

FILED

AUG 20 2014

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
ALEJANDRO ISAAC GUZMAN,) BRE no. H-04528 SD
Respondent.) OAH no. 2013120070
) STIPULATION AND AGREEMENT;
) DECISION AFTER REJECTION

The California Bureau of Real Estate ("Bureau") filed an Accusation against ALEJANDRO ISAAC GUZMAN ("Respondent") on October 18, 2013. On May 14, 2014, a hearing was held and evidence was received; the case was deemed submitted on May 14, 2014.

On May 20, 2014, the Proposed Decision of the Administrative Law Judge ("ALJ") Alan S. Meth was issued, and determined, among other things, that Respondent's license and license rights under the Real Estate Law should be revoked; provided, however, a restricted salesperson license be issued to Respondent under certain terms and conditions pursuant to California Business and Professions Code section 10156.5.

On June 20, 2014, the Commissioner rejected the

1 Proposed Decision of May 20, 2014.

2 The parties wish to settle this matter without further
3 proceedings.

4 IT IS HEREBY STIPULATED by and between Respondent,
5 ALEJANDRO ISAAC GUZMAN, representing himself, and the Bureau,
6 acting by and through Diane Lee, Counsel for the Bureau of Real
7 Estate, as follows for the purpose of settling and disposing of
8 the Accusation filed by the Bureau.

9 1. It is understood by the parties that the Real
10 Estate Commissioner may adopt the Stipulation and Agreement and
11 Decision After Rejection as his decision in this matter, thereby
12 imposing the restrictions on Respondent's real estate salesperson
13 license as set forth in the below "Decision and Order." In the
14 event the Commissioner in his discretion does not adopt the
15 Stipulation, the Stipulation shall be void and of no effect; the
16 Commissioner will review the transcript and the evidence in the
17 case, and will issue his Decision after Rejection as his Decision
18 in this matter.

19 2. By reason of the foregoing and solely for the
20 purpose of settlement of the Accusation without further
21 administrative proceedings, it is stipulated and agreed that the
22 following shall be adopted as the Commissioner's Decision:

23
24 FACTUAL FINDINGS

25 1. Veronica Kilpatrick, Deputy Real Estate
26 Commissioner of the Bureau filed Accusation No. H-04528 SD in her
27 official capacity on October 18, 2013. Respondent filed a timely

1 Notice of Defense.

2 2. On November 21, 2005, the Bureau issued real
3 estate salesperson license number S/01720274 to Respondent.

4 3. On July 15, 2011, in the San Diego County Superior
5 Court, Respondent pleaded guilty and was convicted of one count
6 of violating California Vehicle Code section 23153, subdivision
7 (a), driving under the influence causing injury, with
8 enhancements that respondent committed the offense when he had a
9 blood alcohol concentration of 0.15 percent or higher within the
10 meaning of California Vehicle Code section 23578 and that
11 Respondent personally inflicted great bodily injury within the
12 meaning of California Penal Code sections 1192.7, subdivision
13 (c)(8) and 12022.7, subdivision (a), a felony. On August 26,
14 2011, the court suspended imposition of sentence and placed
15 respondent on probation for five years, and ordered him to serve
16 180 days in custody, with credit for six days served. Respondent
17 was permitted to enter the work furlough program. The court also
18 imposed a fine of \$1560.00 and other fines and fees and required
19 him to pay restitution.

20 4. Respondent committed the offense on March 20,
21 2011, at approximately 2:00 a.m. According to the police report,
22 respondent was driving a vehicle at an unsafe speed on Tierra
23 Baja Way in San Diego. He had a passenger with him. As
24 Respondent approached the end of the cul-de-sac, he did not stop
25 and instead turned up the driveway of a home at 5075 Tierra Baja
26 Way and collided with the back of a pickup truck. The pickup
27 then crashed into the closed garage door of the home. Meanwhile,

1 Respondent continued driving his car and struck the house next
2 door, causing damage to his car and the house.

3 The passenger suffered a broken right humerus.
4 Respondent suffered an injury to his left shoulder. Paramedics
5 took both of them to Scripps Mercy Hospital.

