

FILED

SEP 13 2019

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPT. OF REAL ESTATE

[Signature]

* * *

In the Matter of the Accusation of:)	DRE No. H-05030 SD
)	
JASON ROBERT KLEIN,)	OAH No. 2018110872
)	
Respondent.)	

DECISION

The Proposed Decision dated August 6, 2019, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following Corrections are made to the Proposed Decision:

Order, page 23, paragraph No.1, line 1, "...Robert E. Chartier," is amended to read "...Jason R. Klein,".

Order, page 23, paragraph No. 2, line 2, " ...within 90 days of the effective date of this order" is amended to read "...due at reinstatement of real estate license."

The Decision suspends or revokes one or more real estate licenses.

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.

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 OCT 02 2019.

IT IS SO ORDERED September 9, 2019

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER



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

In the Matter of the First Amended Accusation Against:

JASON ROBERT KLEIN, Respondent

Agency Case No. H-05030 SD

OAH No. 2018110872

PROPOSED DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on July 8, 2019, in San Diego, California.

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

Marisol Ocampo, Attorney at Law, represented respondent Jason Robert Klein, who was present throughout the administrative proceeding.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 8, 2019.

Summary

Respondent was first issued a real estate broker's license on August 16, 2006. On June 13, 2014, the department revoked respondent's real estate broker's license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), and granted him a restricted real estate broker's license subject to terms and conditions. Respondent's restricted real estate broker's license will expire on June 12, 2022, but on October 31, 2018, his restricted real estate broker's license was suspended indefinitely pursuant to Business and Professions Code section 10177, subdivision (h). Complainant seeks to revoke respondent's restricted real estate broker's license on three bases of discipline: (1) he has incurred three criminal convictions since February 3, 2016, substantially related to his license; (2) he failed to notify the department of some of his traffic citations ultimately resulting in some of his convictions within 72 hours of their issuance as required; and (3) he failed to report two of his convictions to the department as required. Complainant produced clear and convincing evidence that supports the imposition of discipline on respondent's license. Respondent provided insufficient evidence of rehabilitation, and public protection requires the revocation of respondent's restricted real estate broker's license.

Factual Findings

Jurisdictional Matters

1. On July 10, 2003, respondent was first issued a real estate salesperson license. On August 16, 2006, respondent was first issued his real estate broker's license.

2. On June 13, 2014, pursuant to a decision of the department¹ after an administrative hearing, respondent's real estate broker's license was suspended for ten days, revoked and a restricted real estate broker's license issued with terms and conditions, including providing notification to the department within 72 hours of any citation or arrest, no consumption of alcoholic beverages, and suspension of his license prior to hearing if respondent is convicted of any crime substantially related to his license. The decision of the department and discipline to respondent's license was based upon his three convictions of driving under the influence of alcohol in California in May 2010, driving under the influence of alcohol in Nevada in May 2009, and reckless driving in California in July 2008. Respondent's restricted real estate broker's license will expire on June 12, 2022.

3. On October 31, 2018, respondent's restricted real estate broker's license was immediately suspended indefinitely pursuant to the term of his restricted real estate broker's license allowing suspension of his license prior to hearing if he is convicted of a crime substantially related to his license.

4. On October 26, 2018, the department filed the accusation in this matter alleging three causes for discipline against respondent's license: (1) he has incurred two criminal convictions since February 3, 2016, substantially related to his license; (2) he failed to notify the department of some of his traffic citations ultimately resulting in some of his convictions within 72 hours of their issuance as required; and (3) he failed to report two of his convictions to the department as required.

¹ Between July 1, 2013, and June 30, 2018, the California Department of Real Estate operated as the California Bureau of Real Estate.

5. On March 14, 2019, the department filed the first amended accusation in this matter alleging the same three causes for discipline against respondent's license, but including and third conviction he incurred on December 21, 2018, as a basis for the discipline.

6. Respondent timely filed a Notice of Defense and this hearing followed.

Respondent's Convictions

7. On May 10, 2016, in the Superior Court of California, County of Kern, in Case No. SM115795A, respondent was convicted on his plea of nolo contendere of violation of Vehicle Code section 14601.1, subdivision (A) (driving with a suspended driver's license), a misdemeanor. As a result of this conviction, respondent was sentenced to three years of probation with terms and conditions, including payment of \$1,509 of fines and fees, and not to operate a vehicle without a valid license.

