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3 **FILED**

4 JAN 17 2019

5 DEPT. OF REAL ESTATE
6 By Sybil Danner

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11 BEFORE THE DEPARTMENT OF REAL ESTATE
12 STATE OF CALIFORNIA

13 * * *

14 In the Matter of the Application of) DRE No. H-04999 SD
15 JESSICA LYNN HAWK,) OAH No. 2018070363
16)
17 Respondent.)

18 STIPULATION AND WAIVER
19 &
20 DECISION AFTER REJECTION

21 The California Department of Real Estate ("DEPARTMENT") filed a Statement
22 of Issues against JESSICA LYNN HAWK ("Respondent") on May 25, 2018. On September 5,
23 2018, a hearing was held and evidence was received, and the case was deemed submitted on
24 September 5, 2018.

25 On September 26, 2018, the Proposed Decision of Administrative Law Judge
26 ("ALJ") Susan J. Boyle was issued. ALJ Boyle determined, among other things, that

1 Respondent's application for an unrestricted real estate salesperson license should be denied;
2 provided, however, Respondent shall be issued a restricted license by the Real Estate
3 Commissioner pursuant to section 10156.5 of the Business and Professions Code ("Code") and
4 subject to the provisions of Code Section 10156.7 and to certain enumerated limitations,
5 conditions, and restrictions.

6 On October 25, 2018 the Commissioner rejected the Proposed Decision of
7 September 26, 2018.

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

9 IT IS HEREBY STIPULATED by and between Respondent, JESSICA LYNN
10 HAWK, representing herself, and the Department, acting by and through Julie To, Counsel for
11 the Department of Real Estate, as follows for the purpose of settling and disposing of the
12 Statement of Issues filed by the Department.

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

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

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FACTUAL FINDINGS

1. Complainant brought the Statement of Issues in her official capacity.

2. On April 3, 2017, Respondent submitted an application for a real estate salesperson license. The application was denied and the denial is the subject of this hearing.

3. On or about November 15, 2007, a felony complaint was filed against Respondent in the Superior Court of the State of California, County of San Diego, in Case No. CN237356, for violation of VC Section 20001(b)(2) (Hit and Run with Death or Permanent Serious Injury) (Count 1); VC Section 191.5(b) (Vehicular Manslaughter While Intoxicated) (Count 2); and Penal Code ("PC") Section 273(a)(a) (Child Abuse – Felony) (Count 3). On or about February 7, 2008, Respondent pled guilty to and was convicted for violation of Counts 1 and 2. On or about March 25, 2008, Respondent was sentenced four (4) years in prison and ordered to pay fines in the amount of \$800.00 and victim restitution in the amount of \$2,292.83.

4. Respondent has complied with the court-ordered requirements of her sentence in Case No. CN237356.

5. Respondent disclosed her 2008 conviction on her April 3, 2017 application to the Department. At hearing, Respondent testified as to the details of the underlying incident that led to her 2017 conviction, the details of her sentence, and the details of her life subsequent to completion of the court-ordered sentence.

LEGAL CONCLUSIONS

1. Respondent has the burden of proof in this matter because she applied for and was denied licensure by the Department and appealed the denial.

2. The hearing on Respondent's appeal was held pursuant to a Statement of Issues filed by the Department. The Statement of Issues was created pursuant to the authority conferred by Government Code section 11504. A Statement of Issues is the appropriate initial pleading in matters where a Respondent requests that an agency take some action regarding

1 whether a right, authority, license or privilege should be granted, issued or renewed and the
2 agency has refused to do so. Section 11504 places the burden of proof upon the Respondent to
3 establish why the agency should grant the applied for right, authority, license or privilege.
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5 3. This conclusion is supported by the decision in *McCoy v. Board of Retirement*
6 (1986) 183 Cal. App. 3d 1044, where the Court of Appeal, in considering the issue of who has
7 the burden of proof in an administering hearing, stated:

8 "As in ordinary civil actions, the party asserting the affirmative at an
9 administrative hearing has the burden of proof, including both the initial burden
10 of going forward and the burden of persuasion by preponderance of the
11 evidence..."

12 4. Respondent is asserting the affirmative in this matter by claiming that he
13 should be granted the applied-for-license. Therefore she has the burden of proof. The
14 standard of proof is a preponderance of the evidence.

