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FILED

MAR 22 2021

DEPARTMENT OF REAL ESTATE
By B. Nicholas

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:) DRE No. H-3328 FR
BROOKE ELIZABETH FRASER,) OAH No. 2020070803
Respondent.)
_____)

ORDER DENYING RECONSIDERATION

On February 2, 2021, a Decision was rendered in the above-entitled matter. The Decision was to become effective on February 24, 2021, and was stayed by separate Order to March 26, 2021.

On February 22, 2021, Respondent petitioned for reconsideration of the Decision of February 02, 2021.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of February 02, 2021, and reconsideration is hereby denied.

IT IS SO ORDERED _____

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

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FEB 22 2021

DEPARTMENT OF REAL ESTATE
By B. Nicholas

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

BROOKE ELIZABETH FRASER,

Respondent(s).

) DRE NO. H-3328 FR

) OAH NO. 2020070803

ORDER STAYING EFFECTIVE DATE

On February 02, 2021, a Decision was rendered in the above-entitled matter to become effective February 24, 2021.

IT IS HEREBY ORDERED that the effective date of February 24, 2021, is stayed for a period of 30 days to allow Respondent BROOKE ELIZABETH FRASER to file a petition for reconsideration or consider Respondent's petition for reconsideration.

The Decision of February 02, 2021, shall become effective at 12 o'clock noon on March 26, 2021.

DATED: 2/22/2021

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER



MARCUS McCARTHER
CHIEF DEPUTY COMMISSIONER

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BEFORE THE DEPARTMENT OF REAL ESTATE

FEB 03 2021

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By B. Nicholas

* * *

In the Matter of the Accusation of:)	DRE No. H-3328 FR
)	
BROOKE ELIZABETH FRASER,)	OAH No. 2020070803
)	
Respondent.)	

DECISION

The Proposed Decision dated December 21, 2020, 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.

- 1) Page 3, Factual Findings 5., Line 2 is corrected to read, "...upon her plea of no contest...".
- 2) Page 3, Footnote 1, is corrected to read, "...respondent was convicted July 17, 2018 and sentenced July 10, 2019."

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

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department'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 **FEB 24 2021**.

IT IS SO ORDERED 2-2-21

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

FILED

JAN 25 2021

DEPARTMENT OF REAL ESTATE
By B. Nicholas

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

BROOKE ELIZABETH FRASER, Respondent

Agency Case No. H-3328 FR

OAH No. 2020070803

PROPOSED DECISION

Administrative Law Judge Ed Washington, Office of Administrative Hearings (OAH), State of California, heard this matter via video conference on November 17, 2020, from Sacramento, California.

Real Estate Counsel Kyle T. Jones represented Brenda Smith (complainant), Supervising Special Investigator, Department of Real Estate (Department), State of California.

Attorney Adam J. Richards represented Brooke Elizabeth Fraser (respondent), who was present at hearing.

Evidence was received and the hearing concluded. The record remained open through November 20, 2020, to allow respondent to submit fully redacted versions of her exhibits. Respondent timely submitted fully redacted exhibits and the matter was submitted for decision on November 20, 2020.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant made and filed the Accusation in her official capacity. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506, and this hearing followed.

2. On September 30, 2016, the California Real Estate Commissioner issued Real Estate Salesperson's License No. 01968328 (license) to respondent. The license expired September 29, 2020.

Respondent's Convictions and Failure to Report

3. On November 28, 2017, in the Superior Court of California, County of San Luis Obispo, Case No. 17M-06439, upon her plea of no contest, respondent was convicted of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content (BAC) of 0.08 percent or greater (DUI)), a misdemeanor. As a result of this conviction, the court placed respondent on three years of supervised probation, ordered her to serve two days in jail, ordered her to complete a three-month DUI program, and pay related fines and fees.

4. The circumstances that led to respondent's DUI conviction occurred on June 2, 2017. A California Highway Patrol officer observed respondent swerving while driving on the highway at an excessive speed. He stopped respondent, who also had a passenger in the vehicle. As the officer approached the vehicle, respondent pulled away and then stopped the vehicle again. The officer repeatedly ordered respondent to stop the vehicle and roll the driver's side window down. As the officer approached the vehicle he observed respondent pulling up her pants and buttoning her shirt. The

officer had respondent exit the vehicle. Her eyes were red and watery and her speech was slurred. Respondent told the officer she had just dressed in the car because she had come from swimming at a pool party and decided to drive home without clothes so she would not get her car seats wet. She agreed to complete field sobriety tests, which she failed. Respondent also submitted preliminary alcohol screening tests at the scene, which measured her BAC as 0.151 and 0.156 percent. She was arrested for DUI.

