

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

DEC 23 2010

DEPARTMENT OF REAL ESTATE

By K. Contreras

In the Matter of the Accusation of

VICTORIA CONTRERAS,

Respondent.

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DRE NO. H-2476 FR

OAH NO. 2010070892

DECISION

The Proposed Decision dated November 17, 2010, 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 on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 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 January 13, 2011

IT IS SO ORDERED 12/23/2010

JEFF DAVI
Real Estate Commissioner



By WAYNE S. BELL
Chief Counsel

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VICTORIA CONTRERAS,

Case No. H-2476 FR

OAH No. 2010070892

Respondent.

PROPOSED DECISION

Administrative Law Judge Linda A. Cabatic, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California on November 2, 2010.

Kara Tredway, a legal intern for the Department of Real Estate (Department) under the supervision of Kenneth C. Espell, Real Estate Counsel, represented complainant Luke Martin, Deputy Real Estate Commissioner (complainant).

Respondent was present and represented herself.

This case arose as a result of an Accusation issued by the Department due to respondent's criminal conviction. Evidence was received and the matter was submitted for decision on November 2, 2010.

FACTUAL FINDINGS

1. Respondent was issued a real estate salesperson's license on September 20, 2007, which expires on September 19, 2011.
2. On April 5, 2010, complainant made and filed the Accusation in his official capacity seeking to suspend or revoke respondent's license, based upon the October 28, 2008 felony conviction suffered by respondent. The felony conviction, however, was subsequently reduced to a misdemeanor on May 17, 2010.
3. On April 29, 2010, respondent filed a timely notice of defense to the Accusation pursuant to Government Code section 11506.

Respondent's Conviction

4. On September 23, 2008, respondent appeared in Fresno County Superior Court. Respondent withdrew her plea of not guilty to the felony charge of violating Vehicle Code section 23153 (driving with a blood alcohol level of 0.08% or greater with injury) and entered a plea of nolo contendere. Respondent was ordered to return to Court for sentencing on October 28, 2008.

5. On October 28, 2008, respondent again appeared in Fresno County Superior Court for sentencing. The Court reviewed the probation report, suspended the imposition of judgment and sentencing, and placed respondent on formal probation for a period of four years (October 28, 2012) subject to a variety of conditions. The conditions pertinent to this proceeding included serving 180 days in Fresno County jail, which was stayed until January 26, 2009; referral to the Work Furlough program; report to probation; payment of a fine of \$1,315; payment of a Court Security fee of \$20; payment to the Restitution Fund in the amount of \$200; and the payment of fines and fees, which were extended to October 28, 2010. In addition, respondent was also ordered to obey all laws, report any change of address to the Court and/or Probation within 7 days; attend and complete a three-month, Level 1-3 First Offender Alcohol Program; not drive without a valid driver's license and to not use or possess alcoholic beverages and not be present in any establishment where the primary items for sales are alcoholic beverages. The Court also revoked respondent's driver's license for six months.

6. On May 17, 2010, respondent again appeared in Fresno County Superior Court for a Probation Hearing Modification. Respondent moved to have the felony conviction reduced to a misdemeanor conviction. The Court granted the motion and ordered the case to proceed as if respondent had been arraigned on a misdemeanor complaint.

The Court modified the formal probation of respondent to a conditional sentence for the balance of the term of her probation and ordered that she remain on probation.

7. The circumstances leading to respondent's conviction occurred on May 3, 2008, at 12:23 a.m. According to the report of the California Highway Patrol¹ and respondent's testimony at the hearing, respondent had gone out with friends to Club 500, which is a bar and restaurant. Respondent began drinking beer after 8:30 p.m. Respondent was also under the care of a doctor, who had prescribed tromidol for her neck pain. She had taken tromidol and felt the effects of both the tromidol and beer, but thought she could drive.

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. . ." A police officer's report constitutes the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. (*Lake v. Reed* (1997) 16 Cal.4th 261.)

Respondent drove her vehicle at a speed of approximately 50 miles per hour and it crossed over the center line into oncoming traffic. Her vehicle collided with another vehicle, causing that vehicle to run into an old wood fence, a mailbox and onto the shoulder of the road. The occupants of the vehicle respondent hit attempted to avoid respondent's, but were not successful.

8. The vehicle struck by respondent sustained major damage to the left front fender, left door, windshield, front grille, right rear, right bumper, and left front tire, which was broken from its axle. No mechanical defects were noted or claimed by either driver. The driver of the other vehicle complained of pain to his waist and his passenger sustained a small cut to her left cheek. Both of the occupants of the vehicle refused medical treatment.

9. Respondent's vehicle sustained major damage to the front bumper, grille, hood, left front fender, left side and door, and roof as a result of the collision. Respondent suffered a bruised and lacerated left forearm, bruised left leg and seatbelt abrasions to her left chest and clavicle. Respondent was transported to Community Regional Medical Center. After she was treated for her injuries, she was transported to the Fresno County Jail. Respondent's blood alcohol level was .14 percent.

