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**FILED**  
**SEP 21 2018**  
DEPARTMENT OF REAL ESTATE  
By 

BEFORE THE DEPARTMENT<sup>1</sup> OF REAL ESTATE  
STATE OF CALIFORNIA

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| <p>In the Matter of the Accusation of</p> <p>TIFFANY MICHELLE HOWELL,</p> <p>Respondent.</p> | <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> | <p>CASE NO. H-04954 SD</p> <p>OAH NO. 2018010609</p> |
|--|--|--|

STIPULATION AND AGREEMENT  
AND  
DECISION AFTER REJECTION

The California Department of Real Estate (“Department”) filed an Accusation against TIFFANY MICHELLE HOWELL (“Respondent”) on November 27, 2017.

On March 29, 2018, a hearing was held before Adam L. Berg, Administrative Law Judge (“ALJ”), Office of Administrative Hearings, at San Diego, California. Department Counsel, James R. Peel, represented the Complainant. Respondent personally appeared at the

<sup>1</sup> Between July 1, 2013 and July 1, 2018, the Department of Real Estate operated as the Bureau of Real Estate, under the Department of Consumer Affairs.

1 hearing and was represented by George R. Najjar, Esq. Oral and documentary evidence was  
2 received, and the matter was submitted.

3 On April 27, 2018, the ALJ issued a Proposed Decision, which suspended  
4 Respondent's real estate salesperson license for 30 days, with the suspension stayed for 1 year,  
5 subject to certain terms and conditions. On May 31, 2018, the Commissioner rejected the  
6 Proposed Decision of April 27, 2018.

7  
8 The parties wish to settle this matter without further proceedings.

9 IT IS HEREBY STIPULATED by and between Respondent and Respondent's  
10 attorney, George R. Najjar, and the Department, acting by and through James A. Demus, as  
11 follows for the purpose of settling and disposing of the Accusation filed by the Department.

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

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

23 ORDER

24  
25 WHEREFORE, THE FOLLOWING ORDER is hereby made:

26 All licenses and licensing rights of Respondent TIFFANY MICHELLE  
27 HOWELL, under the Real Estate Law are revoked; provided, however, a restricted real estate

1 salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business  
2 and Professions Code, if Respondent makes application therefor and pays to the Department  
3 the appropriate fee within 90 days from the effective date of this Decision. The restricted  
4 license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the  
5 Business and Professions Code and to the following limitations, conditions and restrictions  
6 imposed under authority of Section 10156.6 of that code:

7 1. The restricted license issued to Respondent may be suspended prior to  
8 hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or  
9 plea of nolo contendere to a crime which is substantially related to Respondent's fitness or  
10 capacity as a real estate licensee.

11 2. The restricted license issued to Respondent may be suspended prior to  
12 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the  
13 Commissioner that Respondent has violated provisions of the California Real Estate Law, the  
14 Subdivided Lands Law, Regulations of the Real Estate Commissioner, or conditions attaching  
15 to this restricted license.

16 3. Respondent shall not be eligible to apply for the issuance of an unrestricted  
17 real estate license nor for the removal of any of the conditions, limitations or restrictions  
18 of a restricted license until two (2) years have elapsed from the date of issuance of the  
19 restricted license to Respondent.

20 4. Respondent shall submit with any application for license under an employing  
21 broker, or any application for transfer to a new employing broker, a statement signed by the  
22 prospective employing real estate broker on a form approved by the Department of Real Estate  
23 which shall certify:

24 (a) That the employing broker has read the  
25 Decision of the Commissioner which granted  
26 the right to a restricted license; and

27 (b) That the employing broker will exercise

1 close supervision over the performance by  
2 the restricted licensee relating to activities  
3 for which a real estate license is required.

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

13 6. Respondent shall notify the Commissioner in writing within 72 hours of any  
14 arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post  
15 Office Box 137007, Sacramento, CA 95813-7007. The letter shall set forth the date of  
16 Respondent's arrest, the crime for which Respondent was arrested and the name and address of  
17 the arresting law enforcement agency. Respondent's failure to timely file written notice shall  
18 constitute an independent violation of the terms of the restricted license and shall be grounds  
19 for the suspension or revocation of that license.

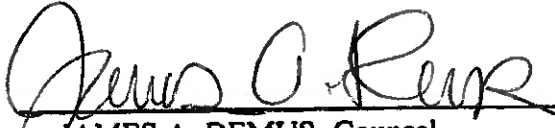
20 7. All licenses and licensing rights of Respondent are indefinitely suspended  
21 unless or until Respondent pays the sum of \$500 for the Commissioner's reasonable cost of  
22 the investigation and enforcement which led to this disciplinary action. Said payment shall be  
23 in the form of a cashier's check made payable to the Department of Real Estate. The  
24 investigative and enforcement costs must be delivered to the Department of Real Estate, Flag  
25 Section at P.O. Box 137013, Sacramento, CA 95813-7013, within 60 days of the effective date  
26 of this Order.