6 Officer Zirpolo of the San Diego Police Department was
7 dispatched to the hospital. He spoke to Respondent and detected
8 the odor of alcohol on Respondent's breath and noticed
9 Respondent's eyes were red, bloodshot, and droopy. The officer
10 noticed that Respondent's speech was slurred. The officer asked
11 respondent to perform a PAS test. Respondent made two half-
12 hearted attempts and then declined to submit and said he wanted
13 to talk to his attorney.

14 Respondent at first denied he was driving the vehicle
15 but eventually admitted he was the driver. The passenger told
16 the officer that Respondent was the driver.

17 A blood test indicated that Respondent's blood alcohol
18 concentration was 0.08 percent or higher.

19 5. Respondent's conviction is substantially related
20 to the qualifications, functions, or duties of a real estate
21 salesperson. (Cal. Code of Regs., tit. 10, §2910, subdivision
22 (a)(8)).

23 6. Regarding the conviction, respondent testified he
24 went to a bar before a San Diego State University ("SDSU")
25 basketball game near the SDSU campus and watched the game on
26 television with some friends. He drank during and after the
27 game. He and his friends went to another bar in La Jolla and

1 continued to drink. Respondent did not drive there. Around
2 midnight, Respondent and his friends returned to the first bar.
3 Respondent expected to spend the night in his car because he knew
4 he was intoxicated. He met a friend there who was also
5 intoxicated. The friend asked respondent to drive him home.
6 Respondent agreed to drive him home, and during the drive, he
7 crashed his car into the pickup.

8 Respondent testified that as he drove up the hill on
9 Tierra Baja Way, the car experienced mechanical problems and
10 would not stop although he applied the brakes. He believed the
11 throttle stuck.

12 Respondent testified he was sorry for what he did and
13 believed he was trying to simply help a friend.

14 7. Respondent graduated from California State
15 University, Fullerton in 2007 with a Bachelor of Arts degree in
16 business administration with an emphasis on finance. He obtained
17 his real estate license as well as a contractor's license in
18 2005.

19 Respondent worked for Marcos Rodriguez, a real estate
20 broker after he obtained his license and helped clients obtain
21 financing. He also worked for his father who is a painting
22 contractor. In 2007, Respondent began working full-time for LPL
23 Financial in the field of finance in San Diego. He continued to
24 work part-time for Mr. Rodriguez and for his father while he
25 worked at LPL Financial.

26 8. Respondent testified that he has paid all the
27 fines imposed by the court and continues to pay the probation

1 costs, which accrue while he remains on probation. Respondent
2 completed a nine-month first offender DUI course in 2012 and
3 attended numerous AA meetings during 2011. While he attended the
4 DUI program, Respondent met with a counselor weekly. He attended
5 a MADD program. He completed 100 days of work furlough but
6 served no time in custody. His driver's license was suspended
7 for a year but has been reinstated. He remains on probation.
8 Respondent plans to have his attorney file a motion to dismiss
9 the conviction shortly.

10 9. Respondent testified that because he was convicted
11 of a felony, LPL Financial terminated his employment in 2011 and
12 will not rehire him while the felony conviction remains on his
13 record. Respondent worked for Mr. Rodriguez until his recent
14 death. Although Respondent's contractor's license was revoked
15 because of the conviction, Respondent continues to work for his
16 father and also works on small jobs. Respondent is no longer
17 working the field of real estate.

18 Respondent testified that from his counseling sessions
19 and the AA meetings he attended, he learned that there were
20 substantial stresses in life that can take a toll on a person.
21 He pointed to the long hours he worked and the breakup of his
22 parents' marriage as such stressors that might have caused him to
23 drink more than he should have. In hindsight, Respondent
24 believed he had a drinking problem but he testified that he did
25 not drink any longer. He added that he still attends AA
26 meetings.

27 10. Respondent submitted numerous character letters.

