

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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**FILED**

FEB 4 2013

DEPARTMENT OF REAL ESTATE

By L. Frost

In the Matter of the Accusation of

CHAD ELLIOTT URIE,

Respondent.

)  
) NO. H-4362 SD

)  
) OAH NO. 2012080101

DECISION

The Proposed Decision dated January 4, 2013, 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 license is granted to Respondent.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 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 25 2013.

IT IS SO ORDERED 1/30/13

Real Estate Commissioner



By AWET P. KIDANE  
Chief Deputy Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CHAD ELLIOTT URIE,

Respondent.

Case No. H 4362 SD

OAH No. 2012080101

**PROPOSED DECISION**

This matter came on regularly for hearing on November 13, 27 and December 4, 2012, before Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, in San Diego, California.

Real Estate Counsel Jason D. Lazark represented complainant, Veronica Kilpatrick, Deputy Real Estate Commissioner, Department of Real Estate (department).

Attorney Blake R. Jones, of Gordon & Rees, LLP, represented respondent Chad Elliott Urie (respondent) who was present throughout the proceedings.

Oral and documentary evidence was presented. The record remained open until December 5, 2012, for the submission of additional evidence at which time the record was closed and the matter was submitted.

**FACTUAL FINDINGS**

*Jurisdictional Matters*

1. On June 28, 1999, the department issued a real estate salesperson license to respondent. The license was revoked and a restricted salesperson license issued on April 6, 2005 based upon convictions sustained by respondent in 2002 (driving under the influence of alcohol) and 1999 (conspiracy to distribute cocaine). The restricted salesperson license was suspended indefinitely on July 2, 2012, in response to a conviction sustained by respondent in 2011 (hit and run). The restricted salesperson license will expire on July 2, 2013, unless revoked or renewed.

2. On May 3, 2012, the Accusation in Case No. H 4362 SD was signed by Veronica Kilpatrick in her official capacity as Deputy Real Estate Commissioner of the

department. The Accusation and other required jurisdictional documents were served upon respondent. The Accusation seeks to revoke respondent's license based upon his conviction for violating Vehicle Code section 20002(a), hit and run, a misdemeanor. The Accusation also seeks to recover the costs of the investigation and prosecution of the Accusation.

3. On July 23, 2012, a Notice of Defense on Accusation was executed on behalf of respondent.

*1999 Conviction for Conspiracy to Distribute Cocaine*

4. On October 4, 1999, in the United States District Court for the Western District of Washington State, in case number CR99-414WD, respondent pled guilty to, and was convicted of, one felony count of conspiracy to distribute cocaine. As a result of his conviction, respondent was placed on five years of formal probation with certain terms and conditions, including that he serve one month in custody (weekend incarceration was permitted if available) and five months home confinement with electronic monitoring. Respondent was further ordered to perform 100 hours of community service and pay fines and fees of approximately \$6,100. Formal probation terminated in October 2004.

*2002 Conviction for Driving Under the Influence of Alcohol*

5. On January 23, 2002, in the San Diego County Superior Court, in case number M848510, respondent pled guilty to, and was convicted of, one misdemeanor count of driving under the influence of alcohol or drugs. In exchange for his plea, an additional misdemeanor count was dismissed. As a result of his conviction, respondent was placed on five years of informal probation with certain terms and conditions, including that he serve 180 days in custody; custody was stayed pending successful completion of probation. Respondent was further ordered to perform three days in the Public Work Program with credit for two days, report to the Substance Abuse Assessment Unit (SAAU) to register for and complete First Conviction and MADD programs, and pay fines and fees of approximately \$1,400. Further, respondent's driver's license was restricted for 90 days. Probation was terminated in January, 2007.

6. On March 7, 2002, respondent was found to be in violation of probation because he failed to report to the SAAU as required by the terms and conditions of his probation. Probation was formally revoked and reinstated on the same terms and conditions, and respondent was required to report to the SAAU by March 21, 2002.

7. On July 31, 2002, respondent's probation was modified and he was required to enroll in the First Conviction Program by August 6, 2002, and complete three months in that program. Probation was continued on the same terms and conditions as originally ordered. Proof of completion was received by the court on January 20, 2004.

