

**FILED**

BEFORE THE BUREAU OF REAL ESTATE

MAR 21 2017

STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By B. Nicholas

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In the Matter of the Accusation of ) CalBRE No. H-3014 FR  
KIMBERLY ANNE DEVITO, ) OAH No. 2016060282  
Respondent. )

DECISION

The Proposed Decision dated February 24, 2017, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision suspends or revokes one or more real estate licenses.

Pursuant to Government Code section 11521, the 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.

This Decision shall become effective at 12 o'clock noon on APR 11 2017

IT IS SO ORDERED 3/20/17

WAYNE S. BELL  
REAL ESTATE COMMISSIONER

Daniel J. Sandri

By: DANIEL J. SANDRI  
Chief Deputy Commissioner

BEFORE THE  
BUREAU OF REAL ESTATE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KIMBERLY ANNE DEVITO,

Respondent.

Case No. H-3014 FR

OAH No. 2016060282

**PROPOSED DECISION**

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on February 1, 2017, in Sacramento, California.

Truly A. Sughrue, Counsel, represented Brenda Smith (complainant), Supervising Special Investigator, Bureau of Real Estate (Bureau), Department of Consumer Affairs, State of California.

Kimberly Anne DeVito (respondent) represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on February 1, 2017.

**FACTUAL FINDINGS**

1. Complainant made and filed the Accusation in her official capacity. Complainant seeks to discipline respondent's real estate salesperson license based upon her four convictions for driving under the influence of alcohol (DUI) described below, her failure to disclose one of these convictions when she renewed her salesperson license on March 18, 2014, and her failure to report her convictions to the Bureau in accordance with Business and Professions Code section 10186.2.

2. Respondent was originally granted a conditional salesperson license on August 13, 2004. Her license was reinstated from conditional suspended status on March 21, 2006, upon completion of the education requirement. Respondent's license was in full force and effect at all times relevant to this proceeding. It will expire on March 17, 2018, unless renewed or revoked.

### *Respondent's Convictions*

3. On November 19, 2013, in the Madera County Superior Court, Case No. SCF013871, respondent, on a plea of guilty, was convicted of violating Vehicle Code section 23152, subdivision (b), driving with .08 percent or more of alcohol in her blood, a misdemeanor. She was placed on bench probation for three years. She was ordered to serve 48 hours in jail, complete a three-month first offender DUI program, and pay fines and fees.

4. Complainant did not offer into evidence a police report to describe the circumstances surrounding respondent's November 19, 2013 DUI conviction. At the hearing, respondent testified that the incident underlying her conviction occurred on December 18, 2012. According to respondent, she went to dinner with a friend and had a glass of wine. When respondent was arrested, her blood alcohol content (BAC) was measured at .13 percent. Respondent was 38 years old at the time of this incident.

5. On November 13, 2015, in the Madera County Superior Court, Case No. CCR047002, respondent, on a plea of guilty, was convicted of violating Vehicle Code section 23152, subdivision (b), driving with .08 percent or more of alcohol in her blood, with one prior, a misdemeanor. Respondent was placed on bench probation for three years. She was ordered confined to the Madera County Department of Corrections for 10 days, and was given credit for two days served. She was allowed to serve this time through work furlough/county parole. She was also ordered to complete an 18-month DUI program and pay fines and fees. Her driver's license was suspended for two years.

6. The incident underlying respondent's DUI conviction in Case No. CCR047002 occurred on May 11, 2014, at approximately 9:10 p.m. A California Highway Patrol (CHP) officer observed that respondent failed to stop her vehicle at a stop sign. When the CHP officer stopped respondent's vehicle, he "smelled the strong odor of an alcoholic beverage emitting from inside the vehicle," and he noticed that respondent's eyes were "bloodshot and watery."<sup>1</sup> Respondent admitted to the CHP officer that her driver's license was suspended for a prior DUI conviction. Respondent "knew she was on DUI probation" and "had another DUI case pending from an accident." She told the CHP officer that she drank two and one-half glasses of red wine earlier in the day. When respondent spoke to the officer, he noticed that her speech was slurred. Respondent "showed impairment on" the field sobriety tests that the officer conducted. Her BAC was measured at .12/.11 percent.

