

FILED

OCT 26 2016

BUREAU OF REAL ESTATE

By Zuiga

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	CalBRE No. H-02541 FR
JUAN MANUEL BUSTAMANTE, JR,)	OAH No. 2011031229
Respondent.)	
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In the Matter of the Application of)	CalBRE No. H-03012 FR
JUAN MANUEL BUSTAMANTE, JR,)	OAH No. 2016060437
Respondent.)	

DECISION

The Proposed Decision dated September 29, 2016, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision:

Factual Findings, Page 4, Paragraph No. 13, Line 6, "May 2015" is amended to read "May 2016".

Order, Page 9, Paragraph No. 8, Lines 2-3, "Post Office Box 137000, Sacramento, California 95813-7000" is amended to read "Post Office Box 137013, Sacramento, California 95813-7013."

1. The Decision suspends or revokes one or more real estate licenses, but the right to a restricted license is granted to Respondent.
2. The suspension of Respondent's license shall last for one year.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau'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. 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.

NOV 15 2016

This Decision shall become effective at 12 o'clock noon on _____.

IT IS SO ORDERED 10/21/16

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: DANIEL SANDRI
Assistant Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JUAN MANUEL BUSTAMANTE JR.,

Respondent.

Case No. H-02541 FR

OAH No. 2011031229

In the Matter of the Accusation Against:

JUAN MANUEL BUSTAMANTE JR.,

Respondent.

Case No. H-03012 FR

OAH No. 2016060437

PROPOSED DECISION

The above-captioned matters were consolidated for hearing and were heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on August 31, 2016, in Los Angeles, California.

Complainant was represented by Judith Vasan, Counsel for the Bureau of Real Estate (Bureau).

Juan Manuel Bustamante Jr. (respondent) appeared personally and was represented by Edgardo Gonzalez, Attorney at Law.

Evidence was received and the matter was submitted for decision on August 31, 2016. The Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. Brenda Smith (complainant) made the Accusation in her official capacity as Supervising Special Investigator for the Bureau of Real Estate.

2. Luke Martin (complainant) made the Statement of Issues in his official capacity as Deputy Real Estate Commissioner for the Department of Real Estate (now the Bureau of Real Estate).

3. On April 6, 2010, respondent filed an application to the Department of Real Estate for a real estate salesperson license.

4. On July 13, 2012, in Case No. H-02541 FR, respondent was denied a real estate salesperson license. However, the Bureau issued a restricted real estate salesperson license to respondent June 27, 2012. The restricted license was issued to respondent pursuant to a Stipulation and Waiver wherein respondent agreed to comply with certain terms and conditions attached to the restricted license. The restricted salesperson license was based on respondent's convictions in 2002, 2005, 2006 and 2008, discussed in more detail in Factual Findings 5 through 9. Pursuant to the Stipulation and Waiver, respondent did not obtain licensing rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code. The restricted license was suspended on May 3, 2016. The Bureau retains jurisdiction over the suspended license pursuant to Business and Professions Code section 10103.

5. On May 15, 2002, in the Superior Court of California, County of Kern, Case No. KM013859A, respondent entered a plea of nolo contendere and was convicted of violating Fish and Game Code section 5652, littering within 150 feet of state waters, a misdemeanor that is substantially related to the duties, functions and qualifications of a real estate salesperson.

6. On June 28, 2002, in the Superior Court of California, County of Los Angeles, Case No. VA070868, respondent was convicted of violating Penal Code section 594, subdivision (a), vandalism, a misdemeanor that is substantially related to the duties, functions and qualifications of a real estate salesperson.

7. On March 1, 2005, in the Superior Court of California, County of Los Angeles, Case No. 5SB01235, respondent entered a plea of nolo contendere and was convicted of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol level of 0.08 percent or greater, a misdemeanor that is substantially related to the duties, functions and qualifications of a real estate salesperson.

8. On November 7, 2006, in the Superior Court of California, County of Kern, Case No. LM076958A, respondent entered a plea of nolo contendere and was convicted of violating Vehicle Code section 14601.1, subdivision (a), driving with a suspended driver's license, a misdemeanor that is substantially related to the duties, functions and qualifications of a real estate salesperson.