*2011 Conviction for Leaving the Scene of an Accident*

8. On February 3, 2010, San Diego Police responded to a call of a vehicular accident with possible injury. The investigating officer's report was received under *Lake v. Reed* (1997) 16 Cal. 4th 448. When police arrived at the scene of the accident, respondent's car was overturned on an embankment. Respondent was not at the scene. Respondent's passenger, Shira Aspesi Brockett (Brockett), was taken from the scene to the hospital.

9. On January 19, 2011, in the San Diego County Superior Court, in case number M111668, respondent admitted that he "failed to remain at the scene of a vehicle accident." Respondent pled guilty to, and was convicted of, one misdemeanor count of leaving the scene of an accident that resulted in property damage in violation of Vehicle Code section 20002, subdivision (a). In exchange for his plea, an additional misdemeanor count was dismissed. As a result of his conviction, respondent was placed on three years of informal probation with certain terms and conditions, including that he perform seven days in the Public Service Program, and pay fines and fees of approximately \$1,000. Probation is scheduled to terminate in January, 2014. On July 30, 2012, respondent paid \$1,055 to fulfill his obligation to pay fines and restitution.

10. On December 20, 2011, respondent's probation was revoked because he failed to complete one day of service in the Public Service Program. On March 26, 2012, probation was reinstated and continued on the same terms and conditions previously ordered. Respondent was ordered to complete one day in the Public Service Program by April 25, 2012. Respondent has complied with his obligation.

#### *Facts Concerning the Accident That Occurred on February 3, 2010*

##### The Accident

11. The accident that resulted in respondent's conviction in 2011 occurred on February 3, 2010. Respondent and Brockett had dinner together in La Jolla; Brockett wanted to talk to Urie about the real estate business as her father was exploring opportunities in that field. Brockett had wine at dinner and felt she should not drive home. Brockett and respondent assert that respondent had not been drinking at dinner. Respondent agreed to drive Brockett home.

Brockett lived on a portion of Chalcedony Street in Pacific Beach that was not well lighted and came to a dead end just beyond Brockett's home. The area is posted and a low retaining wall of approximately twelve inches marks the dead end. A private driveway extends from the dead end portion of Chalcedony Street down an embankment to a residence below. Respondent admitted that he was driving too fast and did not realize that the street came to a dead end. Respondent drove through the dead end; his car rolled down the embankment and landed upside down on its roof.

Portions of concrete block retaining walls belonging to a resident whose home was below Chalcedony Street were damaged in the accident. Additionally, two trees and a portion of a fence were damaged from either contact with the vehicle or loose concrete blocks that were dislodged and thrown by the force of the vehicle as it came over the

embankment. A roof rafter at one home sustained minimal damage where a television cable line was pulled off.

Two neighbors, Jason Venneri (Venneri) and Daniel Kuczon (Kuczon), who heard the accident and arrived immediately on the scene, testified at hearing. Venneri heard a loud "bang" and ran to investigate. When he heard the sound, he knew what had likely happened because there were five other occasions when cars had mistakenly come down his driveway from Chalcedony Street and hit his retaining wall. Respondent's accident was the most serious; most cars get hung up on the lip of the retaining wall at the top of the hill. Respondent's vehicle was the first he is aware of to go down the hill.

Venneri opened the rear passenger door of respondent's car. Respondent was free from his seat belt, but Brockett was still held by hers. Venneri told respondent and Brockett that help was on the way and that everything will be all right. Respondent was unable to open the driver's side door so he climbed under Brockett, still hanging in the passenger seat, to get out of the passenger side door past Venneri. Venneri had some experience with first aid and attempted to keep Brockett in position until the emergency medical team arrived. He stated that Brockett was confused, upset, screaming and frantic to get out. Venneri first described respondent as "frantic from the crash," but then stated he seemed calm. After Urie left the vehicle, Venneri focused on Brockett.

Kuczon heard the crash and felt a "thud" that shook his house. He went outside to investigate and watched from the top of the hill where he saw Venneri attending to respondent and Brockett. He saw Venneri help a male out of the car and saw the male walk down the street and sit on a curb. Kuczon saw Venneri's wife go to the man sitting on the curb. He did not see respondent after he saw him sitting on the curb. Kuczon filed an insurance claim and was paid \$3,500 for the damage to his property.