7. On November 13, 2015, in the Madera County Superior Court, Case No. CCR046324, respondent, on a plea of guilty, was convicted of violating Vehicle Code section 23152, subdivision (b), driving with .08 percent or more of alcohol in her blood, with two priors, a misdemeanor. Respondent was placed on bench probation for three years. She was ordered confined to the Madera County Department of Corrections for 120 days, and

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<sup>1</sup> The CHP officer's observations and respondent's admissions to the officer were noted in his Arrest-Investigation Report, which was admitted into evidence pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448.

was given credit for two days served. She was allowed to serve this time through work furlough/county parole. She was also ordered to complete an 18-month DUI program and pay fines and fees. Her driver's license was revoked for three years.

8. The incident underlying respondent's DUI conviction in Case No. CCR046324 occurred on December 17, 2013, at approximately 7:46 p.m.<sup>2</sup> An individual called 911, and reported to the responding CHP officer that he had to swerve to avoid an accident with respondent, and that respondent drove her vehicle off the road and down an embankment. When the CHP officer spoke to respondent, he could smell "the strong overwhelming odor of an alcoholic beverage coming from her breath and about her person."<sup>3</sup> Respondent was unsteady on her feet and had trouble maintaining her balance. Her eyes "were red and watery and her speech slow, thick and slurred." Respondent refused to perform the field sobriety tests requested by the officer.

9. On November, 13, 2015, in the Madera County Superior Court, Case No. CCR049935, respondent pled guilty to violating Vehicle Code section 23152, subdivision (b), driving with .08 percent or more of alcohol in her blood, with three priors, a felony. On February 8, 2016, respondent was convicted of this felony. She was placed on probation for three years. She was ordered to serve 180 days on house arrest and alcohol monitoring through a SCRAM device.<sup>4</sup> Following these 180 days, respondent was ordered to serve 180 days on alcohol monitoring through the SCRAM device without house arrest. She was also required to attend alcohol abuse counseling and to complete a DUI program to the satisfaction of her probation officer. Her driver's license was revoked for four years.

10. On August 8, 2016, the terms of respondent's probation in Case No. CCR049935 were modified. Respondent had completed six months on the SCRAM device, and asked to participate for six months in the Start Fresh Recovery Program. The court granted respondent's request to complete the requirements of her probation by using the prescription medication Naltrexone and being monitored through the Start Fresh Recovery Program. The court also noted that respondent had not enrolled in a DUI program, and granted respondent a 60-day continuance to do so.

11. The incident underlying respondent's February 8, 2016 felony DUI conviction occurred on February 11, 2015, at approximately 10:33 p.m. A CHP officer observed respondent swerving back and forth while she was driving. When the CHP officer stopped

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<sup>2</sup> At the hearing, the parties recognized that the court inverted the convictions described in Findings 5 and 7. The incident underlying the conviction described in Finding 7 preceded the incident underlying the conviction described in Finding 5.

<sup>3</sup> The CHP officer's observations were noted in his Arrest-Investigation Report, which was admitted into evidence pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448.

<sup>4</sup> "SCRAM" stands for Secure Continuous Remote Alcohol Monitor. The SCRAM device is a tamper-resistant bracelet that DUI offenders wear around their ankles.

respondent's vehicle, he smelled a "strong and distinct odor of an alcoholic beverage," and observed a "half-full open mini-wine bottle" in the center cup holder.<sup>5</sup> The officer also noticed that respondent's eyes were "red and watery," and her speech was "slow and slurred." When respondent exited her vehicle, she was "extremely unsteady on her feet." During one of the field sobriety tests, respondent "almost fell over." Respondent's BAC was measured at .23/.21 percent.

