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DEC 13 2017

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	CalBRE No. H-04892 SD
)	
CHRISTOPHER RYAN FARMER,)	OAH No. 2017060250
)	
Respondent.)	

DECISION

The Proposed Decision dated October 30, 2017, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted salesperson license is granted to Respondent.

Pursuant to Government Code Section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

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The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on JAN 02 2018

IT IS SO ORDERED 12/7/17

WAYNE S BELL
REAL ESTATE COMMISSIONER



By: DANIEL J. SANDRI
Chief Deputy Commissioner

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

In the Matter of the Accusation Against:

CHRISTOPHER RYAN FARMER,

Respondent.

Case No. H-04892 SD

OAH No. 2017060250

PROPOSED DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 2, 2017, in San Diego, California.

Michelle Nijm, Real Estate Counsel, represented complainant Veronica Kilpatrick, Supervising Special Investigator, Bureau of Real Estate, Department of Consumer Affairs, State of California.

Eric R. Ginder, Attorney at Law, represented respondent Christopher Ryan Farmer.

The matter was submitted on October 2, 2017.

FACTUAL FINDINGS

Background

1. On May 21, 2015, the bureau issued salesperson license number 01980471 to respondent. Respondent has no history of license discipline.

2. On March 22, 2017, complainant, in her official capacity, signed the accusation seeking disciplinary action against respondent's salesperson license. The accusation alleged that respondent was convicted of assault, making a criminal threat, corporal injury of a spouse, battery of a spouse, and vandalism, which are substantially related crimes under Business and Professions Code section 10177, subdivision (b)(1). Complainant also requested reimbursement of investigation and prosecution costs. Respondent filed a notice of defense; this hearing ensued.

Respondent's 2016 Conviction

3. On July 21, 2016, in the Superior Court of California, San Diego County, respondent, on a plea of guilty, was convicted of misdemeanor violations of Penal Code sections 245, subdivision (b)(4) (assault by means likely to produce great bodily injury); 422 (making a criminal threat); 273.5, subdivision (a)(corporal injury to spouse); 243, subdivision (e)(1) (battery of a significant other); and 594, subdivision (a), (b)(2)(A) (vandalism). The court placed respondent on summary probation for three years; required him to serve two days in jail; ordered him to complete a 52-week domestic violence course; and ordered payment of fines and fees.

4. An arrest report of the San Diego County Sheriff's Department was admitted pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448.¹ On January 8, 2016, sheriff's deputies responded to a report of domestic violence at respondent's residence. After contacting respondent, the deputy observed a strong odor of alcoholic beverage emanating from respondent. Respondent told the deputy that he was out drinking with some clients, and when he returned home, he and his wife began to argue. His wife locked herself in the bathroom and called 911. Respondent stated that the argument was purely verbal and never became physical.

The reporting deputy observed respondent's wife, who had several swollen bumps on her forehead and was crying. Respondent's wife provided the following information to the deputies: Respondent came home from work and the two began to argue over some text messages. Respondent tried to take her phone from her and she pulled away. Respondent pushed her down on the floor. She continued to keep the phone away from respondent when he placed his arm around her neck in a choke hold and began to choke her. He pulled her hair while on top of her. Respondent told her he would kill her. Respondent then took the phone away from her and began hitting her in the face repeatedly. She was able to get away and lock herself in the bathroom. Respondent and his wife had an 18-month-old child who was asleep in a bedroom during the incident.

Respondent denied knowing how the injuries to his wife's face occurred. A deputy observed a small cut underneath respondent's lip; respondent claimed it was from shaving. A deputy located small pieces of black glass that appeared to be from the cell phone, which

¹ In *Lake*, the California Supreme Court concluded that direct observations memorialized in a police officer's report were admissible under Evidence Code section 1280, the public employee records exception to the hearsay rule, and were sufficient to support a factual finding. The court further concluded that admissions by a party memorialized in such a report were admissible under Evidence Code section 1220 and were sufficient to support a factual finding. Citing Government Code section 11513, the court held that other hearsay statements set forth in the police officer's report could be used to supplement or explain other evidence, but they were not sufficient, by themselves, to support a factual finding, unless the hearsay evidence would be admissible over objection in civil actions.

had a cracked screen and portions of glass missing from the phone. Respondent's wife was transported by ambulance to the hospital for evaluation.