Kuczon was aware of other accidents occurring at or near the dead end of Chalcedony Street. In one case a vehicle went off a driveway and into Kuczon's fence, in another his retaining wall was scraped and some blocks at the top of a pillar were knocked off. He stated that even the homeowners at the top of the hill had gotten their wheels over the low retaining wall and needed to call a tow truck to get them off the wall. Kuczon stated that most problems in the dead end occur at night when people don't know where they are. He described navigating the dead end as "tricky driving down there."

#### Conduct After the Accident

12. Respondent testified that he suffered a severe concussion, bruising and a cut on his left arm from the accident. He indicated that he had pain in his head, accompanied by swelling at the top, for several weeks following the accident. Respondent recalled hitting the brakes on the car, and then nothing until he woke up flat on his back on wet grass in a dark area with his head throbbing. He did not recall exiting his vehicle or speaking to any people that had gathered after the accident. He stated that he walked back to where he thought he had come from, but no one was there and his vehicle was gone. He then started to think about Brockett and "freaked out." He did not have his cell phone, and he had not made it to

Brockett's home prior to the accident, so he did not know which house she lived in and did not know how to contact her.

Respondent stated that he walked in the direction of Pacific Beach and eventually came to a Von's supermarket. He attempted to telephone his wife from a pay phone, but she did not answer his call. Respondent was able to hail a cab and get home.

When he arrived home, respondent woke his wife and told her what he recalled had happened. They tried to reach Brockett and left several messages for her on her cell phone. Respondent's wife cleaned blood and glass from respondent and he fell asleep on the couch. When respondent woke, it was daylight and he felt "miserable;" his chest and head hurt. Respondent telephoned his doctor for an appointment. When he was able to remotely check messages on his cell phone, he found messages from a detective who wanted to talk to him and from Brockett's mother saying Brockett was all right but shaken. Respondent telephoned criminal attorney Thomas Warwick, who said he would communicate with the police department and requested that respondent come to his office that day. On the way to his appointment with Warwick, respondent stopped at his office where Lisa Carroll (Carroll), Brokerage Operations Manager for Jones Lang LaSalle, "realized immediately that something was wrong." When Carroll looked closer she "noticed that [respondent's] eyes were shaking back and forth." She suspected respondent could have a concussion and urged him to see a doctor. Later that day, respondent saw his physician; he was diagnosed with a concussion and was advised not to go to work for a couple of days.

#### *Prior Discipline by the Department of Real Estate*

13. On July 20, 2004, an Accusation in Case No. H - 3047 SD was signed by J. Chris Graves in his official capacity as Deputy Real Estate Commissioner of the department. The Accusation sought to suspend or revoke respondent's license based upon his 2002 conviction for driving under the influence of alcohol or drugs, as described above. The Accusation listed respondent's 1999 conviction for conspiracy to distribute cocaine as a matter in aggravation.

14. On February 14, 2005, respondent signed a Stipulation and Agreement (Stipulation) to resolve the issues raised by the Accusation. The Stipulation was adopted as the Decision of the Real Estate Commissioner with an effective date of April 6, 2005. The Commissioner's Order based on the Stipulation revoked respondent's real estate salesperson's license but provided for the issuance of a restricted license upon respondent's application and payment of fees. Under the terms of the Order, respondent was eligible to apply for an unrestricted license two years after the effective date of the Commissioner's Decision. The Order further provided that respondent's restricted license could be suspended prior to a hearing if respondent were convicted of another crime that was substantially related to his fitness or capacity to act as a real estate licensee.

15. Although eligible as of April 5, 2007, to apply for an unrestricted license, respondent did not do so and remained on a restricted license when he was convicted of leaving the scene of an accident in January 2011.

16. On July 2, 2012, in accordance with the terms of the 2005 Decision and Order, the department issued an order that immediately suspended respondent's restricted real estate salesperson's license.

### *Evidence in Mitigation and of Rehabilitation*

#### Background

17. Respondent is a thirty-seven year-old, married, father of four. He is an executive vice-president in the firm Jones Lang LaSalle. He is the senior member of a nine person team specializing in leased properties, with a focus on technology based businesses.

Respondent had an early interest in real estate derived from his father's involvement in the real estate business. He has enjoyed a successful career in real estate, achieving ambitious goals and receiving accolades and awards for maintaining high production and standards.

