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FILED

MAY 17 2016

BUREAU OF REAL ESTATE

By B. Nicholas

9 BEFORE THE BUREAU OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)

13 KIMBERLY ANNE DEVITO,)

14 Respondent.)

No. H- 3014 FR

ACCUSATION

15 The Complainant, BRENDA SMITH, a Supervising Special Investigator of the
16 State of California, for cause of Accusation against KIMBERLY ANNE DEVITO (Respondent),
17 is informed and alleges as follows:

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19 The Complainant, BRENDA SMITH, a Supervising Special Investigator of the
20 State of California, makes this Accusation in her official capacity.

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

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1 FAILURE TO DISCLOSE ON RENEWAL APPLICATION

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3 On or about March 18, 2014, Respondent submitted a Salesperson Renewal
4 Application to the Bureau of Real Estate of the State of California.

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6 In response to Question 4 of said renewal application, to wit: "WITHIN THE
7 SIX-YEAR PERIOD PRIOR TO FILING THIS APPLICATION, HAVE YOU BEEN
8 CONVICTED OF A MIDEMEANOR OR FELONY? CONVICTIONS EXPUNGED UNDER
9 PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT
10 TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY"
11 Respondent answered "No." Respondent concealed and failed to disclose the conviction
12 described in Paragraph 5.

13 CRIMINAL CONVICTIONS

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15 On or about November 19, 2013, in the Superior Court of the State of California,
16 County of Madera, Case No. SCR013871, Respondent was convicted of violating Section
17 23152(b) (driving under the influence) of the California Vehicle Code, a crime which bears a
18 substantial relationship under Section 2910, Title 10, of the California Code of Regulations
19 (Regulations) to the qualifications, functions or duties of a real estate licensee.

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21 On or about November 13, 2015, in the Superior Court of the State of California,
22 County of Madera, Case No. CCR046324, Respondent was convicted of violating Section
23 23152(b) (driving under the influence –with two priors) of the California Vehicle Code, a crime
24 which bears a substantial relationship under Section 2910 of the Regulations to the
25 qualifications, functions or duties of a real estate licensee.

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On or about November 13, 2015, in the Superior Court of the State of California, County of Madera, Case No. CCR047002, Respondent was convicted of violating Section 23152(b) (driving under the influence –with one prior) of the California Vehicle Code, a crime which bears a substantial relationship under Section 2910 of the Regulations to the qualifications, functions or duties of a real estate licensee.

On or about February 8, 2016, in the Superior Court of the State of California, County of Madera, Case No. CCR049935, Respondent was convicted of violating Section 23152(b) (driving under the influence –with three priors) of the California Vehicle Code, a crime which bears a substantial relationship under Section 2910 of the Regulations to the qualifications, functions or duties of a real estate licensee.

FAILURE TO NOTIFY BUREAU

At no time did Respondent provide notice of the bringing of an indictment, the charging of a felony, the conviction of Respondent of one or more misdemeanor and/or felony convictions, and/or any disciplinary action taken by another licensing agency, as required by Section 10186.2 of the Code.

GROUND FOR DISCIPLINE

The facts alleged in Paragraphs 5 through 8 constitute grounds under Sections 490 and 10177(b) of the Code for suspension or revocation of all licenses and license rights of Respondent under Part 1 of Division 4 of the Code.

The facts alleged in Paragraph 9 constitute cause under Sections 10177(d) and 10186.2 of the Code for suspension or revocation of Respondent's license under the Real Estate Law.

Respondent's failure to reveal in said renewal application the conviction set forth in Paragraph 5, constitutes the procurement of or attempt to procure a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said renewal application, which failure is cause for suspension or revocation of Respondent's license pursuant to the provisions of Sections 10177(a) and 10177(j) of the Business and Professions Code (Code).

COST RECOVERY

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the Administrative Law Judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Code, for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under the provisions of law.


BRENDA SMITH
Supervising Special Investigator

Dated at Fresno, California,

this 13 day of May, 2016

DISCOVERY DEMAND

Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the Bureau of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the

1 *Administrative Procedure Act.* Failure to provide Discovery to the Bureau of Real Estate may
2 result in the exclusion of witnesses and documents at the hearing or other sanctions that the
3 Office of Administrative Hearings deems appropriate.
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