*Respondent's Renewal Application and Failure to Disclose and Report*

12. Respondent submitted to the Bureau a Salesperson Renewal Application (renewal application) dated March 18, 2014. Question 4 on the renewal application asked:

Within the six-year period prior to filing this application, have you been convicted of a misdemeanor or felony? **Convictions expunged under Penal Code section 1203.4 must be disclosed. However, you may omit traffic citations which do not constitute a misdemeanor or felony.**

(Bolding in original.)

13. In response to Question 4, respondent checked the "NO" box on her renewal application. Respondent's response was not truthful. As set forth above, on November 19, 2013, she was convicted of a DUI.

14. At the time respondent was convicted of the crimes described above, Business and Professions Code section 10186.2, which requires licensees to report convictions to the Bureau, provided:

(a)(1) A licensee shall report any of the following to the bureau:

(A) The bringing of an indictment or information charging a felony against the licensee.

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(C) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government.

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<sup>5</sup> The CHP officer's observations and respondent's admissions to the officer were noted in his Arrest-Investigation Report, which was admitted into evidence pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448.

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, the conviction, or the disciplinary action.

(b) Failure to make a report required by this section shall constitute a cause for discipline.<sup>6</sup>

15. Respondent did not make the reports to the Bureau required by Business and Professions Code section 10186.2 for any of her four DUI convictions described above.

#### *Respondent's Evidence*

16. Respondent testified at the hearing. She also submitted a letter she wrote in July 2016. At the hearing and in her letter, respondent attributed her four DUI convictions to the dissolution of her "dysfunctional" and "difficult" marriage, and the adverse impact the dissolution had on her emotional state and judgment. Respondent was married on September 27, 2002. She and her ex-husband had two children. They separated on March 17, 2012. On November 30, 2012, respondent's ex-husband filed a petition to dissolve their marriage. Their divorce was finalized shortly before the hearing in this matter. During the marriage, respondent's ex-husband was verbally, emotionally, and physically abusive. Although respondent and her ex-husband separated on March 17, 2012, respondent was surprised when her ex-husband filed for divorce on November 30, 2012, without first discussing it with her. After her ex-husband filed for divorce, respondent became more "self-destructive." Over the course of the next two years, she incurred her four DUI convictions.

17. As respondent explained at the hearing, the sentencing with regard to her three most recent DUI convictions was "rolled into one." She was placed on three years' formal probation, which is scheduled to end in February 2019. She was initially required to report in person to a probation officer. She last met with her probation officer on January 30, 2017. Because she has been determined not to be a high risk, her probation officer was setting her up for phone reporting. She is currently making payments of \$50 per month toward her court-ordered fines and fees from her three most recent DUI convictions. At the hearing, she was not sure how much she still owes. On January 30, 2017, she made her last payment on her fines and fees from her first DUI conviction in November 2013.

18. Respondent served 180 days on house arrest on the SCRAM device. She wore the SCRAM device from March 16, 2015, until August 10, 2016. During this time, the SCRAM device detected no alcohol consumption. It did, however, detect five tamper events. According to respondent, the device took readings every one-half hour. If the device did not get a good reading, it emitted a "tamper" reading. This could happen if she slept on it wrong or if her socks got in the way.

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<sup>6</sup> Business and Professions Code section 10186.2 was amended effective January 1, 2017.

19. Since August 2016 when the SCRAM device was removed, respondent has been receiving injections of Naltrexone every six weeks. It is her understanding that the Naltrexone will make her very ill if she drinks any alcohol. Her next court date is February 8, 2017. She did not know whether the court will be reviewing at that time whether she should continue taking Naltrexone.