1 They all described him as a caring and responsible person who
2 went out of his way to help others. Many of the letters are from
3 co-workers at LPL Financial. In particular, his supervisor,
4 Robert Ornelas, wrote that respondent was a person of virtue and
5 honesty, worked hard, was truthful and ethical, and was an asset
6 to the company.

7 James Profit, a therapeutic counselor at Living
8 Epistles Services, wrote that respondent had worked diligently on
9 his recovery following his DUI conviction. He reported that in
10 the month following the conviction, respondent attended numerous
11 AA, NA or CA meetings weekly and spoke by phone with him as
12 needed. In Mr. Profit's opinion, Respondent did not meet the
13 criteria for chemical dependence.

14 11. Respondent submitted documents to show that he has
15 volunteered at the annual LPL Financial Kids' Day at Petco Park,
16 at the San Diego Blood Bank on two occasions, and for Junior
17 Achievement where he raised funds.

18 19 LEGAL CONCLUSIONS

20 1. California Business and Professions Code section
21 490 provides in part:

22 A board may suspend or revoke a license on the
23 ground that the licensee has been convicted of a crime,
24 if the crime is substantially related to the
25 qualifications, functions, or duties of the business or
26 profession for which the license was issued. A
27 conviction within the meaning of this section means a
plea or verdict of guilty or a conviction following a
plea of nolo contendere.

2. California Business and Professions Code Section

1 10177 provides in pertinent part:

2 The commissioner may suspend or revoke the license
3 of a real estate licensee . . . who has done any of the
4 following:

5 . . . [9]

6 (b) Entered a plea of guilty or nolo contendere
7 to, or been found guilty of, or been convicted of, a
8 felony, or a crime substantially related to the
9 qualifications, functions, or duties of a real estate
10 licensee, and the time for appeal has elapsed or the
11 judgment of conviction has been affirmed on appeal,
irrespective of an order granting probation following
that conviction, suspending the imposition of sentence
or of a subsequent order under Section 1203.4 of the
Penal Code allowing that licensee to withdraw his or
her plea of not guilty, or dismissing the accusation or
information.

12 3. Cause to suspend or revoke Respondent's real
13 estate salesperson license was established pursuant to California
14 Business and Professions Code sections 490 and 10177, subdivision
15 (b), conviction of a crime that is substantially related to the
16 qualifications, functions, and duties of a real estate
17 salesperson, by reason of Findings 3 through 6.

18 4. California Code of Regulations, title 10, section
19 2912 provides:

20 The following criteria have been developed by the
21 department pursuant to Section 482(b) of the Business
22 and Professions Code for the purpose of evaluating the
23 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.

24 (a) The passage of not less than two years from
25 the most recent criminal conviction that is
26 "substantially related" to the qualifications,
27 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.)

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

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

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

6 (e) Successful completion or early discharge from
probation or parole.

7 (f) Abstinence from the use of controlled
substances or alcohol for not less than two years if
8 the criminal conviction was attributable in part to the
use of a controlled substance or alcohol.

9 (g) Payment of any fine imposed in connection
with the criminal conviction that is the basis for
revocation or suspension of the license.

10 (h) Correction of business practices responsible in
some degree for the crime or crimes of which the
11 licensee was convicted.

12 (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
13 conviction or convictions in question.

14 (j) Stability of family life and fulfillment of
parental and familial responsibilities subsequent to
the criminal conviction.

15 (k) Completion of, or sustained enrollment in,
formal educational or vocational training courses for
16 economic self-improvement.

17 (1) Significant and conscientious involvement in
community, church or privately-sponsored programs
designed to provide social benefits or to ameliorate
18 social problems.

19 (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:

20 (1) Testimony of applicant.

21 (2) Evidence from family members, friends or
other persons familiar with the licensee's previous
conduct and with subsequent attitudes and behavioral
22 patterns.

23 (3) Evidence from probation or parole officers or
law enforcement officials competent to testify as to
24 applicant's social adjustments.

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

27 (5) Absence of subsequent felony or misdemeanor
convictions that are reflective of an inability to

1 conform to societal rules when considered in light of
2 the conduct in question.