Respondent stated that the top priorities in his life are "family, God, and work." He asserted that until his license was suspended, he did not completely appreciate how important his work was to him. Respondent stated that his best friend since high school was his father who told him to "stay humble and trust God." He relies heavily upon his father and family for emotional support.

18. Respondent stated that he never had a client complain about work he did for them. He felt his strongest attributes include that he is truthful, has good character, and always makes decisions with the best interest of his client in mind. Respondent spoke of potential business deals in which he advised clients to take an action that was not advantageous to respondent because it was the right decision for the clients. Respondent advised his clients that his license was suspended and disclosed the three convictions that led to the suspension. Respondent stated that his clients continue to support him.

#### 1998 to 2002

19. In 1998, respondent was 23 years old, living in San Diego with two roommates, had attended college for five years on a basketball scholarship, and was supported financially by his parents. When respondent was not focusing on his studies, his father came to San Diego and told respondent he would no longer support him. Respondent's roommates were involved in illegal drug sales, and when respondent's money ran out, he agreed to deliver a kilo of cocaine to Seattle, Washington, in exchange for money. Respondent asserted that this was the only occasion that he participated in the distribution of cocaine, however, he admitted that on one other occasion he was traveling with his roommates and was aware that they were dealing drugs on the trip. Respondent stated the drugs were not transported in the vehicle in which respondent was driving and he denied involvement with those transactions other than he knew they were happening.

20. A year later, in 1999, respondent was employed with Grubb & Ellis and was married with one child when he was charged with conspiracy to distribute cocaine stemming from the 1998 transaction. Respondent admitted his participation in the cocaine transaction and expressed remorse and regret at having been involved in this activity. When arrested, respondent agreed to cooperate with the authorities.

21. In 1999, respondent began attending church with his wife. His active involvement in church activities continued through the present. In 2000, Respondent was Grubb & Ellis Rookie of the Year for San Diego County and a runner up for National Rookie of the Year.

22. In 2001, Respondent went to work for Colliers International, where he continued to thrive as a top producer. In September of 2001, respondent planned to attend a trade event. When the attacks of September 11 occurred, the event was rescheduled to November. Respondent testified that because of the events of September 11 - Colliers International lost employees in the attack - the event changed focus and was very emotional. Respondent and others gathered at the hotel where the key speaker at the event was staying, and respondent admits he had too much to drink. Respondent stated that he was pulled over by police as soon as he left the valet parking at the hotel and charged with driving under the influence of alcohol. Respondent stated that he learned a lot from being arrested and particularly from attending the MADD program where a father talked about losing an elementary age child to a drunk driver. Respondent asserted that he never forgot the lessons learned and as a result he made a pledge to his wife, parents and work colleagues that he would never drink and drive again. Respondent stated that he has honored that pledge.

#### 2003 to present

23. From 2003 to 2010, respondent continued to prosper and accumulate awards for high production and standards. In 2005, he received the Manager's Choice Award for maintaining high ethical standards, and possessing positive attitude and character. In 2007, at thirty years old, he was one of two brokers from the United States to be elected to Collier's International Global Leadership Team.

24. In 2009, respondent went to work for Jones Lang LaSalle. Respondent advised his new company of his prior convictions

25. In 2003, respondent sat on the board of a charity providing educational services to homeless children. He continued to be involved in a variety of charitable organizations up to and including the time of the hearing.

#### Character References at Trial

26. Andre Koren (Koren), has known respondent since they were young children and considers respondent his best friend. Koren is the president and owner of a private real estate investment company, specializing in multifamily properties throughout the United States. He and respondent speak two to three times a week and spend holidays and special



occasions together with their families. Koren stated that respondent comes from a strong Christian family who treated him and his brother as if they were their own. Koren testified that respondent was already on his way to becoming a strong family man and "real estate superstar" when he was charged with conspiracy to distribute cocaine. Koren stated that respondent had previously distanced himself from the friends he had before, and was devoting his time to his wife and work. Koren described respondent as "one of the best dads I ever saw." In the past ten years, Koren has never seen respondent drink and drive. Koren was aware that respondent had a conviction in 2002 for driving under the influence of alcohol and was aware of the circumstances surrounding the automobile accident.