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9/11/18

DATED



JAMES A. DEMUS, Counsel  
Department of Real Estate

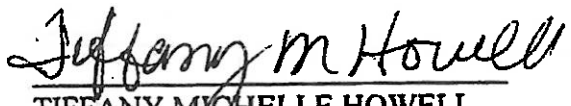
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I have read the Stipulation and its terms are understood by me and are agreeable and acceptable to me. I willingly and voluntarily agree to enter into this Stipulation.

Respondent shall send a hard copy of the original signed Stipulation and Agreement to: James A. Demus, Department of Real Estate, 320 West Fourth St, Ste 350, Los Angeles, CA. 90013. In the event of time constraints, Respondent can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by emailing a scanned copy of the signature page, as actually signed by Respondent, to the Department counsel assigned to this case. Respondent agrees, acknowledges and understands that by electronically sending the Department a scan of Respondent's actual signature as it appears on the Stipulation and Agreement, that receipt of the scan by the Department shall be binding on Respondent as if the Department had received the original signed Stipulation and Agreement.

8/25/18

Dated

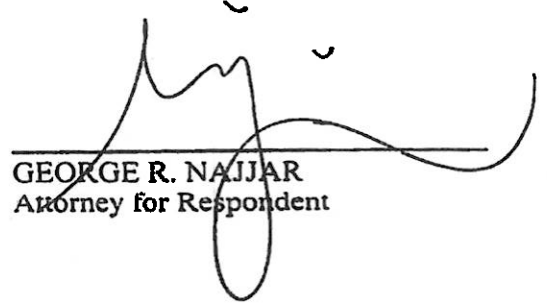


TIFFANY MICHELLE HOWELL  
Respondent

I have reviewed this Stipulation and Agreement as to form and content and have advised my client accordingly.

9/11/18

Dated



GEORGE R. NAJJAR  
Attorney for Respondent

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DECISION AND ORDER

The foregoing Stipulation and Agreement and Decision After Rejection is hereby adopted as my Decision in this matter.

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

OCT 11 2018,

IT IS SO ORDERED September 17, 2018.

Daniel J. Sandri  
Acting Real Estate Commissioner

  
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**FILED**

JUN 05 2018

**BUREAU OF REAL ESTATE**

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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|------------------------------------|---|-----------------------|
| In the Matter of the Accusation of | ) | CalBRE No. H-04954 SD |
|                                    | ) |                       |
| TIFFANY MICHELLE HOWELL,           | ) | OAH No. 2018010609    |
|                                    | ) |                       |
| Respondent.                        | ) |                       |

NOTICE

TO: TIFFANY MICHELLE HOWELL, Respondent, and GEORGE RICHARD NAJJAR, her Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated April 27, 2018, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated April 27, 2018, is attached hereto 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 Thursday, March 29, 2018, and 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 Thursday, March 29, 2018, at the Los

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

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

6 DATED: May 31, 2018.

7 WAYNE S. BELL  
8 REAL ESTATE COMMISSIONER

9  
10 By   
11 DANIEL J. SANDRI  
12 Chief Deputy Commissioner

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

In the Matter of the Accusation Against:

TIFFANY MICHELE HOWELL,

Respondent.

Case No. H-04954 SD

OAH No. 2018010609

**PROPOSED DECISION**

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 29, 2019, in San Diego, California.

James R. Peel, Real Estate Counsel, represented complainant, Veronica Kilpatrick, Supervising Special Investigator, Bureau of Real Estate, Department of Consumer Affairs, State of California.

George R. Najjar, Attorney at Law, represented respondent, Tiffany Michelle Howell.

The matter was submitted on March 29, 2018.

**FACTUAL FINDINGS**

*Background*

1. On June 3, 2011, respondent submitted to the bureau an application for a real estate salesperson license. The bureau denied respondent's application based on misdemeanor convictions in 1990 and 1991 for trespassing, petty theft and driving under the influence of an alcoholic beverage. On July 2, 2012, following an administrative hearing, the Commissioner issued respondent a restricted license with terms and conditions. On December 8, 2015, the bureau issued respondent an unrestricted license.

2. On November 16, 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 battery of a spouse and vandalism, which are crimes substantially related to the qualifications, functions, and duties of a real estate salesperson. Complainant also alleged respondent failed to timely report the

convictions to the bureau. Complainant requested reimbursement of investigation and prosecution costs. Respondent filed a notice of defense; this hearing ensued.

#### *Respondent's 2017 Convictions*

3. On March 2, 2017, in the Superior Court of California, San Diego County, respondent, on a plea of guilty, was convicted of misdemeanor violations of Penal Code sections 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; ordered her to complete a 52-week domestic violence course; and ordered payment of fines and fees.