15 5. Business and Professions Code section 10177 provides:

16 "The commissioner may suspend or revoke the license of a real estate
17 licensee, or may deny the issuance of a license to an applicant, who has done any
18 of the following, or may suspend or revoke the license of a corporation, or deny
19 the issuance of a license to a corporation, if an officer, director, or person owning
20 or controlling 10 percent or more of the corporation's stock has done any of the
21 following:

22 [¶]...[¶]

23 (b)(1) Entered a plea of guilty or *nolo contendere* to, or been found guilty
24 of, or been convicted of, a felony, or a crime substantially related to the
25 qualifications, functions, or duties of a real estate licensee, and the time for appeal
26 has elapsed or the judgement of conviction has been affirmed on appeal,
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1 irrespective of an order granting probation following that conviction, suspending
2 the imposition of sentence, or of a subsequent order under Section 1203.4 of the
3 Penal Code allowing that licensee to withdraw his or her plea of guilty and to
4 enter a plea of not guilty, or dismissing the accusation or information.”

5 6. Cause exists to deny Respondent's application for a real estate salesperson
6 license pursuant to Business and Professions Code section 10177, subdivision (b), by reason
7 of Respondent's April 3, 2017 conviction.

8 7. Although cause for license denial exists, restricted licensure of Respondent
9 under the close supervision of a real estate broker for a period of two (2) years is consistent with
10 the public interest.

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2 **ORDER**

3 Respondent's application for a real estate salesperson license is denied; provided,
4 however, a restricted real estate salesperson license shall be issued to Respondent pursuant to
5 Section 10156.5 of the Business and Professions Code. The restricted license issued to the
6 Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and
7 Professions Code and to the following limitations, conditions and restrictions imposed under
8 authority of Section 10156.6 of said Code:

9 1. The restricted license shall not confer any property right in the privileges to be
10 exercised, and the Real Estate Commissioner may by appropriate order suspend the right to
11 exercise any privileges granted under this restricted license in the event of:

12 a. The conviction of Respondent (including a plea of *nolo contendere*) of
13 a crime which is substantially related to Respondent's fitness or capacity as a real estate
14 licensee; or

15 b. The receipt of evidence that Respondent has violated provisions of the
16 California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate
17 Commissioner, or conditions attaching to this restricted license.

18 2. Respondent shall not be eligible to petition for the issuance of an unrestricted
19 real estate license nor the removal of any of the conditions, limitations, or restrictions attaching
20 to the restricted license until two (2) years have elapsed from the date of issuance of the
21 restricted license to Respondent. Respondent shall not be eligible to apply for any unrestricted
22 licenses until all restrictions attaching to the license have been removed.

23 3. With the application for license, or with the application for transfer to a new
24 employing broker, Respondent shall submit a statement signed by the prospective employing
25 real estate broker on a form approved by the Department of Real Estate wherein the employing
26 broker shall certify as follows:


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2 a. That the employing broker has read the Decision which is the basis for
3 the issuance of the restricted license; and

4 b. That the employing broker will carefully review all transaction
5 documents prepared by the restricted licensee and otherwise exercise
6 close supervision over the licensee's performance of acts for which a
7 license is required.

8 4. Respondent shall notify the Commissioner in writing within seventy-two (72)
9 hours of any arrest by sending a certified letter to the Real Estate Commissioner at the
10 Department of Real Estate, Post Office Box 137013, Sacramento, CA 95813-7013. The letter
11 shall set forth the date of Respondent's arrest, the crime for which Respondent was arrested, and
12 the name and address of the arresting law enforcement agency. Respondent's failure to timely
13 file written notice shall constitute an independent violation of the terms of the restricted license
14 and shall be grounds for the suspension or revocation of that license.

15 12-24-18

16 Dated


Julie L. To, Counsel
Department of Real Estate

17 * * *

18 I have read the Stipulation and Waiver and Decision after Rejection, and its terms
19 are understood by me and are agreeable and acceptable to me. I willingly and voluntarily agree
20 to enter into this Stipulation and Waiver and Decision after Rejection.