The reporting deputy further questioned respondent after providing him his *Miranda* warning. Respondent explained that when he returned home his wife began looking at his phone and found a text message from an ex-girlfriend. His wife became upset and the two began to argue verbally. He tried to get the phone from her and she ran away and locked herself in the bathroom. He again denied any physical contact.

Respondent's Testimony

5. Respondent testified that he had been out with clients and had three or four drinks. He drank more after he returned home. He and his wife got into an argument about text messages his wife was sending to another person. He tried to take her cell phone from her and a struggle ensued. During the struggle, he bumped and hit her. He said he did not hit her in the face with the phone. He denied remembering what he told the police that night. He said he was intoxicated, which he "thinks" affected his judgment. Respondent said he snapped the cell phone in half. He did not recall putting her in a chokehold or threatening her.

6. In a Conviction Detail Report respondent submitted to the bureau explaining the incident, respondent wrote that he attempted to grab his wife's phone when it "got physical." He wrote, "I held her down in order to get the phone, she resisted. As we fought over the phone, she did get bumped in the face with it. Once I got the phone I backed away, looked for the text messages, then purposely broke the phone." Respondent said it was a "heated argument that went too far" and they were both being "irrational."

7. Respondent testified that he regretted the incident. He said he pled guilty to all the charges because it was what was required in order to avoid a stay-away order. He completed a 52-week court-ordered domestic violence program. He said he learned about self-control from the class. Respondent said he stopped drinking in August 2016 when his domestic violence program started. He does not believe he has a problem with alcohol. Respondent's probation is not scheduled to terminate until July 2019.

8. Respondent is 33 years old. He received his real estate license in 2015. He worked at RE/MAX for approximately two years until he went to work with his father at Keller Williams. He testified that he loves real estate, it is his career, and he does not know what else he would do. He volunteers for several organizations to help them raise money. He organized sock drives for the homeless, a charity poker tournament, an annual charity banquet, and toy drives during the holidays.

Testimony of Kathryn Farmer

9. Kathryn Farmer and respondent have been married since 2014. They have one child together. Prior to this incident, she had never been involved in a physical altercation

with respondent. She testified that there was a struggle and he broke the cell phone in half with his hands. She said the phone was not used as a weapon, and he never intentionally struck her with the phone. She said the phone could have hit her in the face, but she never recalled him hitting her with it. She denied that he put her in a chokehold. Mrs. Farmer said she was afraid and locked herself in the bathroom. She had swollen bumps on her forehead. She did not recall respondent threatening to kill her. She did state that respondent pushed her to the floor. She testified that she and respondent now enjoy a good relationship. In a letter she submitted, she wrote that he is a caring and loving father. She wrote that the prosecutor "threw the book at him" and "blew our situation out of proportion." Respondent pled guilty in order to avoid jail time.

Testimony of Ruth Shaepersky

10. Ruth Shaepersky is the director of A Center for Change, which operated the 52-week domestic violence program respondent attended. She has taught this class since 2010 and has worked in the field since 2003. The class respondent completed met for two hours a week and was interactive. Respondent was an active participant in the program. Ms. Shaepersky was impressed by respondent and believed he was of solid character. She noted that she would not have agreed to testify had she not been so impressed by respondent.

Testimony of Walt Clyne

11. Walt Clyne is the general manager for RE/MAX United. He testified at the hearing and wrote a letter in support of respondent. In this role as general manager, he supervises the agents in the office and observed respondent's work over a two-year period. He was aware of respondent's conviction and testified that it was out of character for respondent. He believed it was an isolated event and did not reflect on respondent's character. He praised respondent's professionalism and never had any concerns about his work as an agent.