3 5. The evidence in light of the Bureau's criteria of
4 rehabilitation shows that Respondent was convicted of one felony
5 offense almost three years ago. This is his only criminal
6 offense. He was placed on probation for five years and remains
7 on probation. He completed a work-furlough sentence and paid the
8 fines. While the minute order of the sentencing does not reflect
9 requirements that respondent attend a DUI course, attend a MADD
10 course, and attend AA meetings as they typically do in DUI cases,
11 respondent completed a nine-month DUI course, a MADD course, and
12 went to AA meetings regularly. There is no indication in the
13 record that Respondent has failed to comply with all the
14 requirements of probation. Since Respondent is still on
15 probation, it is too early for him to have the conviction
16 expunged.

17 Respondent testified that he no longer drinks but
18 offered no evidence to corroborate that testimony. He has not
19 been arrested for an alcohol-related offense since March 20,
20 2011.

21 Respondent has volunteered his time to the community on
22 an occasional basis.

23 No witness testified on Respondent's behalf. He
24 submitted numerous letters attesting to the quality of his
25 character and his work performance.

26 Prior to his conviction, Respondent was a hard-working
27 individual. He held three jobs, one full-time and two-part-time,

1 and worked long hours and this may have contributed to the stress
2 that led to his drinking. Because he was convicted of a felony,
3 respondent lost his job at LPL Financial, and he no longer works
4 in real estate because of the death of Mr. Rodriguez. He now
5 supports himself by working as a painter for his father and
6 performing small painting jobs.

7 In summary, Respondent was convicted of one DUI offense
8 almost three years ago. It is a serious offense in that
9 Respondent's blood alcohol level was twice the legal limit, and
10 his driving caused injury to himself and his passenger and
11 property damage to his car, another vehicle and two homes.
12 Respondent remains on probation but to date he has complied with
13 all the requirements of probation and satisfied all of the
14 obligations imposed upon him by the court. There have been no
15 other disciplinary actions taken against his license.

16 Respondent has a college degree in finance and worked
17 diligently for years following graduation, at one point holding
18 three jobs, until his conviction. He has continued to work since
19 the conviction and hopes to return to the field of finance if he
20 can have his conviction expunged. His friends, co-workers, and
21 supervisors respect his character and the quality of his work.
22 There is no evidence to suggest that he has a drinking or
23 chemical dependency problem that may endanger the public.
24 Respondent expressed remorse for what he did and it appeared that
25 he was sincere. He recognized the serious repercussions his
26 conviction had on his life and has taken steps to ensure that
27 drinking alcohol will not cause him any further problems. Based

1 upon these considerations, it would not be against the public
2 interest to allow respondent to remain in the field of real
3 estate, but with a restricted license.

4
5 ORDER

6 All licenses and licensing rights of Respondent
7 ALEJANDRO ISAAC GUZMAN under the Real Estate Law are revoked;
8 provided, however, a restricted real estate salesperson license
9 shall be issued to respondent pursuant to California Business and
10 Professions Code section 10156.5 if Respondent makes application
11 therefor and pays to the Bureau the appropriate fee for the
12 restricted license within 90 days from the effective date of this
13 Decision. The restricted license issued to Respondent shall be
14 subject to all of the provisions of California Business and
15 Professions Code section 10156.7 and to the following
16 limitations, conditions and restrictions imposed under authority
17 of California Business and Professions Code section 10156.6:

18 1. The Real Estate Commissioner may without hearing
19 issue an order suspending the licensee's right to exercise any
20 privileges granted under this restricted license in the event of:

21 (a) The conviction of Respondent (including a plea of
22 nolo contendere) of a crime which is substantially related to
23 Respondent's fitness or capacity as a real estate licensee; or

24 (b) The receipt of evidence satisfactory to the
25 Commissioner that Respondent has violated provisions of the
26 California Real Estate Law, the Subdivided Lands Law, Regulations
27 of the Real Estate Commissioner, or conditions attaching to this

1 restricted license.