5. On July 17, 2018, in the Superior Court of California, County of San Luis Obispo, Case No. 18F-02731, upon her plea of guilty, respondent was convicted of violating Penal Code section 594, subdivision (b)(1) (vandalism), a misdemeanor.¹ The court placed respondent on three years of supervised probation, ordered her to serve 18 days in jail, participate in a batterer's treatment program, attend 10 substance abuse counseling sessions through her treating physician, and pay related fines and fees.

6. The circumstances that led to respondent's vandalism conviction occurred on March 25, 2018. A San Luis Obispo County sheriff's deputy responded to a suicidal subject call based on respondent's behavior the previous night and early that morning. Respondent was intoxicated and argued with her boyfriend in their home. Respondent's boyfriend left their home and went to his office. Respondent followed him but could not gain access to his office. She returned home and sent him several profane text messages throughout the night. She also sent him video recordings by

¹ The Accusation identifies July 10, 2019, as the date this conviction occurred. The evidence presented established that respondent was convicted July 17, 2018, and convicted July 10, 2019.

text of her holding a knife to her wrist. In one recording, she used the knife to make a small superficial cut on her wrist. Respondent also sent multiple text messages to her boyfriend threatening to burn his personal items. She burned several of her boyfriend's items in a fire pit that night.

7. On August 14, 2018, in the Superior Court of California, County of Santa Barbara, Case No. 18 CR 07533, upon her plea of no contest, respondent was convicted of violating Penal Code section 148, subdivision (a)(1) (resisting, obstructing, or delaying a peace officer), a misdemeanor. As a result of this conviction, respondent was placed on three years of unsupervised probation, and ordered to pay related fines and fees.

8. The circumstances that led to respondent's resisting arrest conviction occurred on August 5, 2018. On that date, deputies of the Santa Barbara County Sheriff's Department responded to a reported fight at a hotel room between respondent and her ex-boyfriend. Respondent was in violation of a criminal protective order served upon her by her ex-boyfriend. Respondent appeared intoxicated and her speech was slurred. She became uncooperative while one of the deputies interviewed a witness. The deputies attempted to restrain respondent in handcuffs and she resisted by pulling her arms away and shouting at the deputies.

9. Respondent did not report any of these convictions to the Department within 30 days as required by Business and Professions Code section 10186.2.

Respondent's Testimony

10. Respondent is 35 years old and has been a licensed real estate salesperson for four years. She is affiliated with Douglas Elliman Real Estate, in

Montecito, California. She has also worked as a salesperson for Keller Williams in Pismo Beach, and Century 21 in San Louis Obispo.

11. Respondent testified that she did not attempt to conceal her convictions from the Department by not reporting them. Instead, she asserted she was unaware she had an obligation to report her convictions to the Department within 30 days, until after she was sentenced for her third conviction in July 2019. She reported her convictions in August 2019, in response to an inquiry from the Department.

12. Respondent testified that her three convictions resulted from her being in a bad relationship with her ex-boyfriend that created "tremendous stress" in her life and damaged her emotional well-being. Her ex-boyfriend is a real estate broker. He was the passenger in the vehicle on the night respondent was arrested for DUI, in June 2017. He is the person respondent fought with at the hotel in August 2018, when respondent was arrested for interfering with a peace officer, and was the victim of respondent's March 2018 acts of vandalism. Respondent testified that her ex-boyfriend was a very successful real estate broker that she "was in awe of." She dated him, worked for him, moved in with him, and their relationship quickly deteriorated.

13. Respondent testified that after she moved in with her boyfriend, he abused alcohol and drugs and began to display addictive behaviors. She began using alcohol and drugs to excess because she felt pressured by him to abuse those substances. She asserted that he was physically abusive to her, but she felt trapped and could not leave him because she had grown dependent on him for financial security.