21 Respondent can signify acceptance and approval of the terms and conditions of
22 this Stipulation and Waiver and Decision after Rejection by sending a hard copy of the original
23 signed signature page(s) of the Stipulation herein to Julie L. To, Legal Section, Department of
24 Real Estate, 320 W. Fourth St., Suite 350, Los Angeles, California 90013-1105. In the event of
25 time constraints, Respondent can signify acceptance and approval of the terms and conditions of
26 this Stipulation and Agreement by e-mailing a scanned copy of the signature page, as actually

1 signed by Respondent, to the Department counsel assigned to this case. Respondent agrees,
2 acknowledges and understands that by electronically sending to the Department a scan of
3 Respondent's actual signature as it appears on the Stipulation and Waiver and Decision After
4 Rejection, that receipt of the scan by the Department shall be binding on Respondent as if the
5 Department had received the original signed Stipulation and Waiver and Decision After
6 Rejection.

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8 Dated

12/12/2018


JESSICA LYNN HAWK
Respondent

9 * * *

10 The foregoing Stipulation and Waiver and Decision After Rejection is hereby
11 adopted as my Decision in this matter and shall become effective at 12 o'clock noon on
12 FEB 05 2019

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14 IT IS SO ORDERED January 8, 2019.

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16 DANIEL J. SANDRI
17 ACTING REAL ESTATE COMMISSIONER

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Flag-Intro

FILED

OCT 30 2018

DEPT. OF REAL ESTATE

By *Suzanne Danner*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of)	DRE No. H-04999 SD
)	
JESSICA LYNN HAWK,)	
)	OAH No. 2018070363
Respondent.)	

NOTICE

TO: JESSICA LYNN HAWK, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated September 26, 2018, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated September 26, 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 Wednesday, September 05, 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 Wednesday, September 05, 2018, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for

1 good cause shown.

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

5 DATED: October 25, 2018

6 DANIEL J. SANDRI
7 ACTING REAL ESTATE COMMISSIONER

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JESSICA LYNN HAWK,

Respondent.

Case No. H-04999 SD

OAH No. 2018070363

PROPOSED DECISION

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 5, 2018, in San Diego, California.

Julie To, Real Estate Counsel, represented complainant, Veronica Kilpatrick, Supervising Special Investigator, Department of Real Estate,¹ State of California (department).

Jessica Lynn Hawk, respondent, represented herself.

The matter was submitted on September 5, 2018.

FACTUAL FINDINGS

Application for a Real Estate Salesperson License

1. On January 17, 2017, respondent passed the real estate salesperson examination. On March 30, 2017, she signed and submitted to the department an application to become a real estate salesperson.

2. The real estate salesperson application requires applicants to detail criminal convictions they received, if any. In her application, respondent checked the box "Yes" in answer to Question No. 28, which asked "HAVE YOU EVER BEEN CONVICTED . . . OF ANY VIOLATION OF THE LAW AT THE MISDEMEANOR OR FELONY LEVEL?" (Emphasis in the original.)

¹ The Bureau of Real Estate became the Department of Real Estate on July 1, 2018.

3. In the section of the application where respondent was to describe the convictions she sustained, respondent disclosed that on November 9, 2007,² she was convicted of two felony offenses, one a violation of Vehicle Code section 20001, subdivision (b)(2), hit and run with death or permanent serious injury; and one a violation of Penal Code section 191.5, subdivision (c)(1), vehicular manslaughter while intoxicated.

4. On May 12, 2017, the department congratulated respondent on passing her real estate salesperson examination but advised her that it required additional information before "a determination may be made on your license request." Respondent completed an Interview Information Statement, Conviction Detail Report, and a two-page letter in response to the department's request for additional information.

5. On May 23, 2018, complainant signed the Statement of Issues in Case No. H-04999 SD in her official capacity. The Statement of Issues sought an order denying the issuance of a real estate salesperson license to respondent because she was convicted of two felony offenses that are substantially related to the qualifications, functions or duties of a real estate salesperson.

2008 CONVICTION

DETAILS OF THE INCIDENT

6. In a letter of explanation dated June 21, 2017, respondent described the incident that led to her arrest and conviction in 2008 as follows: On November 9, 2007, she finished her shift as a bartender at a restaurant/bar at 6:00 p.m. She waited for her son's babysitter to deliver her one and one-half year-old son to her at the restaurant/bar and then left with her son in her car to go to her boyfriend's home. It was dark when respondent left the bar/restaurant.