2 2. Respondent shall not be eligible to apply for the
3 issuance of an unrestricted real estate license nor for the
4 removal of any of the conditions, limitations or restrictions of
5 a restricted license until two (2) years have elapsed from the
6 effective date of this Decision.

7 3. Respondent shall submit with any application for
8 license under an employing broker, or any application for
9 transfer to a new employing broker, a statement signed by the
10 prospective employing real estate broker on a form (which is
11 currently form RE 552 (Rev. 7/13)) approved by the Bureau which
12 shall certify:

13 (a) That the employing broker has read the Decision of
14 the Commissioner which granted the right to a restricted license;
15 and

16 (b) That the employing broker will carefully review
17 all transaction documents prepared by the restricted licensee and
18 otherwise exercise close supervision over the licensee's
19 performance of acts for which a license is required.

20 4. Respondent shall notify the Commissioner in writing
21 within 72 hours of any arrest by sending a certified letter to
22 the Commissioner at the Bureau of Real Estate, Post Office Box
23 137013, Sacramento, CA 95813-7013. The letter shall set forth
24 the date of Respondent's arrest, the crime for which Respondent
25 was arrested, and the name and address of the arresting law
26 enforcement agency. Respondent's failure to timely file written
27 notice shall constitute an independent violation of the terms of

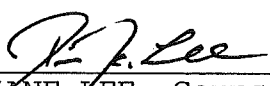
1 the restricted license and shall be grounds for the suspension or
2 revocation of that license.

3 5. Respondent shall, within nine months from the
4 effective date of this Decision, present evidence satisfactory to
5 the Real Estate Commissioner that respondent has, since the most
6 recent issuance of an original or renewal real estate license,
7 taken and successfully completed the continuing education
8 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
9 for renewal of a real estate license. If Respondent fails to
10 satisfy this condition, the Commissioner may order the suspension
11 of the restricted license until respondent presents such
12 evidence. The Commissioner shall afford Respondent the
13 opportunity for a hearing pursuant to the Administrative
14 Procedure Act to present such evidence.

15 6. Respondent shall, within six (6) months from the
16 effective date of this Decision, take and pass the Professional
17 Responsibility Examination administered by the Bureau of Real
18 Estate including the payment of the appropriate examination fee.
19 If Respondent fails to satisfy this condition, the Commissioner
20 shall order suspension of Respondent's license until Respondent
21 passes the examination. The Commissioner shall afford Respondent
22 the opportunity for a hearing pursuant to the Administrative
23 Procedure Act to present such evidence.

24
25 DATED

07/29/2014


DIANE LEE, Counsel
BUREAU OF REAL ESTATE

* * *

1 I have read the Stipulation and Agreement and Decision
2 after Rejection, and its terms are understood by me and are
3 agreeable and acceptable to me. I willingly and voluntarily
4 agree to enter into this Stipulation and Agreement and Decision
5 after Rejection.

6 Respondent can signify acceptance and approval of the
7 terms and conditions of this Stipulation and Agreement and
8 Decision after Rejection by faxing a copy of the signature page,
9 as actually signed by Respondent, to the Bureau at fax number
10 (213) 576-6917. Respondent agrees, acknowledges and understands
11 that by electronically sending to the Bureau a fax copy of his
12 actual signature as it appears on the Stipulation and Agreement
13 and Decision After Rejection, that receipt of the faxed copy by
14 the Bureau shall be as binding on Respondent as if the Bureau had
15 received the original signed Stipulation and Agreement and
16 Decision After Rejection.

17 _____
18 DATED

ALEJANDRO ISAAC GUZMAN
Respondent

19 * * *

20 The foregoing Stipulation and Agreement and Decision
21 After Rejection regarding Respondent ALEJANDRO ISAAC GUZMAN is
22 hereby adopted as my Decision in this matter and shall become
23 effective at 12 o'clock noon on _____.

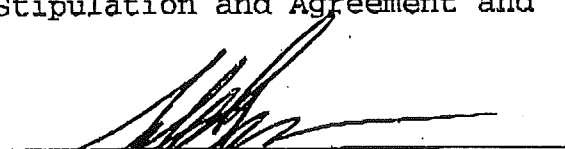
24 IT IS SO ORDERED _____.