Testimony of Kevin Hugli

12. Kevin Hugli has been a broker since 1994 and works at Keller Williams. He has known respondent for approximately one year, ever since respondent and his father moved to his company. Respondent informed Mr. Hugli about his conviction, although he did not remember the specifics of the conversation or exactly what respondent said had happened. He thought that respondent might have thrown a phone at his wife. He was also aware respondent had been drinking. Ultimately, he believed that respondent did not do anything that would affect his business, and he does not have concerns about continuing to employ respondent.

Testimony of Gary Strohmenger

13. Gary Strohmenger has been a broker for four years and is respondent's managing broker at Keller Williams. In that role, he supervises respondent in his day-to-day

activities. He testified that respondent is a good agent and he has never had any complaints. He was very surprised when he heard of respondent's conviction. He has read the accusation and discussed it with respondent. Although he was concerned by what happened, he is comfortable continuing to employ respondent.

Reference Letters

14. Respondent submitted a letter from his father, Dave Farmer. Mr. Farmer has been licensed since 1983 and has worked with respondent since respondent was licensed. He praised respondent's work as an agent. In another letter cosigned with his wife, Sheila Farmer, the Farmers discussed respondent's volunteer activities. He believed that the domestic violence incident was out of character for respondent.

Lindsay Kadane is the office manager at RE/MAX and observed respondent while he worked there. She praised his work and character. Her letter did not reference respondent's conviction.

Cost Recovery

15. Complainant requested cost recovery against respondent pursuant to Business and Professions Code section 10106. The declaration by complainant certified investigative costs in the amount of \$536. Complainant's counsel submitted a declaration for prosecution costs in the amount of \$890.

The evidence established that complainant's reasonable costs of investigation and enforcement totaled \$1,426. The certifications that were provided complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b). The scope of the investigation was reasonable in light of the alleged misconduct.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proving that the charges in the accusation are true. (Evid. Code § 115.) The standard of proof in an administrative action seeking to suspend or revoke a professional license is "clear and convincing evidence." (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Sup. Ct.* (2005) 130 Cal.App.4th 586, 594.)

Relevant Statutory Authority

2. Business and Professions Code section 490 provides in relevant part:

(a) In addition to any other action that a board is permitted to take against a licensee, 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.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

3. Pursuant to Business and Professions Code section 10177, subdivision (b), the commissioner may suspend or revoke a license if the licensee has been convicted of a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate license.

4. Pursuant to Business and Professions Code section 10156.5, subdivision (a), the commissioner may issue a restricted license to a person found to have violated the Real Estate Law where such violation would justify the suspension or revocation of the license.

Substantial Relationship

5. Business and Professions Code section 481 provides:

Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

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

(a) When considering whether a license should be . . . suspended or revoked on the basis of the conviction of a crime . . . the crime . . . 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 or threat of doing substantial injury to the person or property of another . . .

Cause Exists to Impose Discipline

7. Cause exists to revoke or suspend respondent's license pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b). Respondent's convictions for assault, making a criminal threat, corporal injury of a spouse, battery of a spouse, and vandalism are substantially related to the qualifications, functions, or duties of a licensee. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Although respondent attempted to minimize the conduct leading to his conviction, he nevertheless pled guilty to the charges. Irrespective of the reason that he entered the plea, respondent is not permitted to attack or impeach the conviction in this administrative proceeding; the conviction stands as conclusive evidence of respondent's guilt of the offense charged. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

Measure of Discipline

8. 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. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

9. California Code of Regulations, title 10, section 2912, sets forth the bureau's criteria for rehabilitation for licensee's who have been convicted of a crime. Under subdivision (a)(1), "The passage of less than two years after the most recent criminal conviction or act of the licensee that is a cause of action in the Bureau's Accusation against the licensee is inadequate to demonstrate rehabilitation."² Respondent suffered four misdemeanor convictions stemming from a single incident. A little more than one year has passed since respondent's conviction. Respondent has complied with the terms of his probation thus far, but has almost two years until his probation is set to terminate. Respondent demonstrated significant and conscientious involvement in community programs designed to provide social benefits or to ameliorate social problems. Respondent has abstained from alcoholic beverages for a little more than a year. According to his testimony, his family life has stabilized and he currently enjoys a good relationship with his wife.

10. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Respondent's acceptance of

² Notwithstanding that respondent cannot demonstrate rehabilitation because two years has not passed since his conviction, Business and Professions Code section 10156.5, subdivision (a), authorizes the commissioner to issue a restricted license.

responsibility was lukewarm at best. Although he admitted that he engaged in a physical altercation with his wife in an attempt to take her cell phone from her, his version of events was far different than what his wife reported to the police and the conduct for which he ultimately pled guilty. Although it is possible that respondent's level of intoxication affected his ability to recall details about the incident, he did not admit to intentionally striking his wife with the phone, placing her in a chokehold, and threatening to kill her – the conduct for which he suffered his convictions. His statement that he snapped the cell phone in half was contradicted by the deputy's observation, which noted only that the screen had been broken. Additionally, respondent lied to the responding officers when he denied any physical altercation. This casts further doubt as to respondent's credibility and integrity.

The testimony by respondent's wife did not bolster his case as she was simply not credible. Her testimony generally mirrored his that respondent attempted to take her cell phone from her and she suffered injuries as result. She denied he intentionally struck her in the face with the phone, put her in a chokehold, and threatened to kill her. There was no clear explanations as to why the reporting deputy would have included this information in his report had she not reported it at the time. Although it is possible that she lied to the deputies, she suffered observable physical injuries and was scared enough to have locked herself in the bathroom and called 911. Thus, it is much more likely that her account to the deputies was a truthful and accurate explanation of what had occurred. As such, the police report is credited over both respondent and his wife's testimony about the incident.

11. Respondent engaged in a violent attack against his wife while he was intoxicated. Although respondent might be a highly professional real estate agent, the attack calls into question his ability to control his anger and impulses. It may well be an isolated incident such that the threat to the public is minimal. However, respondent's request that no discipline be imposed would be inappropriate given the recency of his conviction and that he has not accepted full responsibility. However, given that it appears to be an isolated domestic incident, the public will be protected by permitting respondent to apply for and hold a restricted real estate salesperson license.

Costs of Investigation and Enforcement

12. Complainant is seeking recovery of the reasonable costs of prosecution. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5, which is similar to Business and Professions Code section 10106, did not violate due process. But it was incumbent on the board in that case to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not "deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing." (*Ibid.*)

The Supreme Court set forth five factors to consider in deciding whether to reduce or eliminate costs: Whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; whether the licensee had a

“subjective” good faith belief in the merits of his or her position; whether the licensee raised a “colorable challenge” to the proposed discipline; whether the licensee had the financial ability to make payments; and whether the scope of the investigation was appropriate in light of the alleged misconduct. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 10106 since the language in the cost recovery regulation at issue in *Zuckerman* and section 10106 are substantially the same.

Applying the *Zuckerman* criteria, respondent raised a “colorable challenge” to the proposed discipline and received a reduction in the severity of the discipline imposed. There was no evidence regarding respondent’s ability to pay costs. Investigation and prosecution costs are reduced to \$1,000 as a condition of applying for a restricted license.

ORDER

All licenses and licensing rights issued to respondent Christopher Ryan Farmer under the Real Estate Law are revoked; provided, however, that a restricted real estate salesperson license shall be issued to respondent under Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the issuance of such a restricted license and \$1,000 in prosecution costs 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 Business and Professions Code section 10156.7 and shall be subject to the to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

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 Bureau 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 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.

6. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau 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: October 30, 2017

DocuSigned by:

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ADAM L. BERG
Administrative Law Judge
Office of Administrative Hearings