7. Respondent exited "the freeway"³ at Civic Center Drive in or around Vista, California via a "poorly lit off ramp." She "glanced" down at her cell phone and, within seconds, she heard a loud crash and saw that her windshield was shattered. She believed at the time that she had hit a parked car on the shoulder of the off ramp. She continued on the off ramp and made the first right turn onto Phillips Street. She stopped her car to check on her son and "try to piece together what [had] just happened." Glass shards from the shattered windshield were in her car and her fender was "bent." Respondent confirmed that her son was all right. Shaken by the accident, respondent continued to her boyfriend's home and

² Respondent's convictions were entered on February 7, 2008. The date respondent provided was the date of the accident that led to her conviction. The fact that she misidentified her conviction date was not alleged as a ground to deny respondent's application.

³ Respondent did not identify the freeway, but it is believed to be California State Route 78.

parked on the street in front of his home. Respondent did not notify the authorities that she had hit a vehicle.

8. The following day, respondent was preparing to take her son to a movie when she noticed a police officer outside her boyfriend's home. The police officer asked her what had happened to her car. Respondent "broke down" and told the officer she hit a car. The officer then advised her that she did not hit a parked car, but she had hit a person. Respondent later learned that an individual was crossing the dark off ramp to put gas in his car that was parked on the shoulder of the off ramp when respondent struck and killed him. A neighbor had heard about the hit and run accident, observed the damage to respondent's vehicle, and telephoned police.

9. Respondent was "in a state of shock." She was taken to a police station and questioned. Although she did not believe she was "drunk" at the time of the accident, she admitted to police that she had consumed beer at the end of her shift before driving to her boyfriend's home. Respondent wrote, had she believed she had hit a person and was trying to evade arrest, she would have parked her car in her boyfriend's garage.

GUILTY PLEA AND SENTENCING

10. On March 25, 2008, in the Superior Court of California, County of San Diego, respondent pled guilty to, and was convicted of, one felony count of hit and run with a death involved in violation of Vehicle Code section 20001, subdivision (b)(2), and one felony count of vehicular manslaughter without gross negligence in violation of Penal Code section 19, subdivision (c)(3). Respondent admitted on her guilty plea form that she

was driving a vehicle involved in an accident resulting in death and failed to stop at the scene and provide information or render aid as required by law. Additionally, [she] did unlawfully kill another without malice or gross negligence or driving [illegible] while under the influence of alcohol at an unsafe speed for conditions and personally inflicted great bodily injury on that individual.

11. Respondent was sentenced to four years in custody with credit for 205 days served. She was ordered to pay \$2,292.83 in restitution, and \$800 for fines and fees.

12. Respondent wrote in her explanation letter that she was a model inmate in prison. While she was in custody, she became a forest fighter with the California Department of Forestry through a program called Fire Camp. Her participation in this program reduced her sentence to 20 months in custody. Once released from custody and on parole, her parole officer petitioned to have her parole reduced, and she was released from parole after three months.

Evidence Presented by Respondent

13. Respondent testified at the hearing. She is 34 years old, engaged to be married, and the mother of three children. She was 23 years old at the time of her accident.

14. Respondent emotionally recounted the events of the night of November 9, 2007. She understood the seriousness of her past conduct and her grave error in not stopping, even if she believed she hit only a vehicle, and in not notifying law enforcement after the accident. She expressed her belief that she was not a bad person, but she was a person who made a "dumb decision." As related to having killed a person, respondent said she had never been in a fight, hurt anyone, or been in trouble with the law before the accident, and she has not been involved in any such conduct since. Respondent has paid the court-ordered restitution.

15. Respondent does not believe she had a drinking problem in 2007, and she does not believe she was intoxicated on November 9, 2007. At that time, she did not rely on alcohol to live her life and only drank socially and not to excess. However, after respondent was released from incarceration, she turned to alcohol to cope with the accident and what she had done. After approximately six months of using alcohol to self-medicate, respondent realized this was not the life she wanted, and she became clean and sober. Respondent sought out Alcoholics Anonymous (AA) and became a regular attendee. Currently, she attends meetings when she can, continues to work the steps, and shares her story with fellow AA attendees. She does not have a sponsor, nor does she sponsor anyone. She last attended an AA meeting two weeks before the administrative hearing. She testified she recently moved and is getting used to the location of AA meetings near her new home. Her sobriety date is July 26, 2010.

