

FILED

JUL 20 2022

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-3415 FR.
)	
RUDY ALDERETTE,)	OAH No. 2021120808
)	
Respondent.)	

DECISION

The Proposed Decision dated June 9, 2022, 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, but the right to a restricted salesperson license is granted to Respondent.

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.

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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 AUG 10 2022

IT IS SO ORDERED 7.15.22

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

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DEPARTMENT OF REAL ESTATE
By B. Nicholas

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

In the Matter of the Accusation Against:

RUDY ALDERETTE, Respondent

Agency Case No. H-3415 FR

OAH No. 2021120808

CORRECTED PROPOSED DECISION

Jessica Wall, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter via videoconference on April 5, 2022, from Sacramento, California.

Brenda Smith (complainant), Supervising Special Investigator, Department of Real Estate (Department or DRE), State of California, was represented by Jason D. Lazark, Counsel III.

Rudy Alderette (respondent) appeared and represented himself.

Oral and documentary evidence was received, the record closed, and the matter submitted for decision on April 5, 2022. The Administrative Law Judge issued a Proposed Decision on May 5, 2022.

On May 12, 2022, counsel for complainant filed with the Office of Administrative Hearings an application for correction of a mistake or clerical error under Government

Code section 11518.5, on the basis that there is ambiguity in the Proposed Decision regarding the restricted license period. No opposition to the application was filed by respondent. The application is granted.

FACTUAL FINDINGS

Jurisdictional Matters

1. On September 29, 2005, the DRE issued respondent conditional salesperson license number S/01517470 (license) under Business and Professions Code section 10153.4.¹ Said salesperson license expired on March 29, 2007, and was suspended indefinitely for failure to meet the educational requirements of Section 10153.4.² On April 12, 2007, respondent's conditional license was reinstated. At all relevant times thereafter, respondent's license was in full force and effect and will expire on September 27, 2023, unless renewed or revoked.

2. On December 1, 2021, complainant made and served the Accusation on respondent in her official capacity, seeking to revoke his license under sections 490

¹ Hereinafter, all reference is to the Business and Professions Code unless otherwise stated.

² Under Section 10153.4, respondent was required to submit evidence or certification of successful completion of a course in real estate practice and one additional course, other than real estate principles, real estate practice, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal, within 18 months after issuance of his conditional license.

and 10177, subdivisions (b), (d), and (f), based on his alleged: (1) criminal conviction, (2) failure to disclose his felony charge and misdemeanor convictions to the DRE, (3) license discipline by the Department of Insurance (DOI), and (4) failure to disclose the same. Respondent filed a timely notice of defense and the matter was set for an evidentiary hearing under Government Code section 11500 et seq.

Criminal Charges and Convictions

3. On February 1, 2018, the County of Fresno charged respondent in a criminal complaint with violating Vehicle Code section 20001, subdivision (b)(2) (Hit-and-Run Vehicle Accident Causing Death), a felony, and Penal Code section 192, subdivision (c)(2) (Vehicular Manslaughter), a misdemeanor. On November 25, 2019, the Fresno County District Attorney filed a subsequent information, charging respondent with the same offenses.

4. On September 17, 2020, upon his plea of nolo contendere, respondent was convicted in Fresno County Superior Court, Case Number F18900846, of the two offenses, as misdemeanors. The court suspended imposition of sentencing and placed respondent on two years of informal probation. Additionally, the court ordered respondent to complete 180 hours of community service within two years and obey all laws.

5. The underlying circumstances surrounding the charges and convictions occurred on January 19, 2018, as respondent drove a Fresno Area Express (FAX) bus for the City of Fresno. At 6:04 a.m., he made a left turn, struck a pedestrian in the crosswalk, and continued driving. About four minutes later, the Fresno Police Department received several 911 calls regarding a person lying in the road. Paramedics arrived at 6:19 a.m. and declared the victim to be deceased. A subsequent

autopsy concluded the victim died of blunt force injuries to his head, chest, and abdomen from the bus collision.