9. On September 12, 2008, in the Superior Court of California, County of Kern, Case No. LM087639A, respondent entered a plea of nolo contendere and was convicted of violating Vehicle Code sections 23152, subdivision (a), and 23540, driving under the influence of alcohol (DUI) within 10 years of two prior DUI convictions, a misdemeanor that is substantially related to the duties, functions and qualifications of a real estate salesperson. Imposition of sentence was suspended and respondent was placed on informal probation for

five years on certain conditions including, inter alia, that respondent serve 30 days in the county jail, pay fines and fees totaling \$1,584, and complete an SB 38 DUI alcohol program.

10. On April 3, 2015, in the Superior Court of California, County of Kern, Case No. BM841869A, respondent entered a plea of nolo contendere and was convicted of violating Vehicle Code sections 23152, subdivision (a), and 23546, subdivision (a), driving under the influence of alcohol (DUI) within 10 years of two prior DUI convictions, a misdemeanor that is substantially related to the duties, functions and qualifications of a real estate salesperson. Imposition of sentence was suspended and respondent was placed on probation for three years on certain conditions including, inter alia, that respondent serve 180 days in the county jail, pay fines and fees totaling \$2,018, complete 300 hours of community service, attend 40 Alcoholics Anonymous (AA) meetings, and complete a Mothers Against Drunk Driving (MADD) Awareness Program. Respondent was also ordered to install an ignition interlock device. The facts and circumstances underlying the conviction were that on May 17, 2014, respondent drove his vehicle while under the influence of alcohol. A police officer observed respondent run a red light and made a traffic stop for the violation. The police officer approached respondent and suspected that respondent was under the influence of alcohol. Respondent was unable to perform the field sobriety tests and was arrested for DUI. While in custody, respondent made veiled threats against the arresting police officer. Respondent's 2015 DUI conviction, and his conduct underlying the conviction, was a violation of condition number 1 of his restricted license.

11. Condition number 4 of respondent's restricted license issued on July 13, 2012, states in pertinent part:

Respondent shall notify the Commissioner within 72 hours of any arrest by sending a letter to the Commissioner at (address omitted in this quote). 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 suspension or revocation of that license.

Respondent failed to notify the Commissioner of his May 17, 2014 arrest for DUI, which constitutes a violation of the terms of his restricted license. However, respondent did notify the Bureau shortly after his 2015 DUI conviction.

12. Respondent testified that after his first two DUIs, he did not take his court-ordered alcohol education programs seriously. He just "went through the motions." After his 2015 conviction for DUI, he realized that he had a serious drinking problem. He stated that unlike his previous convictions, he took his AA classes seriously and admitted to himself that he is an alcoholic. He actively participates in his AA classes, and, as of the time of the hearing, he has attended more than 50 AA meetings. In addition, respondent completed the drunk driving awareness program conducted by MADD. Respondent is remorseful, noting

that he "could have hurt or killed someone by driving drunk." Respondent has remained sober since his 2014 arrest and no longer associates with drinking friends.

13. Respondent graduated from Cal State Long Beach in 2008. From 2009 to 2012, respondent worked for Wells Fargo in Bakersfield. He performed quite well and was eventually promoted to Branch Manager. After obtaining his restricted real estate salesperson license, respondent worked at Karpe, Inc. real estate company from 2012 to 2014. In 2014, respondent began working for Marcus and Millichap Real Estate Investment Services in Bakersfield. He worked there until his license was suspended in May 2015. There was no evidence that respondent has engaged in any misconduct in the performance of his duties as a real estate salesperson.

14. Respondent submitted numerous letters from friends, and past co-workers all of whom attested to respondent's honesty, trustworthiness and professionalism when performing work for real estate clients.

15. Respondent presented evidence that he volunteers his time to certain community organizations, including the local Cancer Society by visiting terminally ill patients, and the local Chambers of Commerce in Bakersfield and the City of Arvin. In addition, respondent is satisfying the court-ordered community service by working at a homeless center.

16. Pursuant to Business and Professions Code section 10106, complainant requests costs of investigation of this matter in the amount of \$507.45, and costs of enforcement in the amount of \$716.45. These costs are reasonable under section 10106.

LEGAL CONCLUSIONS

1. Cause exists to revoke respondent's restricted real estate salesperson license and to re-impose the Bureau's denial of licensure under Business and Professions Code sections 480, 490, and 10177, subdivision (b), for respondent's third DUI conviction and his prior convictions, which are substantially related to the duties, functions and qualifications of a real estate salesperson pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(10) and (a)(11).

2. Cause exists to revoke respondent's restricted real estate salesperson license and re-impose the Bureau's denial of licensure under Business and Professions Code section 10177, subdivision (k), for violating condition number 1 of his restricted license, based on respondent's April 13, 2015 conviction for DUI.