16. Respondent continues to carry "a ton of guilt" about the accident. She testified that a family friend of the man whose life she took contacted her, and he offered forgiveness. Respondent was grateful and humbled by that act of graciousness. Respondent wrote in her letter of explanation that the "hardest thing about all [that happened] is forgiving [herself]."

17. Respondent obtained employment within two months of being paroled. She always disclosed her criminal conviction to each employer. In January 2015, respondent obtained employment with Reebroker Group, an online real estate brokerage, as an administrator. She did "behind the scenes" work for them and loved the work. In March 2018, respondent obtained employment with a high producing team of realtors with Keller Williams. She performs administrative tasks that do not require a license. She believes Keller Williams is a potential supervising broker should she receive her real estate license. Respondent also started her own business and provides support services to other real estate agents as an independent contractor. In this capacity, respondent is a liaison between the agents and their clients to expedite transactions. Respondent stated she did not receive performance evaluations from her employers. Respondent testified she had a lot of support in the industry; however, she did not provide any letters of reference or commendation because she did not know she could submit them at the hearing.

18. Respondent testified she has been involved in charity work, but she did not provide any documentary evidence of her work. She stated she has a good heart, and she tries to be a good citizen. She is a member of her church and attends as regularly as she can when she can get her children ready. She had been involved with Toastmasters, but she no longer attends those meetings. Respondent asked that she would be “granted the chance to prove that the mistakes of [her] past do not define [her].”

19. Respondent’s testimony was forthright and sincere. She answered questions thoughtfully and completely. She fully accepted responsibility for her conduct on November 9, 2007, and was genuinely remorseful. Respondent’s testimony was credible and persuasive, although it was not supported by documentary evidence.

LEGAL CONCLUSIONS

Applicable Statutory and Regulatory Provisions

1. Business and Professions Code section 475 provides, in part:
 - (a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

[¶] . . . [¶]

(2) Conviction of a crime.
2. Business and Professions Code section 480, subdivisions (a)(1), and (a)(3)(B), provide that a license may be denied when an applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a licensee.
3. Business and Professions Code section 482 requires the department to “develop criteria to evaluate the rehabilitation of a person” when considering the denial of a license under section 480. Section 482 also requires the department to “take into account all competent evidence of rehabilitation furnished by the applicant or licensee.”
4. Business and Professions Code section 10177, subdivision (b), provides in relevant part that the department can deny the issuance of a license to an applicant who has entered a plea of guilty to a felony, or a crime that is “substantially related to the qualifications, functions, or duties of a real estate licensee”
5. California Code of Regulations, title 10, section 2910, subdivision (a), provides 11 acts and/or conduct that are “deemed to be substantially related to the qualifications, functions or duties of a licensee of the Bureau within the meaning of Sections 480 and 490 of the Code” None of the 11 items listed are applicable to respondent.

6. California Code of Regulations, title 10, section 2911, subdivision (a), provides criteria to be considered in evaluating whether or not an applicant is rehabilitated for purposes of issuance or for reinstatement of a license as follows:

(1) The time that has elapsed since commission of the act(s) or offense(s):

(A) The passage of less than two years after the most recent criminal conviction or act of the applicant that is a cause of action in the Bureau's Statement of Issues against the applicant is inadequate to demonstrate rehabilitation.

(B) Notwithstanding subdivision (a)(1)(A), above, the two year period may be increased based upon consideration of the following:

(i) The nature and severity of the crime(s) and/or act(s) committed by the applicant.

(ii) The applicant's history of criminal convictions and/or license discipline that are "substantially related" to the qualifications, functions, or duties of a real estate licensee. However, no rehabilitation shall be required where the sole proven basis or bases for denial of an application is an expunged conviction as described in Business and Professions Code Section 480(c).

(2) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant, or escheat to the State of these monies or other properties if the victim(s) cannot be located.

(3) Expungement of criminal convictions.

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

(5) Successful completion or early discharge from probation or parole.