25 REAL ESTATE COMMISSIONER
26 _____
27 _____

1 I have read the Stipulation and Agreement and Decision
2 after Rejection, and its terms are understood by me and are
3 agreeable and acceptable to me. I willingly and voluntarily
4 agree to enter into this Stipulation and Agreement and Decision
5 after Rejection.

6 Respondent can signify acceptance and approval of the
7 terms and conditions of this Stipulation and Agreement and
8 Decision after Rejection by faxing a copy of the signature page,
9 as actually signed by Respondent, to the Bureau at fax number
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13 and Decision After Rejection, that receipt of the faxed copy by
14 the Bureau shall be as binding on Respondent as if the Bureau had
15 received the original signed Stipulation and Agreement and
16 Decision After Rejection.

17 7-15-14
18 DATED


ALEJANDRO ISAAC GUZMAN
Respondent

19 * * *

20 The foregoing Stipulation and Agreement and Decision
21 After Rejection regarding Respondent ALEJANDRO ISAAC GUZMAN is
22 hereby adopted as my Decision in this matter and shall become
23 effective at 12 o'clock noon on SEP 09 2014

24 IT IS SO ORDERED 8/14/2014

25 REAL ESTATE COMMISSIONER

26 
27 Wayne S. Bell

123456789101112131415161718192021222324252627

FILED

JUN 27 2014

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

ALEJANDRO ISAAC GUZMAN,

Respondent.

No. H-4528 SD

OAH No. 2013120070

NOTICE

TO: ALEJANDRO ISAAC GUZMAN, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated May 20, 2014, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated May 20, 2014, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on May 14, 2014, any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of May 14, 2014, at the

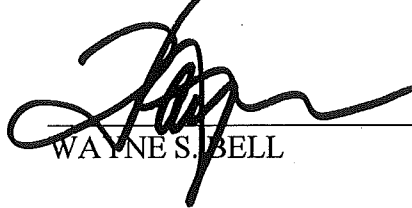
1 Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for
2 good cause shown.

3 Written argument of Complainant to be considered by me must be submitted
4 within 15 days after receipt of the argument of Respondent at the Los Angeles office of the
5 Bureau of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: _____

6/20/2014

7 REAL ESTATE COMMISSIONER

8 
9
10 WAYNE S. BELL

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

In the Matter of the Accusation Against:

ALEJANDRO ISSAC GUZMAN.

Respondent.

Case No. H-4528 SD

OAH No. 2013120070

PROPOSED DECISION

On May 14, 2014, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Diane Lee, Real Estate Counsel, represented complainant.

Respondent represented himself.

The matter was submitted on May 14, 2014.

FACTUAL FINDINGS

1. Veronica Kilpatrick, Deputy Real Estate Commissioner of the Bureau of Real Estate of the State of California (Bureau) filed Accusation No. H-4528 SD in her official capacity on October 18, 2013. Respondent filed a timely Notice of Defense.

2. On November 21, 2005, the Department issued real estate salesperson license number S/01720274 to respondent.

3. On July 15, 2011, in the San Diego County Superior Court, respondent pleaded guilty and was convicted of one count of violating Vehicle Code section 23153, subdivision (a), driving under the influence causing injury, with enhancements that respondent committed the offense when he had a blood alcohol concentration of 0.15 percent or higher within the meaning of Vehicle Code section 23578 and that respondent personally inflicted great bodily injury within the meaning of Penal Code sections 1192.7, subdivision (c)(8) and 12022.7, subdivision (a), a felony. On August 26, 2011, the court suspended imposition of sentence and placed respondent on probation for five years, and ordered him to serve 180 days in custody, with credit for six days served. Respondent was permitted to enter the work furlough program. The court also imposed a fine of \$1560.00 and other fines and fees and required him to pay restitution.