6. After hitting the victim, respondent continued driving his route for another three hours. At 9:11 a.m., respondent learned that a pedestrian died at an intersection after being hit by a bus and realized he may have been involved. He stopped the bus and was arrested shortly thereafter. He agreed to provide a statement to the officer and also provided blood and urine samples, which were negative for drugs and alcohol.

Department of Insurance License Discipline

7. On April 12, 2021, DOI Background Analyst Ryan Mullenix filed an accusation (DOI Accusation) against respondent's accident and health agent and life-only agent licenses (insurance licenses). In the DOI Accusation, the DOI sought to discipline respondent's insurance licenses based on the public interest (Ins. Code, § 1668, subd. (b).) and respondent's failure to perform duties under the Insurance Code (Ins. Code, § 1668, subd. (l).). Specifically, the DOI Accusation alleged respondent failed to report his felony charges and misdemeanor convictions, detailed in Factual Findings 3 through 6, to the DOI within 30 days.

8. Respondent did not file a notice of defense or request an administrative hearing in response to the DOI Accusation. The DOI issued a Default Decision and Order of Revocation of respondent's insurance licenses on June 2, 2021. On July 19, 2021, respondent filed a Special Notice of Defense in which he acknowledged the facts alleged in the DOI Accusation were true, requested the Insurance Commissioner revoke his unrestricted insurance licenses, issue him restricted insurance licenses, and

order him to pay costs and a fine. On July 28, 2021, the Insurance Commissioner adopted the discipline set forth in the Special Notice of Defense.

Failure to Report

9. Respondent did not notify the DRE within 30 days of his felony charge or misdemeanor convictions. On September 27, 2019, respondent disclosed the pending felony and misdemeanor charges in his Salesperson Renewal Application. On or around November 15, 2020, he submitted an Interview Information Statement to the DRE in which he detailed his charges, convictions, and sentencing requirements. On March 24, 2021, DRE Special Investigator Yolanda Chapman spoke with respondent about the circumstances that led to his convictions. During the call, respondent described how the rain and darkness on the morning of the accident impeded visibility. He remembered feeling a bump in the road, but he did not see anything when he checked his rearview mirrors. Respondent was unaware that the bus had hit a person until he later learned that a pedestrian had been killed by a bus.

10. Respondent did not notify the DRE within 30 days of the Insurance Accusation or the adoption of the Special Notice of Defense. As of the date complainant filed the Accusation, respondent still had not reported his DOI discipline.

Aggravation, Mitigation, and Rehabilitation

11. Respondent is 73 years old. He is divorced and has four adult children and two grandchildren, with whom he is close. Respondent was a bus driver for the City of Fresno for 19 years and retired shortly after the accident. He collects a pension and lives entirely off his retirement income. His regular expenses make up about two-thirds of his fixed income.

12. On the morning of the accident, respondent recalled going to work and driving his route as usual. At the intersection where the accident occurred, he did not see anyone in the crosswalk as he turned. He felt a bump as the rear tire went over an object. Trash was common in the area, so respondent assumed the bus had driven over a bag or box left in the road. He checked his mirrors but could not see what caused the bump, so he continued his route. While stopped, respondent exited and checked the bus. He did not see any scratches, dents, or signs of damage. As he drove his route, he repeatedly passed the scene of the accident. Respondent observed police had closed the road but did not find this unusual because it was a high crime area. He was unaware that the bus had hit a person until he spoke with a FAX employee three hours after the collision. When he learned he may have struck someone, he contacted his supervisors and cooperated with the police investigation.

13. Respondent did not intentionally fail to report his arrest, convictions, and license discipline. He was unaware he needed to notify the DRE about the felony complaint and information, or about the DOI discipline. Respondent recalled sending the DRE and the DOI copies of the minute order from his sentencing once convicted; however, he could not find the certified mail receipts. In September 2019, he disclosed the convictions on his DRE license renewal form. Once informed of the notice requirements, he timely completed and submitted the requested forms.