3. Cause exists to suspend or revoke respondent's real estate salesperson license and re-impose the Bureau's denial of licensure under Business and Professions Code section 10177, subdivision (k), for violating condition number 4 of his restricted license for failing to notify the Bureau of his April 13, 2015 conviction for DUI.

4. Complainant submitted reasonable costs of investigation under Business and Professions Code section 10106. Therefore, cause exists to grant complainant's request for the costs of investigation and enforcement.

5. California Code of Regulations, title 10, section 2912, sets forth criteria for rehabilitation. The factors set forth in section 2912 are applied as follows:

(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.

Respondent's last DUI conviction occurred 17 months ago.

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

This criterion is not applicable in this case.

(c) Expungement of the conviction or convictions resulting from immoral or antisocial acts.

Respondent's last DUI conviction has not been expunged.

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

This factor is not applicable to this case.

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

Respondent is still on summary probation, which is scheduled to terminate in April 2018.

(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.

Respondent stopped drinking alcoholic beverages. He has been sober since his May 17, 2014 arrest.

(g) Payment of any fine imposed in connection with the criminal conviction.

Respondent is paying the court fines in installments.

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

This factor is not applicable in this case.

(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.

Respondent no longer associates with people with whom he used to drink alcoholic beverages, or with people who drink to excess.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial.

Respondent lives with his mother in a stable family relationship.

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

There was no evidence presented addressing this factor.

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

Respondent is currently complying with court-ordered community service by working at the homeless center. In addition, respondent volunteers for the local Chamber of Commerce. He also volunteers for the Cancer Society.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts. . . .

Respondent admitted his misconduct, accepted responsibility for his actions and expressed remorse during his testimony. Further, respondent has a changed attitude by admitting that he is an alcoholic and becoming an active participant in AA. Finally, respondent has been sober since May 17, 2014.

6. Respondent satisfied some of the applicable criteria of rehabilitation set forth in regulation section 2912. However, respondent's latest DUI conviction is less than two years old. It is his third such conviction and constituted a violation of his restricted

salesperson license. In addition, respondent has suffered other convictions dating back to 2002. Respondent also failed to timely inform the Bureau of his May 17, 2014 DUI arrest, in violation of a specific term of his restricted salesperson license. Because of respondent's history of DUIs, one of which is recent, a finding cannot be made that recidivism is unlikely at this time. In contrast to the above concerns, respondent established a certain amount of rehabilitation. He has accepted responsibility for his misconduct and expressed remorse, noting that he could have hurt or killed someone by driving while drunk. He has changed his attitude in that he has accepted the fact that he is an alcoholic, has become an active participant in AA, and no longer associates with former drinking friends. Finally, the evidence established that respondent has not engaged in any misconduct while performing his duties as a licensee. In fact, his written references supported respondent's testimony that he has performed duties in a competent manner.

7. The purpose for disciplinary proceedings is to protect the public and not to punish individuals. (*Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1030-1031; *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.). Based on the evidence of this case, the public will be adequately protected by revoking and re-issuing respondent's restricted real estate salesperson license under appropriate conditions, including a substantial period of suspension.

ORDER

The restricted real estate salesperson license issued to Juan Manuel Bustamante Jr., is revoked and the original denial of licensure is re-imposed. However, respondent's restricted real estate salesperson license shall be re-issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application thereof and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. Any restricted license issued to respondent pursuant to this Decision shall be suspended for 360 days from the date of issuance of said restricted license. Respondent shall be given retroactive credit for the time that his restricted real estate salesperson license has been under suspension (since May 3, 2016).

2. 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 which is substantially related to Respondent's fitness or capacity as a real estate licensee.

3. 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.

4. 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 this Decision.

5. Respondent shall submit with any application for a 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 Decision of the Commissioner which 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.

6. Respondent shall pay to the Bureau of Real Estate the costs of investigation and enforcement of this matter in the amount of \$1,223.90. In its discretion, the Bureau may allow respondent to pay this amount in installments.

7. Respondent shall, within nine months from the effective date of this 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 respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

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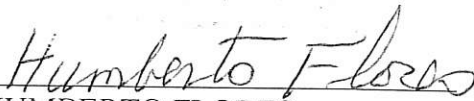
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8. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 137000, Sacramento, California 95813-7000. The letter shall set forth 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 suspension or revocation of that license.

DATED: September 29, 2016


HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings