bureau the appropriate fee for the restricted license within 90 days from the effective date of the Bureau's Decision. The restricted license issued to 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 restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime that is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three years have elapsed from the effective date of the Bureau's Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Bureau of Real Estate which shall certify:

(a) That the employing broker has read the Bureau's Decision that granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of the Bureau's Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

7. Respondent shall pay \$1856.40 for the reasonable costs associated with investigation and prosecution of this case.

DATED: March 28, 2018

DocuSigned by:

James Michael Davis

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JAMES MICHAEL DAVIS
Administrative Law Judge
Office of Administrative Hearings