14. Respondent testified that she drove while under the influence of alcohol in June 2017 because she and her boyfriend had been drinking at a party. Her

boyfriend had driven them to the party. But, because she was "less drunk than him" when the party ended she decided to drive home. She claimed that her vandalism conviction resulted from her reaching her "boiling point," after learning that her boyfriend had been involved with another woman. Respondent was intoxicated and angry at the time. She slapped him and sent him threatening messages after he left their home. Respondent asserted that she lit the fire pit at their home because she was cold. Although she threatened to burn his personal belongings, she testified that she only burned old furniture of no value that came from an abandoned structure on their property. She asserted no restitution was ordered, because what burned was worthless. Respondent also claimed that she did not resist or obstruct any peace officer when she was arrested on August 5, 2018. Instead, she asserted that she attempted to answer her phone while being interviewed by an officer and that she simply pulled her hand away when the officer objected and attempted to grab her phone.

15. After her August 2018 conviction, respondent realized that her convictions had a common thread, as each of her arrests involved alcohol intoxication. She also realized that her relationship with her boyfriend had turned her into a person she did not want to be, so she decided to make a change. She asked her friends and family for forgiveness. She attended 10 court-ordered therapy sessions with Ana Melendez, a licensed clinical social worker. Thereafter, she engaged in weekly therapy sessions with Lily Kao, M.D. Respondent participated in the batterer's treatment program and gained strength hearing stories from other women who had been abused. Respondent also stopped using drugs and temporarily stopped consuming alcohol.

16. Respondent has contributed to her community by helping her mother raise money for two non-profit organizations by selling donated clothes. She occasionally drinks alcohol, and most recently consumed alcohol in "August 2020." In January 2020, she submitted an Interview Information Statement to the Department, which contains information about her criminal history and conduct. On that statement, respondent responded "No" to the question that asks whether her record indicates she has a substance abuse problem. Respondent testified that she answered "No" in response to that question, because she does not believe she meets the criteria for being an alcoholic based on what she learned in her three-month DUI program. Respondent does not currently participate in any substance abuse program and is not currently seeing a therapist.

Respondent's Additional Evidence

17. Respondent produced several witnesses at hearing who all testified to respondent's superior skills as a real estate agent. She also submitted copies of eight letters of support from her former attorney, friends, family, and colleagues. The authors of these letters describe respondent as a kind and caring person and an outstanding and committed real estate salesperson.²

Analysis

18. In California Code of Regulations, title 10, section 2912, the Real Estate Commissioner (Commissioner) has adopted criteria of rehabilitation to be considered

² These letters were received in evidence as administrative hearsay and considered to the extent permitted by Government Code section 11513, subdivision (d).

when reviewing disciplinary action against a real estate salesperson who has been convicted of a crime. The criteria in section 2912 relevant to this matter include: (1) the passage of not less than two years from the most recent criminal conviction; (2) restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee; (3) expungement of the convictions; (4) successful completion or early discharge from probation; (5) 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; (6) payment of fines; (7) 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; (8) significant and conscientious involvement in programs designed to provide social benefits or to ameliorate social problems; and (9) change in attitude from that which existed at the time of the commission of the criminal acts.

19. Respondent presented some evidence of rehabilitation. She has engaged in work to benefit her community. She no longer associates with the individual she asserts caused her to repeatedly engage in unlawful conduct, and she testified to a change in attitude.

20. However, respondent's convictions and the underlying conduct are serious. Shortly after receiving her license, respondent received three convictions in less than two years. All three convictions involved the consumption of alcohol. She drove while drunk. She obstructed a peace officer performing his duties, while drunk. She burned her boyfriend's clothes, while drunk. Respondent's convictions are substantially related to the qualifications, functions or duties of a real estate licensee, because they represent two or more convictions involving the consumption or use of

alcohol. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(11).) These convictions are also substantially related to the qualifications, functions or duties of a real estate licensee, because they demonstrate a pattern of repeated and willful disregard for the law. (*Id.* at (a)(10).) Respondent's DUI conviction is also substantially related to the qualifications, functions or duties of a real estate licensee because driving while under the influence of alcohol is an unlawful act with the threat of doing substantial injury to the person or property of another. (*Id.* at (a)(8).)

21. Respondent's convictions are also fairly recent, and have not been expunged. Her most recent conviction occurred just over two years ago, and she will remain on probation through August 2021. That she has not violated the law since her August 2018 arrest is not significant, given that she is on probation. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099 ["Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a bar applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole."].) Respondent also failed to notify the Department of her convictions within 30 days as required. Her asserted ignorance of this requirement does not excuse her failure to comply. As a licensed real estate salesperson, respondent is expected to remain aware of the requirements associated with the license she holds.