4. Respondent committed the offense on March 20, 2011, at approximately 2:00 a.m. According to the police report, respondent was driving a vehicle at an unsafe speed on Tierra Baja Way in San Diego. He had a passenger with him. As respondent approached the end of the cul-de-sac, he did not stop and instead turned up the driveway of a home at 5075 Tierra Baja Way and collided with the back of a pickup truck. The pickup then crashed into the closed garage door of the home. Meanwhile, respondent continued driving his car and struck the house next door, causing damage to his car and the house.

The passenger suffered a broken right humerus. Respondent suffered an injury to his left shoulder. Paramedics took both of them to Scripps Mercy Hospital.

Officer Zirpolo of the San Diego Police Department was dispatched to the hospital. He spoke to respondent and detected the odor of alcohol on respondent's breath and noticed respondent's eyes were red, bloodshot, and droopy. The officer noticed that respondent's speech was slurred. The officer asked respondent to perform a PAS test. Respondent made two half-hearted attempts and then declined to submit and said he wanted to talk to his attorney.

Respondent at first denied he was driving the vehicle but eventually admitted he was the driver. The passenger told the officer that respondent was the driver.

A blood test indicated that respondent's blood alcohol concentration was 0.08 percent or higher.

5. Respondent's conviction is substantially related to the qualifications, functions, or duties of a real estate salesperson. (Cal. Code of Regs., tit. 10, §2910, subdivision (a)(8)).

6. Regarding the conviction, respondent testified he went to a bar before a San Diego State University (SDSU) basketball game near the SDSU campus and watched the game on television with some friends. He drank during and after the game. He and his friends went to another bar in La Jolla and continued to drink. Respondent did not drive there. Around midnight, respondent and his friends returned to the first bar. Respondent expected to spend the night in his car because he knew he was intoxicated. He met a friend there who was also intoxicated. The friend asked respondent to drive him home. Respondent agreed to drive him home, and during the drive, he crashed his car into the pickup.

Respondent testified that as he drove up the hill on Tierra Baja Way, the car experienced mechanical problems and would not stop although he applied the brakes. He believed the throttle stuck.

Respondent testified he was sorry for what he did and believed he was trying to simply help a friend.

7. Respondent graduated from California State University, Fullerton in 2007 with a Bachelor of Arts degree in business administration with an emphasis on finance. He obtained his real estate license as well as a contractor's license in 2005.

Respondent worked for Marcos Rodriguez, a real estate broker after he obtained his license and helped clients obtain financing. He also worked for his father who is a painting contractor. In 2007, respondent began working full-time for LPL Financial in the field of finance in San Diego. He continued to work part-time for Mr. Rodriguez and for his father while he worked at LPL Financial.

8. Respondent testified that he has paid all the fines imposed by the court and continues to pay the probation costs, which accrue while he remains on probation. Respondent completed a nine-month first offender DUI course in 2012 and attended numerous AA meetings during 2011. While he attended the DUI program, respondent met with a counselor weekly. He attended a MADD program. He completed 100 days of work furlough but served no time in custody. His driver's license was suspended for a year but has been reinstated. He remains on probation. Respondent plans to have his attorney file a motion to dismiss the conviction shortly.

9. Respondent testified that because he was convicted of a felony, LPL Financial terminated his employment in 2011 and will not rehire him while the felony conviction remains on his record. Respondent worked for Mr. Rodriguez until his recent death. Although respondent's contractor's license was revoked because of the conviction, respondent continues to work for his father and also works on small jobs. Respondent is no longer working the field of real estate.

Respondent testified that from his counseling sessions and the AA meetings he attended, he learned that there were substantial stresses in life that can take a toll on a person. He pointed to the long hours he worked and the breakup of his parents' marriage as such stressors that might have caused him to drink more than he should have. In hindsight, respondent believed he had a drinking problem but he testified that he did not drink any longer. He added that he still attends AA meetings.

10. Respondent submitted numerous character letters. They all described him as a caring and responsible person who went out of his way to help others. Many of the letters are from co-workers at LPL Financial. In particular, his supervisor, Robert Ornelas, wrote that respondent was a person of virtue and honesty, worked hard, was truthful and ethical, and was an asset to the company.