10. Respondent told the officer she had had two drinks. At the hearing, respondent stated she may have had three beers. With regard to the accident, respondent testified that she leaned over to get a CD, looked up and saw a car coming at her and they collided. She was swerving when she got the CDs. There was, however, no mention of her leaning over to get a CD as the cause of the accident in the police report.

Respondent's Rehabilitation

11. Respondent was sincere in her testimony as she acknowledged and accepted full responsibility for the accident. She stated she has become an advocate for not drinking and driving. She also understood this was a serious offense and she made a mistake.

12. At the hearing, respondent stated that when her conviction was reduced to a misdemeanor, she assumed her probation was over. Respondent stated, however, that she was told by the Clerk of the Court that she was still on conditional probation. When respondent told her she was not, the Clerk advised her to see a lawyer. Due to financial constraints, however, respondent stated she did not see a lawyer. She also stated she did not realize she was still on probation.

13. From October 28, 2008, to May 17, 2010, respondent stated she did not consume any alcohol or go to Club 500. Since May 17, 2010, however, respondent stated she has been back to the Club 500 with her clients and her family. She stated she was still friends with the people she was with on the night of the accident, but does not see them as much because she is a lot busier. Respondent stated she has zero to one glass of wine per week and had a glass recently at a Halloween gathering. She stated she does not drink as much since the accident.

14. Respondent attended and completed the First Offender Program and attended Alcoholics Anonymous meetings for a couple of months after she was off monitoring. She quit because she started attending church and became busy.

15. Respondent volunteers for different organizations like the Lions Club, gives part of her commissions to organizations for support and helps at her church. She has been employed by Keller Williams Realty since 2009.

16. Respondent continues to pay her fines, but did not know how much she has paid or the amount still due and owing.

17. Respondent submitted several letters of support, including a letter from Joanna Odabashian, Team Leader/CEO for Keller Williams Realty that highlights respondent's participation in the Keller Williams Cares Committee. The committee volunteers and raises money for Real Estate Agents and their families in times of hardships, works with the North Fresno Lions Club in putting together a Crab Feed/live auction/silent auction benefitting charities in Fresno and the Habitat for Humanity's RE Store. Ms. Odabashian was aware of the conviction.

18. Respondent submitted a letter from a Greg Kosareff, a realtor and Ann Bridges, Transaction Coordinator, both of who work at Keller Williams Realty, and who worked with respondent since July 2010. The letter attested to her work ethic and performance. Respondent advised that she disclosed her conviction to Ms. Bridges on October 28, 2010, the date of the letter from Ms. Bridges.

19. Respondent submitted a fundraising letter from a Margo Hixon regarding the Crab Feed. Respondent also submitted a letter from the Ramierez Family regarding the help she provided them in finding a house. Nancy Jackson also submitted a letter attesting to her friendship with respondent. A letter from Reverend Doctor Bryan Lee Martin, who is the part owner of the Keller Williams Realty, was submitted, attesting to respondent's character. None of these letters, however, indicate any knowledge of respondent's conviction.

20. Respondent also included three letters that were dated October 28, 2008, and which appear to have been written at the time of her conviction. They attest to her good character and how she has learned from her mistake.

LEGAL CONCLUSIONS

1. The purpose of an administrative proceeding concerning the suspension or revocation of a license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.) The burden of proof in this matter is on the complainant to show by clear and convincing evidence that the respondent's license should be suspended or revoked. (*Id.*)

2. Business and Professions Code section 490 provides, in pertinent part:

(a) In addition to any other action that a board is permitted to take against a licensee, a board 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 for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

[¶]

3. Business and Professions Code section 10177, subdivision (b), provides the Real Estate Commissioner may suspend or revoke the license of a real estate licensee who has:

(b) Entered a plea of guilty or nolo contendere to, or has been found guilty of, or has been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing the licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

4. The Department has developed criteria of substantial relationship which is set forth in California Code of Regulations section 2910 of title 10.²

5. Pursuant to section 2910, subdivision (a) paragraph (1), the crime "shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of section 490," in pertinent part, if it involves:

[¶¶]

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

[¶¶]

6. On its face, the regulation is not limited to specific or general intent crimes. It applies to any unlawful act done with the intent or potential of "doing substantial injury to the person or property of another." The evidence established that respondent's conduct is substantially related to the qualifications, functions and duties of a real estate salesperson. Respondent had been drinking and was also on medication. Her blood alcohol level was at a .14 percent when she decided to get in her car and drive. (Finding 4.) She was not able to control her car and swerved into another car, which threatened substantial injury to the occupants of the other vehicle and caused significant property damage to both vehicles. (Findings 7 and 8.)

7. Respondent was convicted of a felony. While it was subsequently reduced to a misdemeanor, cause exists to revoke or suspend respondent's license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b). (Findings 4, 7 and 8, Legal Conclusions 2, 3, 4, 5 and 6.)