22. Respondent continues to drink and is not in a treatment program. She took no responsibility for her convictions. She attributed her decisions to engage in unlawful acts to her ex-boyfriend, who, in at least one instance, was the victim of her crime. She minimized her choice to drive while drunk by stating that she was "less drunk" than her ex-boyfriend, the intended driver, when she decided to drive. And, she asserted she was convicted of obstructing a peace officer for answering her phone.

This evidence demonstrates that respondent has not fully accepted responsibility for her actions and that there has been no change in her attitude since she engaged in the conduct that led to her convictions. (See, *Singh v. Davi* (2012) 211 Cal.App.4th 141, 149 [describing the criterion based on a change in attitude as "[a]rguably the most important in predicting future conduct"]; see also, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of [one's] actions is an essential step towards rehabilitation".]) Although respondent produced witnesses and supportive letters attesting to her commitment and contributions to the industry, those witnesses and letters provided very little information regarding any insight respondent has gained or steps she has taken to ensure her criminal conduct will not reoccur during challenging times.

23. When all the evidence is considered, particularly respondent's failure to take responsibility for her criminal acts, respondent failed to offer sufficient evidence of rehabilitation to establish that it would be consistent with the public interest, safety and welfare to allow her to retain her license. Consequently, respondent's license must be revoked.

Costs

24. Complainant requested that respondent be ordered to pay costs for the investigative work conducted by Department investigators in the amount of \$1,278.30, and for the enforcement work conducted by their counsel in the amount of \$422.75, for a total of \$1,701.05. Complainant submitted declarations explaining and supporting these costs. From all the evidence, it appears that the time spent by the Department's investigators and counsel was appropriate, given the allegations in the Accusation and legal issues in this matter, and that the amounts charged were

reasonable. Complainant's request for costs is addressed further in the Legal Conclusions below.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 490, subdivision (a), 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), a conviction is deemed substantially related to the qualifications, functions or duties of a real estate licensee 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.

[¶] ... [¶]

(10) Conduct which demonstrates a pattern of repeated and willful disregard of law.

(11) 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. As set forth in Finding 20, each of respondent's convictions are substantially related to the qualifications, functions or duties of a real estate licensee. Consequently, respondent's convictions establish cause to discipline her license pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b).

5. Business and Professions Code section 10186.2, provides, in pertinent part:

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

[REDACTED] ... [REDACTED]

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

[REDACTED] ... [REDACTED]

(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.

6. Respondent failed to report her convictions for DUI, obstructing a peace officer, and vandalism within 30 days after each conviction. Respondent's failure to disclose the convictions within 30 days violated Business and Professions Code section 10186.2, subdivision (a)(2). This violation establishes cause to discipline her license pursuant to Business and Professions Code sections 10186.2, subdivision (b), and 10177, subdivision (d), which authorizes the Department to discipline a licensee if the licensee willfully disregards or violates the Real Estate Law (Bus. & Prof. Code, § 10000, et seq.)

7. As set forth in Findings 18 through 23, when all the relevant rehabilitation criteria in California Code of Regulations, title 10, section 2912, are considered, respondent failed to submit adequate evidence of rehabilitation to demonstrate that it would be consistent with the public interest, safety and welfare to allow her to retain her license. Her license must therefore be revoked.

8. Business and Professions Code section 10106, which permits the award of costs, in relevant part, provides:

(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.

9. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of costs sought pursuant to statutory provisions similar to 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.

10. Complainant seeks \$1,701.05 in investigation and enforcement costs. As set forth in Finding 24, these costs are reasonable, given the allegations and issues in this matter. When all the *Zuckerman* factors are considered, there is no basis for reduction. Consequently, respondent should be ordered to pay these costs in full to the Department.

ORDER

1. All licenses and licensing rights of respondent Brooke Elizabeth Fraser under the Real Estate Law are REVOKED.

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2. Respondent shall pay costs to the Department in the amount of \$1,701.05 within 30 days of the effective date of this decision.

DATE: December 21, 2020

Ed Washington
Ed Washington (Dec 21, 2020 14:22 PST)

ED WASHINGTON

Administrative Law Judge

Office of Administrative Hearings