27. Gordon Janko (Janko) is an entrepreneur who has known respondent for ten years. For the past five years, Janko has retained respondent to negotiate leased space for his businesses. He observed that respondent "gives all his best at all he does." Janko considers respondent a social friend, having participated in social events with him approximately one or two times a month. Janko has seen respondent drink alcohol, but never observed respondent to drink to excess and/or to drink and drive. Although Janko was aware that the hearing was related to discipline of respondent's license, he was not familiar with respondent's convictions in 1999 and 2002 or that respondent was convicted of hit and run in 2011, until prior to the hearing when he was provided with a timeline of events in respondent's life. At the hearing, Janko was not aware that the basis for respondent's conviction in 1999 was that he transported a kilo of cocaine to Seattle.

28. Jay Alexander (Alexander) is the National Director of Jones Lang LaSalle. Alexander has worked with respondent for approximately ten years, first at Colliers and recently at Jones Lang LaSalle. Alexander is familiar with respondent's work as a bio-medical real estate expert. Alexander stated that to function in this specialized area, the real estate licensee must have a high level of knowledge and exercise focused attention to detail. He stated that respondent is one of a handful of experts in the bio-medical leasing market and that he is in the top three such experts in San Diego, and probably Southern California.

Alexander testified that respondent listens well and provides high level advice to clients. Alexander never questioned respondent's integrity or ethics and has never heard another broker make negative comments about him or question what he was doing. Alexander stated that he would not risk his reputation and established strategic partnerships by supporting respondent if he had any question about respondent's honesty, integrity, commitment to hard work, or professionalism. Alexander is aware of advice given by respondent to clients that was contrary to what would have been in respondent's financial interest because it was the right advice for the client.

Alexander observed that respondent drinks responsibly and that he had never seen him act inappropriately. Alexander is aware that if respondent has had more than one drink he will not drive, but will call a taxi.

Alexander was recently made aware of respondent's 1999 conviction, but was aware of the 2002 DUI conviction for some time. He was also aware of the hit and run conviction in 2011.

Alexander is a past president of Society of Industrial and Office Realtors (SIOR) and is on the local board of the National Association of Industrial and Office Properties (NAIOP) and has "sworn to follow the highest ethical standards in our industry as required by both of those groups." With that sworn duty in mind, Alexander supported respondent and offered to monitor any restrictions or requirements should respondent's license be reinstated.

29. Bringham Black (Black), a commercial real estate investor/manager who is active in SIOR and NAIOP testified on behalf of respondent. He has known respondent for twelve years and worked with him professionally approximately two dozen times. He described respondent as maintaining a professional demeanor with all business colleagues, including principals and other brokers. Black stated that respondent has extremely high business ethics, enjoys an excellent reputation in the industry, and is a creative broker who can navigate the nuances of how to make a deal work. Black learned of respondent's criminal history within weeks of the hearing, however, he was not familiar with all of the details concerning the convictions.

#### Expert Testimony

30. Dr. James Rosenberg, M.D. (Rosenberg) testified as a psychiatric medical expert on respondent's behalf. Dr. Rosenberg's qualifications to testify as an expert were not challenged. Rosenberg conducted a psychiatric examination of respondent on October 30, 2012. The examination lasted for five hours and included the administration of the Minnesota Multiphasic Personality Inventory II (MMPI II). Rosenberg reviewed numerous documents, declarations and records, interviewed respondent and considered the results of the MMPI II in reaching certain expert opinions. Among his expert opinions, Rosenberg opined that (1) respondent suffered a mild traumatic brain injury (TBI) in the 2010 automobile accident; (2) as a result of the TBI, respondent experienced post concussive syndrome at impact that lasted for twenty-four to seventy two hours; and (3) respondent's criminal history did not constitute a pattern of an anti-social psychiatric disorder.

Rosenberg found respondent's reported lack of memory, wandering, and loss of consciousness consistent with a TBI. Rosenberg also found that respondent's disruption in concentration and memory, as demonstrated by his failure to think of retrieving his cell phone, his unawareness of whether the air bags in the vehicle activated, the lack of reason or sense for a person who is otherwise a caring person to wander away rather than assist Brockett, and his confusion, fatigue and headaches after the accident, were all consistent with an acute disruption of brain function and indicative of post concussive syndrome. Significantly, Rosenberg found that the observation by Carroll that respondent's eyeballs were jumping was a characteristic of concussion that could not be manufactured. Rosenberg also considered that Brockett's inability to recollect the details of the accident was consistent with respondent's cognitive disruption and made psychiatric sense. Finally, Rosenberg found no evidence of manipulation or intentional disorientation as respondent denied symptoms that could have contributed to his claim of trauma.