14. Respondent feels remorseful for the accident and his failure to prevent it. Had he known he hit someone, he would have immediately stopped. He thinks about the accident every day and will continue to for the rest of his life. Respondent has complied with the terms of his criminal probation, although he has yet to begin serving his 180 hours of community service. He initially hoped to volunteer at a thrift store for veterans, but that opportunity fell through. He now intends to volunteer at

Habitat for Humanity and complete his hours in two months. Respondent will remain on criminal probation until September 2022.

15. After getting his salespersons license in 2005, respondent worked in real estate periodically. He began by buying and selling residential properties, but his work slowed after the 2008 recession. In the years that followed, respondent would occasionally use his license to perform transactions for friends. He estimates having closed about 11 transactions in total. Prior to the accident, respondent also sold insurance part-time. He hopes to use his licenses more after he resolves this Accusation.

Analysis

16. In January 2018, respondent was involved in a tragic accident in which he hit and killed a pedestrian while driving a city bus. However, respondent's convictions do not meet the DRE's criteria for substantially related offenses. (See Legal Conclusion 1, below.) There is no evidence that respondent lied or misrepresented his conduct to achieve an end. He agreed to speak with police, provided blood and urine samples, and cooperated in the investigation. Similarly, it is not apparent that respondent possessed any intent to financially or economically benefit or, for that matter, any "intent or threat of doing substantial injury to the person or property of another." The convictions stem from a singular accident, and thus there is not "a pattern of repeated and willful disregard of law." Accordingly, California Code of Regulations, title 10, section 2910, is inapposite.

17. Respondent's failure to timely report the felony complaint and information, misdemeanor convictions, and the DOI discipline is beyond dispute. The DRE has no record that respondent disclosed his criminal charges until his license

renewal on September 27, 2019, which falls outside of the acceptable notification period. Likewise, the DRE has no record that respondent disclosed his convictions and DOI license discipline within 30 days of each action, which provide cause to discipline his license. Respondent failed to provide any evidence to dispute these allegations.

18. The DOI also disciplined respondent for his failure to comply with timely notice requirements for his felony charge and misdemeanor convictions. Accordingly, these acts also constitute cause to discipline respondent's insurance license.

REHABILITATION

19. The DRE has developed guidelines for evaluating the rehabilitation of a licensee, which are set forth in California Code of Regulations, title 10, section 2912. Relevant criteria include: the passage of not less than two years from the most recent substantially related conviction or underlying act, payment of fines/restitution, expungement of the conviction, completion of or early discharge from probation, correction of business practices, new and different social relationships, stability of family life and fulfillment of parental responsibilities, enrollment in educational or training courses, significant and conscientious involvement in community programs, and any change in attitude from that which existed at the time of the incident in question. (Cal. Code. Regs., tit. 10, § 2912, subds. (a–m).)

20. Respondent was convicted 18 months ago. His probation will not end until September 2022. He has not begun his community service after his preferred opportunity became unavailable. Nevertheless, respondent no longer drives a bus and maintains stable family relationships. He feels sincere regret for the accident and the victim's death.

21. The purpose of this proceeding is not to punish respondent for his criminal conduct, but to ensure that real estate salespersons will be worthy of the fiduciary responsibilities they bear. (*Donaldson v. Dept. of Real Estate* (2005) 134 Cal.App.4th 948, 958, fn. 10; *Harrington v. Dept. of Real Estate* (1989) 214 Cal.App.3d 394, 402.) Given the foregoing, outright revocation of respondent's salesperson license is unnecessary to protect the public interest. Instead, a two-year period of monitoring through a restricted license is sufficient to address any concerns about respondent's misconduct.

Request for Costs

22. Under section 10106, the DRE is authorized to seek reimbursement of investigation and enforcement costs at hearing. Here, complainant incurred \$729.60 in enforcement costs, itemized as 7.6 hours of attorney time. The enforcement costs are supported by a Declaration Regarding Enforcement Costs by Jason Lazark, dated March 29, 2022. Complainant also incurred \$2,138.50 in investigation costs, itemized as 24 hours by special investigators and 2.5 hours by supervising special investigators. The investigation costs are supported by a Certified Statement of Investigation Costs by complainant, dated December 17, 2021. Both the enforcement and investigation hours are documented in a table that described the general tasks performed, the time spent on each task, and the method of calculating the costs. The requested costs of \$2,899.10 are reasonable in light of the issues in this case.

23. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether the costs should be assessed in the particular circumstances of each case. These factors include whether the licensee has succeeded at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his position,

whether the licensee has raised a colorable challenge to the proposed discipline, the licensee's financial ability to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

24. Here, respondent succeeded in getting one charge dismissed but did not raise a colorable challenge to the other three causes for discipline or the breadth and depth of the Board's investigation. Respondent is retired and lives on a fixed income. Nonetheless, because respondent's conduct violated the Real Estate Law, he should be responsible for the payment of some costs to the DRE. In this case, respondent shall pay \$2,500 to the DRE for investigation and enforcement costs and the DRE shall assist respondent in creating a payment plan.

LEGAL CONCLUSIONS

Applicable Standard of Review

1. Sections 490, subdivision (a) and 10177, subdivision (b), authorize the suspension or revocation of a license if the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the licensed business or profession. California Code of Regulations, title 10, section 2910, sets forth criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. A crime is substantially related if it involves:

[¶] . . . [¶]

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

[¶] . . . [¶]

(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.

[¶] . . . [¶]

(Cal. Code Regs., tit. 10, § 2910, subds. (a)(4), (a)(8), (a)(10).)³

2. Section 10177, subdivision (d), authorizes the suspension or revocation of a license if the licensee willfully disregards or violates the Real Estate Law or rules and regulations of the Commissioner. The DRE may take disciplinary action against a licensee for failure to report the following within 30 days to the DRE:

(A) The bringing of a criminal complaint, information, or indictment 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.

³ At hearing, complainant's counsel argued these specific bases for why respondent's convictions had a substantial relationship to the qualifications, functions or duties of a real estate licensee.

(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.

(§ 10186.2, subd. (a)(1).)

3. Section 10177, subdivision (f), authorizes the suspension or revocation of a real estate license when another state licensing agency imposes discipline by for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license.

Cause for Discipline

4. As set forth in Factual Findings 4 and 16, respondent's convictions and the underlying acts are not substantially related to the qualifications, functions, or duties of a licensed real estate salesperson under the criteria in California Code of Regulations, title 10, section 2910. Cause for revocation of respondent's license does not exist under sections 490, subdivision (a), and 10177, subdivision (b).

5. As set forth in Factual Findings 3 and 4, respondent failed to report his 2018 felony complaint, 2019 felony information, and 2020 misdemeanor convictions to the DRE within 30 days. Cause for discipline of respondent's license exists under sections 10186.2, subdivisions (a)(1)(A) and (B), and 10177, subdivision (d).

6. As set forth in Factual Findings 9 and 10, respondent was subject to discipline by the DOI for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license. Cause exists for disciplinary action under section 10177, subdivision (f).

7. As set forth in Factual Finding 10, respondent failed to report his 2021 DOI discipline to the DRE within 30 days. Cause for discipline of respondent's license exists under sections 10186.2, subdivision (a)(1)(C), and 10177, subdivision (d).

Costs

8. Under section 10106, the DRE may recover reasonable costs of investigation and enforcement of a case. As discussed in Factual Findings 22 through 24, respondent shall be ordered to pay \$2,500 in investigation and enforcement costs.

Conclusion

9. Given all of the facts and circumstances, it would not be contrary to the public interest to allow respondent to transact business as a real estate salesperson, with appropriate restrictions and conditions.

ORDER

All licenses and licensing rights of respondent Rudy Alderette under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 if respondent makes application therefor and pays to the DRE 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 and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6:

1. Respondent shall pay costs to the DRE in the amount of \$2,500 within 30 days after the effective date of this decision. The DRE may establish a reasonable plan for the payment of these costs.

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 two years have elapsed from the effective date of this Decision.

5. Respondent shall submit with any application for 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 DRE 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, 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 the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATE: June 9, 2022

Jessica Wall

Jessica Wall (Jun 9, 2022 15:04 PDT)

JESSICA WALL

Administrative Law Judge

Office of Administrative Hearings