

FILED

DEC 10 2020

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPT. OF REAL ESTATE
By John Aguirre

In the Matter of the Accusation of:)	DRE Nos. H-05131 SD & <u>H-04892 SD</u>
)	
CHRISTOPHER RYAN FARMER,)	OAH No. 2020040870
)	
Respondent.)	

DECISION

The Proposed Decision dated October 15, 2020, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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

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

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

This Decision shall become effective at 12 o'clock noon on DEC 31 2020.

IT IS SO ORDERED 12.3.20

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER



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

**In the Matter of the Order Suspending Restricted License and
Accusation against:**

CHRISTOPHER RYAN FARMER, Respondent

Agency Case Nos. H-05131 SD; H-04892 SD

OAH No. 2020040870

PROPOSED DECISION

Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard these consolidated matters on September 16, 2020, by videoconference due to the ongoing pandemic public health emergency.

Kathy Yi, Staff Counsel, Department of Real Estate (department), represented complainant.

Jacqueline A. Oliver, Attorney at Law, represented respondent, who was present throughout the hearing.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on September 16, 2020.

ISSUES

Should Christopher Farmer's real estate salesperson license be disciplined based on a conviction of driving under the influence of alcohol in June of 2019? If so, what measure of discipline should be imposed?

SUMMARY

Cause to discipline respondent's real estate license was established. Under the circumstances of this case, the suspension of respondent's restricted license is lifted and a restricted real estate license issued for a minimum of three years.

Jurisdictional Matters

1. The department issued real estate salesperson license S01980471 to respondent on May 21, 2015. On January 2, 2018, the department revoked the license and issued respondent a restricted license as the result of a domestic violence criminal conviction. On March 17, 2020, Veronica Kilpatrick, Supervising Special Investigator (complainant), issued an accusation in her official capacity. On March 27, 2020, the department issued an order indefinitely suspending respondent's restricted license. Respondent has filed timely appeals to both administrative matters.

Domestic Violence Conviction and Restricted License

2. On January 8, 2016, sheriff's deputies responded to a report of domestic violence at respondent's residence. The reporting deputy observed several swollen bumps on respondent's wife's forehead. Officers observed a strong odor of alcoholic beverage emanating from respondent. On July 21, 2016, respondent pled guilty and

was convicted of violating California Penal Code sections 243, 245, 273.5, 422, and 594, all misdemeanors.

3. As a result of the conviction, the department filed an accusation to discipline his salesperson's license. Respondent appealed, and the matter went to hearing in October 2017 before an administrative law judge. On December 17, 2017, the department adopted the administrative law judge's proposed decision recommending that respondent be issued a restricted license.

4. At the administrative hearing for this earlier conviction, respondent testified that he completed a 52-week court-ordered domestic violence program, from which he learned about self-control. He testified that he stopped drinking in August 2016 when the domestic violence program began. He denied having a problem with alcohol.

5. Respondent completed all terms and conditions of his sentencing and probation for the domestic violence conviction. On May 18, 2018, the Superior Court of California, for the County of San Diego, issued an order granting respondent's petition for dismissal of this conviction under Penal Code section 1203.4.

Driving Under the Influence Incident and Conviction

6. On December 26, 2018, respondent drove his vehicle after drinking alcoholic beverages. Shortly after 7:00 p.m., he was making a left turn from a turn lane and collided head-on with an oncoming vehicle. A preliminary alcohol screening device administered at 9:00 p.m. measured his blood alcohol concentration at 0.257 percent and 0.250 percent. A blood sample taken at 10:02 p.m. showed a blood alcohol concentration of 0.259 percent. The collision resulted in bodily injuries to the other driver.

7. On June 25, 2019, respondent pled guilty and was convicted in San Diego Superior Court Case No. CN397207 of violating Vehicle Code section 23153, subdivision (b) (DUI over 0.08 percent causing bodily injury) and 23578 (enhancement for having a high blood alcohol concentration over 0.15 percent). Respondent was placed on five years of summary probation. He served five days of house arrest and was ordered to complete a MADD program and a 9-month DUI program. He has completed both programs and paid all fines and fees.

Respondent's Rehabilitation

8. Respondent stopped drinking alcohol on December 27, 2018, and has been sober ever since. He has joined Alcoholics Anonymous (AA). He attends regular AA meetings. The DUI program and MADD programs the court ordered him to attend were very impactful for him. Although he regrets the incident that occurred, he is grateful that it happened because it allowed him to make necessary changes. It snapped him into the life that he knew he needed to lead to be a good family man, father, husband, and realtor. He testified his life is 100 percent better now that he's sober.