#### Character References - letters

Respondent submitted several character reference letters attesting to his good character, high ethical standards and strong sense of integrity. Comments from the character references included:

31. From respondent's father, D. Scott Urie, dated September 2, 2012,

Chad and I routinely talk about life and work events. . . . Three years ago, Chad called me and told me that the primary competitor of his best client called him with an offer that was difficult to refuse. This competitor had offered Chad a seven figure, paid up front, consulting contract plus additional project listings if Chad agreed to work for them. The condition was that Chad could no longer work with his existing client for the next five (5) years. . . . In the middle of our discussion Chad said "I am not doing it. . . . It's just not right. I know that they have made me this offer not only because they want me to be their agent but they also want to cripple their competition which is my client. This is the same client that has stuck by my side for the past three years. There is no way I can walk in their office and look them in the eye and say we are no longer going to work together because I am going to work for your competitor." . . . [Chad] understands that in the long run reputation matters.

[Prior to his 1999 court date] I asked him if he was "ok." He said "you know Dad. I know things are going to be OK. I am just so happy to have my life refocused." I can attest that Chad has refocused his life and has a love for God.

32. From Steven Goodman, dated August 12, 2012, relating to first meeting respondent in 2002,

Chad never tried to impress me and never tried to present himself as anything different from what he was. He never falsely projected himself as a market authority, a construction specialist, a leasing master or any other type of seasoned expert. Similarly, unlike most brokers I have known, Chad also never presented false expectations about the likely performance of a project's outcome. It is an understatement to say that his sense of honesty, forthrightness and genuineness was completely opposite from what I experience from most brokers . . .

. . . I am pleased to report that Chad always acted in my best interest even when at times it was in direct conflict with what was in his best interest. Few people can earnestly say they ever once, let alone consistently, experienced such fiduciary behavior from their broker.

¶ . . . . ¶

I am an old fashioned believer in the importance of integrity and character. Without question, Chad is endowed with both of these qualities, and he has manifested them in ways big and small throughout our 10 years of work together. . . .

Chad openly shared with me the regrettable events that occurred recently and when he was at college that in combination led to this suspension. . . .

33. From Grant Schoneman, Vice President, Jones Lang LaSalle, dated August 7, 2012,

Early on in my career I realized the importance of reputation in the brokerage industry. Integrity, honesty, good moral character and a dedication to professionalism are all qualities displayed by many of the top brokers. Chad embodies all of these characteristics and has as good of a reputation and (sic) anyone I know in the industry.

34. From Scot Ginsburg, Managing Director, Jones Lang LaSalle, dated August 14, 2012,

. . . .[Chad's] character is selfless, generous and [he] conducts himself with the utmost integrity.

¶ . . . . ¶

Chad has no alcohol or drug problems and is involved in charitable activities from coaching his kids' football to community services at church. His support structure runs very deep in the personal and professional community.

#### *Costs*

35. The department filed a Statement of Costs pursuant to Business and Professions Code section 10106 seeking recovery of \$2,272.40 for costs of the investigation and prosecution of the instant matter. These costs are reasonable.

### LEGAL CONCLUSIONS

#### *Applicable Statutory and Regulatory Provisions*

1. The suspension or revocation of a professional license must be based upon conduct proven by clear and convincing evidence. (*Grubb Co., Inc. v. Department of Real Estate*, (2011) 194 Cal. App. 4th 1494.)

2. Business and Professions Code section 482 requires the department to “develop criteria to evaluate the rehabilitation of a person when . . . (b) considering suspension or revocation of a license under Section 490.” Section 482 also requires the Department to “take into account all competent evidence of rehabilitation furnished by the applicant or licensee.”

3. Business and Professions Code section 490 provides in part:

(b) . . . a board may suspend or revoke a license on the ground that 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.

¶ . . . . ¶

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere . . . .

4. Business and Professions Code section 493 provides in relevant part, that in a proceeding to revoke or suspend a license

upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

5. Business and Professions Code section 10177, subdivision (a), provides in relevant part, that the department can suspend or revoke the license of a real estate licensee who has entered a plea of guilty to a felony or a crime that is “substantially related to the qualifications, functions, or duties of a real estate licensee . . . .”