20. Respondent submitted to the Bureau a certificate of completion, which indicated that she completed the three-month DUI program ordered as a result of her November 2013 conviction on January 23, 2015. On October 17, 2016, respondent enrolled in the court-ordered 18-month multiple offender DUI program at Kings View Community Services. At the beginning, she attended the program twice a week, until she completed the education part. She now attends once a week. The court revoked her driver's license for four years. She understands that, when she has been enrolled in Kings View for one year, she will be able to obtain a restricted driver's license, which will allow her to drive to and from work and to take her children to school.

21. Respondent admitted at the hearing that she did not truthfully respond to the question on her March 2014 renewal application asking whether she had been convicted of any crimes. She testified that she lacked "good judgment" during the time period in question. She recognized the importance of making truthful disclosures to the Bureau. She asserted that she was never dishonest on her other renewal applications or with clients, other real estate agents or brokers. She also asserted that an individual she was working with at London Properties at the time advised her to mark the "No" box. Respondent testified further that she did not report her four DUI convictions to the Bureau within 30 days as required by Business and Professions Code section 10186.2 because she was not aware of the legal requirement to do so. Respondent admitted that she does not read the Bureau's bulletins, which provide updates to licensees on the law.

22. At the hearing, respondent asserted that she does not consider herself to be an alcoholic. She has not consumed any alcohol since her last arrest on February 11, 2015. She stated that she did not possess the characteristics of an alcoholic in the past before her DUI convictions. Since the day she put on the SCRAM device, it has been "easy" for her to abstain from alcohol. She has attended Alcoholics Anonymous (AA) meetings as required by the court, but does not regularly do so on her own. She does not have a sponsor. She went to a crisis therapist with her ex-husband when they were going through their marital difficulties. She has not seen that therapist since 2013. She is not currently involved in any counseling. She asserted that she is now in a "peaceful and good place." She and her ex-husband share custody of their two children and are communicating well.

23. Respondent graduated from high school in 1992. She attended Fresno City College, San Francisco State College, and Fresno State College, graduating with a B.A. in liberal arts. While in college, she was on the soccer team. She has coached high school and competitive soccer teams. She was first licensed as a real estate salesperson in 2004. In June 2015, she began working as a transaction coordinator for Matt Guagliardo, a licensed real estate salesperson. Since May 2016, she has worked under broker Derek Robin Nott at Executive Realty.

24. Respondent called two witnesses at the hearing, Mr. Guagliardo, and Christina Bever, respondent's older sister. Both of these witnesses also wrote letters on respondent's behalf.

(a) Mr. Guagliardo has known respondent since June 2015, when he retained her as a transaction coordinator. Mr. Guagliardo was first licensed as a real estate salesperson in July 2013. He testified that respondent has an "extremely strong" work ethic. She is committed to their clients. She has never engaged in any conduct to call her integrity into question. When Mr. Guagliardo first hired respondent in June 2015, she did not disclose her DUI convictions to him. He learned of her convictions at the end of June 2016, around the time the Accusation was filed. Respondent and Mr. Guagliardo do not work under the same broker.

(b) Ms. Bever described respondent as very passionate, loyal and family-oriented. Ms. Bever was aware of respondent's convictions and her marital difficulties. Ms. Bever asserted that respondent was not herself "at all" during the approximately two years she incurred her four DUI convictions. Both before and after that period, Ms. Bever trusted respondent "completely" to take care of Ms. Bever's three children, but she did not let respondent watch her children alone during that period. Ms. Bever asserted that she never saw respondent abuse alcohol outside that two-year time period.

25. Respondent submitted the following character references, which were admitted into evidence as administrative hearsay and have been considered to the extent permitted under Government Code section 11513, subdivision (d):<sup>7</sup>

(a) Respondent submitted letters from three friends, Virginia G. Sanchez, LCSW, Carol McClung, RN, and Rachel Miller. Ms. Sanchez recognized that respondent sought to numb the pain caused by the domestic abuse she suffered in the "wrong way," but believes that respondent "has and will continue to have, the discipline to go forward in a more judicious manner." Ms. McClung believes that the personal challenges respondent faced made her an "even stronger woman." Respondent was Ms. McClung's agent when she bought and sold a home. Ms. McClung described respondent as professional, dependable and trustworthy. Ms. Miller believes that respondent "completely understands the magnitude of what she has done and takes complete ownership of it." Ms. Miller thinks that respondent should not be judged "for that extremely short, dark time in her life when she was going through the worst kind of pain and wasn't herself in her decision making."