- (6) Abstinence from the use of controlled substances and/or alcohol for not less than two years if the conduct which is the basis to deny the Bureau action sought is attributable in part to the use of controlled substances and/or alcohol.
- (7) Payment of the fine and/or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.
- (8) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the Bureau action sought.
- (9) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.
- (10) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.
- (11) Correction of business practices resulting in injury to others or with the potential to cause such injury.
- (12) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- (13) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the Bureau action sought.
- (14) Change in attitude from that which existed at the time of the conduct in question as evidenced by the following:
 - (A) Testimony and/or other evidence of rehabilitation submitted by the applicant.
 - (B) Evidence from family members, friends and/or other persons familiar with applicant's previous conduct and with his or her subsequent attitudes and/or behavioral patterns.
 - (C) Evidence from probation or parole officers and/or law enforcement officials competent to testify as to applicant's social adjustments.

(D) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(E) Absence of subsequent felony convictions, misdemeanor convictions, or other conduct that provides grounds to discipline a real estate licensee, which reflect an inability to conform to societal rules when considered in light of the conduct in question.

Evaluation

7. Cause exists to deny respondent's application for a real estate salesperson license pursuant to Business & Professions Code sections 475, subdivision (a)(2); 480, subdivision (a)(1); and 10177, subdivision (b). Real estate salespersons deal in complicated business and financial transactions and are required to comply with complex legal requirements. Real estate salespersons must be law-abiding and trustworthy, have integrity, and use good judgment in completing real estate transactions. Respondent was convicted of two felony charges that involved the death of an individual and leaving the scene of an accident. These crimes are substantially related to the qualifications, functions, and duties of a real estate salesperson. Respondent's convictions provide evidence that respondent did not, in the past, use good judgment, the exercise of which is required of real estate salespersons.

Rehabilitation and Level of Discipline

8. The purpose of an administrative proceeding seeking to deny an application for a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable, or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The determination as to whether respondent's application for a real estate salesperson's license should be granted includes evaluation of the circumstances surrounding her conviction, evidence of rehabilitation, and application of the rehabilitation criteria set forth in the department's regulation.

9. 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.) The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation will be presented if an applicant can demonstrate by sustained conduct over an extended period of time that he or she is rehabilitated and fit to hold a license. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

10. It has been over 10 years since respondent's criminal conviction. The conduct underlying the conviction occurred 11 years ago. No evidence was presented that respondent had a criminal history before the events of November 2007, or that she had any subsequent involvement with law enforcement.

11. Respondent has paid court-ordered restitution.

12. Respondent's time in custody was reduced based upon her participation in the Fire Camp in which she became a forest firefighter with the California Department of Forestry, and she successfully obtained an early discharge from parole.

13. Although respondent did not believe she had an alcohol problem in 2007, she admitted to having had alcoholic beverages before she drove on November 9, 2007. Further, respondent testified that she turned to alcohol when trying to cope with guilt when she was released from parole. She recognized the destructive path she was on and became a member of AA. She attends AA regularly and speaks to others about the accident and turning to alcohol to deaden the pain of what happened that evening.

14. Respondent is engaged and has three children.

15. Respondent has been working in the real estate field in positions that do not require a license. She enjoys the work and would like to obtain her real estate salesperson license and take on more responsibilities.

16. Respondent accepted full and total responsibility for the accident in 2007.

17. Although respondent through her testimony provided credible evidence that she has taken several positive steps towards rehabilitation, she did not present any corroborating evidence from family, friends, and/or business associates, or documentary evidence of her participation in AA to corroborate her statements.

In consideration of the totality of the evidence, it is determined that respondent has achieved a sufficient level of rehabilitation such that issuing her a restricted real estate salesperson license would not be in contravention of the public interest.

ORDER

Respondent Jessica Lynn Hawk's application for a real estate salesperson license is denied; 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 has paid all required fees and has complied with all other requirements to obtain a restricted real estate salesperson license. The restricted license issued to respondent shall be subject to 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 said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may, by appropriate order, suspend the right to exercise any privileges granted under this restricted license in the event of:

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

(b) Evidence 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 this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to respondent. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on form RE 552 (Rev. 4/88) approved by the Commissioner, which shall certify as follows:

(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

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

DATED: September 26, 2018

DocuSigned by:
Susan Boyle
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SUSAN J. BOYLE
Administrative Law Judge
Office of Administrative Hearings