6. Business and Professions Code section 10177, subdivision (k), provides in relevant part, that the department can suspend or revoke the license of a real estate licensee who has “[v]iolated any of the terms, conditions, restrictions, and limitations contained in an order granting a restricted license.”

7. Business and Professions Code section 10106 states in pertinent part:

(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.

¶ . . . . ¶

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the commissioner or the commissioner's designated representative, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the commissioner to increase the cost award. The commissioner may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

8. California Code of Regulations, title 10, section 2910, in relevant part, provides:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code 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.

(9) Contempt of court or willful failure to comply with a court order.

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

¶ . . . ¶

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

9. California Code of Regulations, title 10, section 2912 provides:

The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

(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. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)

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

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

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

- (e) Successful completion or early discharge from probation or parole.
- (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.
- (g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.
- (h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.
- (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.
- (j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.
- (k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.
- (l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- (m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:
  - (1) Testimony of applicant.
  - (2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.
  - (3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.



(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

10. Vehicle Code section 20002, subsection (a) provides:

The driver of any vehicle involved in an accident resulting only in damage to any property, including vehicles, shall immediately stop the vehicle at the nearest location that will not impede traffic or otherwise jeopardize the safety of other motorists. Moving the vehicle in accordance with this subdivision does not affect the question of fault. The driver shall also immediately do either of the following:

(1) Locate and notify the owner or person in charge of that property of the name and address of the driver and owner of the vehicle involved and, upon locating the driver of any other vehicle involved or the owner or person in charge of any damaged property, upon being requested, present his or her driver's license, and vehicle registration, to the other driver, property owner, or person in charge of that property. The information presented shall include the current residence address of the driver and of the registered owner. If the registered owner of an involved vehicle is present at the scene, he or she shall also, upon request, present his or her driver's license information, if available, or other valid identification to the other involved parties.

(2) Leave in a conspicuous place on the vehicle or other property damaged a written notice giving the name and address of the driver and of the owner of the vehicle involved and a statement of the circumstances thereof and shall without unnecessary delay notify the police department of the city wherein the collision occurred or, if the collision occurred in unincorporated territory, the local headquarters of the Department of the California Highway Patrol.

*Evaluation*

11. By pleading guilty, respondent admitted that he willfully failed to comply with the reporting requirements contained in Vehicle Code section 20002, subdivision (a). Real

estate salespersons and brokers, particularly those of respondent's caliber, deal in complicated business and financial transactions and are required to comply with complex legal requirements in those transactions. Respondent's conviction is substantially related to the qualifications, functions, and duties of a real estate licensee in that he failed to follow the law and perform duties required under the law for a person involved in an automobile accident. Respondent's acknowledgement and understanding following the accident that he had been in an accident and that the passenger in his vehicle may have sustained injuries, provides ample evidence that respondent should also have processed that the accident should be reported to the proper authorities as required by the Vehicle Code.

12. The determination as to whether respondent's real estate salesperson's license should be subject to revocation, suspension or restriction includes evaluation of the circumstances of his conviction and the rehabilitation criteria enumerated in California Code of Regulations, title 10, section 2912, set forth above.

13. The regulatory purpose of Vehicle Code section 20002, subdivision (a)

'is to provide the owners of property damaged in traffic accidents with the information they need to pursue their civil remedies.' (*People v. Crouch, supra*, 108 Cal. App. 3d at p. Supp. 20.) By leaving the scene of the accident, the fleeing driver deprives the nonfleeing driver of his or her right to have responsibility for the accident adjudicated in an orderly way according to the rules of law. This commonly entails a real, economic loss, not just an abstract affront. Among other things, the crime imposes on the nonfleeing driver the additional costs of locating the fleeing driver and, in some cases, the total costs of the accident. (*People v. Carbajal* (1995) 10 Cal. 4th 1114, 1124.)

The determination of the appropriate level of discipline in this case, includes consideration of the regulatory purpose of the vehicle code violated by respondent. Respondent's failure to provide information at the scene or report the accident to the authorities did not deny or restrict the homeowners whose property sustained damage the ability to pursue civil remedies. Police were called to the scene of the accident and respondent's car remained at the scene until taken away by a tow truck. Thus, while respondent had left the scene of the accident, his identity was immediately known to the authorities. The evidence established that homeowners were compensated for damage sustained to their properties by a payment in the amount of \$3,500.