Fitness for Continued Licensure

8. The determination of whether a person is presently fit for licensure should be made only after consideration of the conduct of the licensee and consideration of any factors introduced in justification, aggravation or mitigation. The licensee, of course, should be permitted to introduce evidence of extenuative circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449; *Brandt v. Fox* (1979) 90 Cal.App.3d 737, 747.)

² All regulatory references are to Title 10 of the California Code of Regulations, unless noted otherwise.

9. The Department has developed criteria found in section 2912, for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee. The criteria includes, in pertinent part:

(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee.

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

[¶]

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

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

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

[¶]

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

[¶]

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

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

(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 of applicant.
- (2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.
- (3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.
- [¶]
- (5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

10. Reviewing the criteria established by the Department, respondent is still paying the fines and fees imposed upon her. (Finding 15.)

11. Respondent is still friends with the people she was with at the time of the accident. (Finding 12.)

12. Respondent completed the First Offender Drug Program and attended some Alcoholics Anonymous meetings, but has not continued with AA or any other program. (Finding 13.)

13. Respondent states she volunteers at her church but no specifics were given and her volunteer work results mainly from her employment with Keller Williams Realty. (Findings 13, 17, 18 and 19.) While the programs Keller Williams Realty participates in are significant and conscientious programs of the community designed to provide social benefits or to ameliorate social problems, respondent participates in these efforts primarily because of her employment. (Findings 15, 17, 18 and 19.)

14. Respondent was sincere in her testimony that she accepts full responsibility for the accident and has learned not to drink and drive. (Finding 10.)

15. It has been, however, approximately two years since respondent's conviction of having a blood alcohol level above the legal limit. (Findings 4 and 5.) Respondent remains on conditional probation and is not eligible to have her criminal record expunged at this time. (Findings 5 and 6.) The fact that respondent remains on conditional probation until October of 2012 makes the evaluation of her rehabilitation difficult, particularly when

she has already violated one of the terms and conditions of her probation by resuming her consumption of alcohol. (Findings 11 and 12.) While there have been no subsequent arrests or convictions, compliance with the law, however, when one is on court ordered release does not necessarily prove anything but good sense. (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473.) When a person is on criminal probation or parole, rehabilitation efforts are accorded less weight since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion. (*In re Gossage* (200) 23 Cal. 4th 1080, 1099.) Therefore, an insufficient period of time has passed for respondent to demonstrate rehabilitation.

16. A longer history of activities that would indicate a changed behavior is needed to provide adequate assurances that respondent is fully rehabilitated. Activities such as continued involvement in Alcoholics Anonymous program and letters or testimony from friends, relatives or employers who have knowledge of respondent's conviction demonstrating respondent's changed behavior and reliability would also assist in determining respondent's rehabilitation. The letters submitted by respondent do not evidence any knowledge of her conviction or any change in behavior since her conviction. (Findings 17, 18 and 19; Legal Conclusion 9.) Indeed, she did not disclose her conviction to one person until the date of the letter. (Finding 18.) While the letters attest to respondent's good character, they provide no basis upon which to evaluate her rehabilitation.

17. Complainant has shown by clear and convincing evidence that respondent's license should be suspended or revoked. Respondent has failed to demonstrate that she is sufficiently rehabilitated to permit her to retain her real estate salesperson license, even on a restricted basis. Under all the facts and circumstances, it would be contrary to the public interest to permit respondent to remain licensed as a real estate salesperson at this time, with or without a restricted license.

ORDER

All licenses and licensing rights of Respondent Victoria Contreras under the Real Estate Law are revoked.

Dated: November 17, 2010



Linda A. Cabatic
Administrative Law Judge
Office of Administrative Hearings

FILED

APR 20 2010

DEPARTMENT OF REAL ESTATE

By L. Haney

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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VICTORIA CONTRERAS,)	<u>ACCUSATION</u>
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Respondent.)	
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The Complainant, LUKE MARTIN, in his official capacity as a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against VICTORIA CONTRERAS (hereinafter "Respondent"), is informed and alleges as follows:

1

Respondent is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter "the Code") as a real estate salesperson.

2

On or about October 28, 2008 in the Fresno County Superior Court, State of California, Case No. F08903610, Respondent was convicted of violating Section 23153(b) of the California Vehicle Code (Driving With a BAL of 0.08% or Greater with Injury), a felony

1 and a crime which bears a substantial relationship under Section 2910, Title 10, California Code
2 of Regulations, to the qualifications, functions, or duties of a real estate licensee.

3 3

4 The facts alleged in Paragraph 2, above, constitute cause under Sections 490 and
5 10177(b) of the Code for suspension or revocation of all licenses and license rights of
6 Respondent under the Real Estate Law.

7 WHEREFORE, Complainant prays that a hearing be conducted on the
8 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
9 disciplinary action against all licenses and license rights of Respondent under the Real Estate
10 Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further
11 relief as may be proper under the provisions of law.

12
13 

14 LUKE MARTIN
15 Deputy Real Estate Commissioner

16 Dated at Fresno, California,
17 this 5th day of April, 2010.