James Profit, a therapeutic counselor at Living Epistles Services, wrote that respondent had worked diligently on his recovery following his DUI conviction. He reported that in the month following the conviction, respondent attended numerous AA, NA or CA meetings weekly and spoke by phone with him as needed. In Mr. Profit's opinion, respondent did not meet the criteria for chemical dependence.

11. Respondent submitted documents to show that he has volunteered at the annual LPL Financial Kids' Day at Petco Park, at the San Diego Blood Bank on two occasions, and for Junior Achievement where he raised funds.

LEGAL CONCLUSIONS

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

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

2. Business and Professions Code Section 10177 provides in pertinent part:

The commissioner may suspend or revoke the license of a real estate licensee . . . who has done any of the following:

... [¶]

(b) Entered 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, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of not guilty, or dismissing the accusation or information.

3. Cause to suspend or revoke respondent's real estate salesperson license was established pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), conviction of a crime that is substantially related to the qualifications, functions, and duties of a real estate salesperson, by reason of Findings 3 through 6.

4. 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.”

5. The evidence in light of the Department's criteria of rehabilitation shows that respondent was convicted of one felony offense almost three years ago. This is his only criminal offense. He was placed on probation for five years and remains on probation. He completed a work-furlough sentence and paid the fines. While the minute order of the sentencing does not reflect requirements that respondent attend a DUI course, attend a MADD course, and attend AA meetings as they typically do in DUI cases, respondent completed a nine-month DUI course, a MADD course, and went to AA meetings regularly. There is no indication in the record that respondent has failed to comply with all the requirements of probation. Since respondent is still on probation, it is too early for him to have the conviction expunged.

Respondent testified that he no longer drinks but offered no evidence to corroborate that testimony. He has not been arrested for an alcohol-related offense since March 20, 2011.

Respondent has volunteered his time to the community on an occasional basis.

No witness testified on respondent's behalf. He submitted numerous letters attesting to the quality of his character and his work performance.

Prior to his conviction, respondent was a hard-working individual. He held three jobs, one full-time and two-part-time, and worked long hours and this may have contributed to the stress that led to his drinking. Because he was convicted of a felony, respondent lost his job at LPL Financial, and he no longer works in real estate because of the death of Mr. Rodriguez. He now supports himself by working as a painter for his father and performing small painting jobs.

In summary, respondent was convicted of one DUI offense almost three years ago. It is a serious offense in that respondent's blood alcohol level was twice the legal limit, and his driving caused injury to himself and his passenger and property damage to his car, another vehicle and two homes. Respondent remains on probation but to date he has complied with all the requirements of probation and satisfied all of the obligations imposed upon him by the court. There have been no other disciplinary actions taken against his license.

Respondent has a college degree in finance and worked diligently for years following graduation, at one point holding three jobs, until his conviction. He has continued to work

since the conviction and hopes to return to the field of finance if he can have his conviction expunged. His friends, co-workers, and supervisors respect his character and the quality of his work. There is no evidence to suggest that he has a drinking or chemical dependency problem that may endanger the public. Respondent expressed remorse for what he did and it appeared that he was sincere. He recognized the serious repercussions his conviction had on his life and has taken steps to ensure that drinking alcohol will not cause him any further problems. Based upon these considerations, it would not be against the public interest to allow respondent to remain in the field of real estate, but with a restricted license.

ORDER

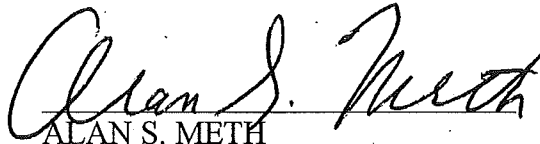
All licenses and licensing rights of respondent Alejandro Issac Guzman under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application 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:

1. 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.
2. 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.
3. 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.
4. 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.

5. 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 respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: May 20, 2014

A handwritten signature in cursive script, reading "Alan S. Meth", written over a horizontal line.

ALAN S. METH

Administrative Law Judge

Office of Administrative Hearings