14. The determination of the appropriate level of discipline also includes a consideration of the facts and circumstances of the conviction. The lack of evidence of a plausible reason why respondent left the scene of the accident, supports the evidence that respondent suffered from a post-concussive brain injury. There was no evidence presented that respondent had been drinking alcohol prior to the accident or that he sought to hide his identity from authorities that would suggest a likely motive for him to absent himself from

the scene. The implication that respondent was concerned about being in an accident with another woman in his car was not supported by evidence at hearing and was contradicted by respondent's testimony that he immediately told his wife that Brockett was in the car and that attempts to reach her were made by respondent and his wife.

15. Respondent's prior convictions in 1999 and 2002, in conjunction with the 2011 conviction, do not provide evidence of a pattern of criminal behavior that would constitute cause to revoke respondent's license. The 1999 and 2002 convictions were previously reviewed by the department and a determination was made in 2005, that despite the convictions, the issuance of a restricted license would protect the public. The older convictions occurred more than ten years ago when respondent was a much younger and less mature man. They do not constitute cause for aggravation of discipline to respondent based upon the 2011 conviction. Although respondent's conviction in 2011 occurred just shy of two years ago, the event that led to the conviction occurred almost three years ago.

Respondent was on a restricted license when he sustained the conviction in 2011 and therefore is subject to discipline under Business and Professions Code Business and Professions Code section 10177, subdivision (k). However, the impact of that section is mitigated by the fact that the restricted license issued in 2005 and, while not a guarantee, respondent was eligible to apply to the department to remove the restrictions as early as 2007. Respondent testified that he chose not to seek removal of the restrictions because it did not interfere with his business and he was not doing anything that he was concerned could warrant further discipline.

No evidence was presented that respondent's business activities, including his ethics or integrity, were questioned by the department. Character references universally lauded respondent's professionalism and trustworthiness in his field. In fact, credible evidence was presented that respondent uniformly assisted clients in making decisions that were for their best interest, even if those decisions resulted in a loss of commission for respondent. But for the 2011 conviction, respondent's performance of his duties as a real estate salesperson in the past eleven years has been exemplary.

16. Respondent devotes time to church and charitable activities. He is married with four children and maintains a close supportive relationship with his father and long-time friends.

17. Respondent has satisfied all conditions of probation except for the passage of time; all court ordered fines and fees were paid and community service was performed. Restitution for damage to property resulting from the accident was made.

18. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Respondent's license was suspended on July 2, 2012, and remains suspended pending resolution of the Accusation. Further discipline in excess of retaining respondent on a restricted license would

improperly constitute punishment and is not warranted in this case; instead, continuation of respondent's restricted license will serve to protect the interests of the public. Upon consideration of the entirety of the facts and the application of the rehabilitation criteria, protection of the public is achieved by revoking respondent's license with a right to a restricted license.

### *Cost Recovery*

19. The department submitted a Statement of Costs seeking to recover the amount of \$2,272.40, which is represented to be the costs of investigating and prosecuting the Accusation against respondent. No challenge was raised to the costs claimed and it is found that the amount claimed is reasonable and properly supported by documentation.

### ORDER

1. All licenses and licensing rights of Respondent Chad Elliot Urie under the Real Estate Law, including any previously issued restricted license, are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department 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:
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 Department 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.

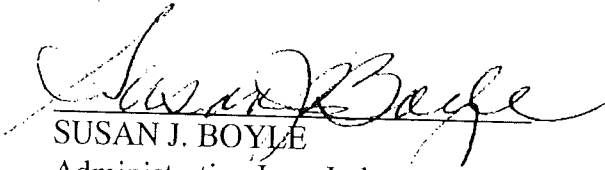
6. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education 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.

7. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

8. Respondent shall, prior to the issuance of the restricted license and as a condition of the issuance of said restricted license, make payment to the Commissioner the amount of \$2,272.40 as reimbursement for reasonable costs of investigation and prosecution of the Accusation.

9. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. 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 the suspension or revocation of that license.

DATED: January 4, 2013

  
SUSAN J. BOYLE

Administrative Law Judge  
Office of Administrative Hearings