9. Respondent recognizes that he testified in his 2017 hearing that he had quit drinking. He is different today than he was then. He was trying to quit drinking on his own then. He has many more supports in place today than he had in 2017. He has been through the 12 steps of AA twice. He has daily contact with his sponsor. He works on the AA steps every day. His AA work comes before family, work, and everything else.

10. Respondent comes from a real estate family. His father has been a broker for over 35 years. Respondent takes pride in his work as a realtor and in representing his family name.

11. Respondent's supervising broker and co-workers support his return to licensed status despite his convictions. His supervising broker is willing to continue with him on a restricted status if that is deemed necessary.

12. Respondent's wife submitted a letter supporting her husband. The letter supplements and explains respondent's testimony at the hearing. After the DUI incident in December 2018, she gave him an ultimatum that if he did not submit to recovery and sustain his sobriety, she would take their child and leave him. She sees a completely different man now that he is sober. They now have two children. The suspension of his license has understandably been very hard on their family.

Department Costs

13. The department has incurred reasonable costs of investigation and enforcement of \$882.60.

Evaluation

14. Respondent received his real estate license in 2015. Less than a year later, he was involved in a domestic violence incident that was precipitated by his abuse of alcohol. In 2017, respondent faced discipline of his real estate license. He testified at that time that he had turned his life around. He convinced the administrative law judge and the department that he should not lose his license, but should instead be allowed to work under a restricted license.

15. Respondent squandered the second chance he was given by the department in 2017. Less than a year after he was placed on a restricted license, he again succumbed to his desire to drink. This time, he caused bodily injury to another person. As he acknowledged in his testimony, he is very lucky the consequences of his poor judgement were not more severe.

16. Did the fact that the department suspended his license provide a sufficient wake-up call? Does he realize that the department is serious that he maintain his sobriety and avoid further misconduct? Does he appreciate that his failure to do so in the future will have dire consequences for his career and his family?

17. Based on the evidence presented at this hearing, the answer to these questions is yes. Respondent established that he is a significantly different person than he was at his hearing in 2017. At that time, he was in denial. He has a stronger recovery in place now. He has internalized many of the principles of AA and lives them daily. His challenge will be to keep on this path in the future.

18. Respondent has invested significant time and energy in his recovery and has made substantial progress. He has more work to do. Revoking his real estate license at this time would amount to more punishment and is not necessary to protect the public. Extending his restricted license for a minimum of three years will provide public protection and give him time to prove himself. The suspension of respondent's current restricted license should be lifted, and a restricted license issued.

LEGAL CONCLUSIONS

1. Business and Professions Code sections 490 and 10177, subdivision (b), authorize the Real Estate Commissioner to suspend or revoke a license if a licensee has

been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. Section 10177, subdivision (k), authorizes the Real Estate Commissioner to suspend or revoke a license if the licensee has violated any of the terms or restrictions contained in an order granting a restricted license.

2. The department has defined conduct deemed to be substantially related to the qualifications, functions, or duties of a real estate licensee in California Code of Regulations, title 10, section 2910. Respondent's convictions are substantially related to the qualifications, functions, or duties of a real estate licensee.

3. The object of an administrative proceeding aimed at revoking a license is to protect the public. (*Small v. Wejjola* (1971) 16 Cal.App.3d 450, 457.)

4. The purpose of discipline is not to punish, but to protect the public by eliminating practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

5. 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.)

6. Business and Professions Code section 10106 authorizes the Commissioner in a disciplinary proceeding to request an order directing the licensee

to pay the reasonable costs of investigation and enforcement. The reasonable costs of investigation and enforcement in this matter are \$882.60.

7. Cause was established by clear and convincing evidence to discipline respondent's real estate license based on his driving under the influence convictions.

8. Based on the evidence in this case, the appropriate measure of discipline is a restricted real estate license for a minimum of three years. Since a restricted license will be issued, the suspension of his current restricted license must be lifted.

ORDER

The suspension of respondent Christopher Ryan Farmer's restricted real estate license is lifted.

Christopher Ryan Farmer shall pay \$882.60 to the department on terms and conditions it establishes for reasonable costs of investigation and enforcement.

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 Department of Real Estate the appropriate fee for the issuance of such a restricted license, and \$882.60 in reasonable investigation and enforcement 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 three 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 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.

DATE: October 15, 2020

Alan R. Alvord

ALAN R. ALVORD

Administrative Law Judge

Office of Administrative Hearings