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<sup>7</sup> Government Code section 11513, subdivision (d), in relevant part, states:

Hearsay 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.



(b) Respondent submitted a letter written by her ex-husband in or about May 2012, when they were separated. In the letter, respondent's ex-husband admitted to the abuse he subjected her to.

### *Discussion*

26. Complainant established by clear and convincing evidence cause to discipline respondent's license. Over the past three and one-half years, respondent suffered four DUI convictions. She failed to disclose her November 2013 DUI conviction on her March 2014 renewal application. She also failed to report her convictions to the Bureau as required by Business and Professions Code section 10186.2.

27. To determine the appropriate level of license discipline, respondent's rehabilitation must be assessed under the Bureau's rehabilitation criteria. The rehabilitation criteria applicable in this matter are set forth in California Code of Regulations, title 10, section 2912. Relevant rehabilitation criteria include: (1) the passage of not less than two years from the most recent criminal conviction; (2) expungement of the conviction which culminated in the administrative proceeding to take disciplinary action; (3) successful completion or early discharge from probation or parole; (4) abstinence from the use of alcohol for not less than two years if the criminal conviction was attributable in part to the use of alcohol; (5) payment of any fine imposed in connection with the criminal conviction that is the basis for revocation of the license; (6) 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 in question; (7) stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction; (8) completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement; (9) significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; and (10) change in attitude from that which existed at the time of the commission of the criminal acts in question.

28. Respondent submitted some evidence of rehabilitation. She has abstained from alcohol since her last arrest on February 11, 2015. She is complying with the terms and conditions of her criminal probation. She testified in a candid and humble fashion. She admitted her wrongdoing and took responsibility for her actions. She now appears to have a stable family life and is fulfilling her parental responsibilities. She is gainfully employed and well-respected by the real estate salesperson she currently works for as a transaction coordinator. She offered supportive character references.

29. But when all the evidence is considered in light of the Bureau's relevant rehabilitation criteria, respondent failed to demonstrate that she has engaged in sufficient rehabilitation to retain her real estate salesperson license. Respondent's most recent conviction was less than two years ago. She is still on criminal probation, which is not scheduled to end until February 2019. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099 [when a person is on criminal probation, rehabilitation efforts are accorded less weight, "[s]ince persons under the direct supervision of correctional authorities are required to behave in exemplary

fashion..."].) She has not fully paid all the court-ordered fines and fees. She was dishonest on her March 2014 renewal application. She did not provide a character reference from her current supervising broker to ensure that she would be adequately supervised if she were granted a restricted license. There was no evidence that she is currently enrolled in educational or vocational training courses or significantly and conscientiously involved in her community.

30. Moreover, respondent's testimony raised serious questions about whether she has adequately addressed her alcohol issues. While she has not consumed alcohol since her last arrest on February 11, 2015, and is currently attending the court-ordered DUI program, she has not taken steps beyond that which the court ordered to provide adequate assurances that her past issues with alcohol have been fully addressed. She denied that she is an alcoholic. She does not regularly attend AA. She does not have a sponsor. She is not currently involved in counseling. She did not enroll in the court-ordered DUI program until October 2016. She still has over a year to go before completing that program. Since her conviction, her alcohol consumption has been either monitored through a SCRAM device or controlled by injections of Naltrexone. Without more evidence of rehabilitation, respondent failed to show that she can be relied upon to abstain from alcohol when the court-ordered monitors and controls are lifted. Consequently, when all the evidence is considered, respondent failed to offer sufficient proof of rehabilitation to demonstrate that the public interest, safety and welfare would be adequately protected if she were granted a restricted license at this time. Her license must therefore be revoked.