4. A San Diego Police Department arrest report was admitted pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448.<sup>1</sup> On June 3, 2016, officers responded to respondent's call to 911 for report of domestic violence at her residence. Respondent told the officer that she had argued with her 13 year-old-daughter earlier in the evening. Her daughter ran away, and respondent attempted to find her for several hours. When respondent's husband came home from a concert, he said he knew where their daughter was but he was not going to tell respondent. Respondent said she grabbed her husband's shirt and began shaking him, but he refused to tell her where their daughter was. Respondent then called the police. Officers arrested respondent for domestic violence.

#### *Respondent's Testimony*

5. Respondent is 50 years old. She accepted full responsibility for her conviction. She completed all requirements the court imposed including community service and the domestic violence counseling. She submitted a petition for early termination of probation and dismissal that is set to be heard in May 2018.

6. After her arrest, she realized she had unresolved personal issues and sought counseling. She was diagnosed with bipolar disorder. Through medication and cognitive therapy, she has realized a dramatic change in her life. Since her diagnosis, her family life has improved. Respondent expressed pride in her work. She said that her failure to notify the bureau of her conviction was not intentional. She said she was focused almost

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<sup>1</sup> 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.

exclusively on her mental health and counseling and her work took a back-seat. She knew she would have to disclose the conviction when she renewed her license, but it had not occurred to her that she needed to immediately disclose the conviction. Respondent was on the board of directors for a non-profit that helped people who were previously in gangs raise money for tattoo removal. However, the non-profit was recently dissolved when the director was caught embezzling funds.

7. In a Conviction Detail Report respondent submitted to the bureau, respondent discussed in detail the circumstances of her arrest. She admitted to scratching her daughter on the neck during the fight and grabbing her husband by the shirt and pulling a necklace from him. Her statement was consistent with what she told the police the night of her arrest.

8. Respondent's testimony was sincere, contrite, and credible.

#### *Respondent's Additional Evidence*

9. Respondent submitted a progress report from Robert Gerstle, Ph.D., addressing respondent's diagnoses of bipolar disorder and major depressive disorder. Dr. Gerstle noted that respondent has been compliant with treatment, including medications and psychotherapy, with no reported incidents.

10. Respondent submitted a declaration by her broker, Andrew Lyon. Mr. Lyon praised respondent's professionalism and attentiveness to her clients. He has no concerns about her ability to work in the real estate profession and he fully intends to retain respondent as an employee. Respondent kept Mr. Lyon informed about the charges against her and her subsequent conviction.

11. Respondent submitted a declaration by John Howell, respondent's husband. Mr. Howell described the incident that led to respondent's arrest, her bipolar diagnosis, and her post-conviction treatment. He stated that his relationship between respondent and their family has improved, and respondent has not exhibited any violent tendencies.

#### *Cost Recovery*

12. 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 \$920. Complainant's counsel submitted a declaration for prosecution costs in the amount of \$218.

The evidence established that complainant's reasonable costs of investigation and enforcement totaled \$1,138. The certifications that were provided complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b).

## 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.
5. Under Business and Professions Code section 10186.2, a licensee shall report any felony or misdemeanor conviction to the bureau within 30 days of conviction. Failure to make a report constitutes a cause for disciplinary action.

*Substantial Relationship*

6. 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.

7. 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*

8. 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 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).)

9. Cause exists to revoke or suspend respondent's license, pursuant to Business and Professions Code section 10186.2. Clear and convincing evidence established that respondent failed to report his criminal conviction to the bureau within 30 days of conviction.

*Measure of Discipline*

10. 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.)

11. California Code of Regulations, title 10, section 2912, sets forth the bureau's criteria for rehabilitation for licensees 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." Respondent suffered two 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 her probation thus far and has sought early termination of probation.

12. 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 responsibility was sincere and complete. She was honest with the police the night of her arrest and completely forthcoming with the bureau regarding the circumstances of her arrest. Most importantly, respondent has meaningfully attempted to resolve her underlying anger issues. This led to a diagnosis of bipolar disorder for which respondent has been receptive to treatment. The domestic incident appears to be an isolated event. Respondent reported her arrest to her broker, and although she did not report the conviction to the bureau, her testimony that her mental health was her primary focus was credible. The public will be protected by suspending respondent's license for 30 days, but staying the suspension for a period of one year, subject to applicable terms and conditions.

#### *Costs of Investigation and Enforcement*

13. 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 \$500.

ORDER

All licenses and licensing rights of respondent, Tiffany Michelle Howell, under the Real Estate Law are suspended for a period of 30 days from the effective date of this Decision; provided, however, that 30 days of said suspension shall be stayed for one (1) year upon the following terms and conditions:

Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California;

Respondent shall pay investigation costs in the amount of \$500 within 60 days of the effective date of this Decision or within any extension granted by the bureau; and

That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

DATED: April 27, 2018

DocuSigned by:



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ADAM L. BERG  
Administrative Law Judge  
Office of Administrative Hearings