#### *Costs*

31. Complainant has requested that respondent be ordered to pay investigation costs in the amount of \$245.95, and enforcement costs in the amount of \$1,980.25, for total costs of \$2,226.20. In support of these costs, complainant submitted a Certified Statement of Investigation Costs, and a Certified Statement of Costs seeking reimbursement of the costs of enforcement. Attached to these certified statements were printouts that described the general tasks performed, the time spent on each task and the hourly rate for the services in accordance with California Code of Regulations, title 1, section 1042. From a review of the certified statements, it appears that the time spent by the Bureau's investigators and counsel was appropriate in light of the allegations and legal issues in this matter, and that the amounts charged were reasonable. There was no evidence offered at the hearing in opposition to the requested costs.

### LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 490, a professional license may be suspended or revoked if 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."

2. Pursuant to Business and Professions Code section 10177, subdivision (b), a real estate license may be disciplined when the licensee has "[e]ntered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee."

3. Pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(11), a conviction is deemed to be substantially related to the qualifications, functions or duties of a real estate licensee if it involves:

Two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs.

4. Respondent's four DUI convictions are substantially related to the qualifications, functions and duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivisions (a)(11). Consequently, they establish cause to discipline her real estate license under Business and Professions Code sections 490 and 10177, subdivision (b). (Findings 3 through 11.)

5. Pursuant to Business and Professions Code section 10177, subdivision (a), a real estate license may be disciplined if the licensee has "[p]rocured, or attempted to procure, a real estate license or license renewal, for himself or herself or a salesperson, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement." Respondent's failure to disclose her November 19, 2013 DUI conviction on her March 18, 2014 renewal application establishes cause to discipline her license under Business and Professions Code section 10177, subdivision (a). (Findings 12 and 13.)

6. Pursuant to Business and Professions Code section 10177, subdivision (j), a real estate license may be disciplined if the licensee has "[e]ngaged in any other conduct, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealing." Respondent's failure to disclose her November 19, 2013 DUI conviction on her March 18, 2014 renewal application establishes cause to discipline her license under Business and Professions Code section 10177, subdivision (j). (Findings 12 and 13.)

7. Pursuant to Business and Professions Code section 10177, subdivision (d), a real estate license may be disciplined if the licensee has "[w]illfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000)." Respondent's failure to report her DUI convictions to the Bureau as required by Business and Professions Code section 10186.2 establishes cause to discipline her license under Business and Professions Code section 10177, subdivision (d). (Findings 14 and 15.)

8. As set forth in Findings 26 through 30, complainant established by clear and convincing evidence cause to discipline respondent's license: Respondent failed to offer sufficient evidence of rehabilitation to demonstrate that the public interest, safety and welfare

would be adequately protected if she were allowed to remain licensed, even on a restricted basis. Her license must therefore be revoked.

9. Business and Professions Code section 10106 permits the award of costs, in relevant part, as follows:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the department, 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.

10. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered when determining the reasonableness of costs sought pursuant to statutory provisions like Business and Professions Code section 10106. These factors include: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate in light of the alleged misconduct.

11. As set forth in Finding 31, complainant seeks a total of \$2,226.20 in investigation and enforcement costs. When all the *Zuckerman* factors are considered, the requested investigation and enforcement costs are reasonable. Consequently, respondent should be ordered to pay these costs in full to the Bureau.

#### ORDER

1. All licenses and licensing rights of respondent Kimberly Anne DeVito under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), including her real estate salesperson license, are REVOKED.

2. Respondent shall pay investigation and enforcement costs to the Bureau in the amount of \$2,226.20. This amount may be paid in accordance with a reasonable payment plan approved by the Bureau or its designee.

DATED: February 24, 2017

DocuSigned by:

*Karen Brandt*

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KAREN J. BRANDT  
Administrative Law Judge  
Office of Administrative Hearings