The circumstances of this conviction were that respondent was issued a traffic citation on February 3, 2016, in Kern County, California for driving with excessive speed, driving with his driver's license suspended, and having no valid insurance for his vehicle.

8. On August 11, 2016², in the Superior Court of California, County of Kern, in Case No. SM116058A, respondent was convicted on his plea of nolo contendere of violation of Vehicle Code section 12500, subdivision (A) (driving without a valid driver's license), a misdemeanor. As a result of this conviction respondent was sentenced to

² Respondent signed his plea form for this conviction on August 11, 2016. However, he was not sentenced for this conviction until November 28, 2016.

three years of probation with terms and conditions, including payment of \$601 of fines and fees, and not to operate a vehicle without a valid license.

The circumstances of this conviction were that respondent was issued a traffic citation on April 27, 2016, for driving with excessive speed and driving without a valid license.

9. On December 21, 2018, in the Superior Court of California, County of San Diego, in Case No. CN393320, respondent was convicted on his plea of guilty of violation of Vehicle Code section 23152, subdivision (b) (driving while having a measurable blood alcohol content (BAC) of 0.08 percent or more, by weight, of alcohol in his blood with prior DUI convictions within the past ten years), a misdemeanor. As a result of this conviction respondent was sentenced to 96 hours in the custody of the Sheriff and placed on summary probation for a term of five years with terms and conditions including the payment of \$2,635 of fines and fees, completion of an 18-month multiple conviction DUI program. Respondent timely reported this conviction to the department as required by the terms of his restricted license, despite the fact that his license was suspended in November 2018.

The circumstances of this conviction were taken from respondent's plea form where he wrote that he "drove a vehicle with a BAC above a 0.08 % and admit a prior DUI conviction within 10 years."

Respondent's Testimony

10. Respondent is 40 years old and recently married. He has a 14-year-old son and is not currently employed. Prior to his real estate broker's license suspension on November 1, 2018, respondent worked as a real estate broker at Big Block Realty. Respondent is currently in bankruptcy. He currently attends church at New Hope

church where he has attended for the past ten years and also volunteers about 10 hours per month feeding homeless individuals and working for Habitat for Humanity.

11. Respondent testified regarding his two misdemeanor convictions in 2016 for driving on a suspended license and driving without a license. Respondent stated he had "excessive points" on his driver license, which led to his driver license being suspended. He hired an attorney to obtain a restricted driver license to allow him to drive to and from work. For his May 10, 2016, conviction his attorney had already applied for that restricted driver license, but respondent claimed he did not realize that the restricted driver license had not yet been issued when he was stopped by a police officer. With regard to the August 11, 2016, conviction, respondent was struggling financially and was not able to pay his vehicle insurance bill, which resulted in him not having a valid driver license when he was driving. Respondent stated that neither of these two convictions involved alcohol in any way. Respondent remains on probation for his August 11, 2016, conviction until November 2019. He completed his probation for his May 10, 2016, conviction. Respondent currently has petitions pending for early termination of his probation for his August 11, 2016, conviction and for expungement of both of these convictions. However, those motions have not yet been granted.

12. Respondent did not report the two 2016 convictions to the department because he claimed he did not understand that they were misdemeanors, but only thought they were infractions, like speeding tickets. He understood his obligation to report his convictions to the department within 72 hours. However, he did not report these because he did not believe he was required to do so. Respondent testified that if he understood that these convictions were misdemeanors, he would have reported them to the department within 72 hours.

13. With regard to his December 21, 2018, conviction for driving with a BAC of 0.08 percent or higher with a previous DUI conviction within the past ten years, respondent testified that the underlying incident occurred on October 23, 2018. On that date respondent went out with friends and had three or four alcoholic beverages. He admitted to driving his vehicle home after having consumed too much alcohol. Respondent claimed that during this time he was under a lot of stress because he had an ex-girlfriend harassing him, and he had a petition pending with the department to have his real estate broker's license unrestricted. He had recently learned that the department had "flagged" his petition, and he believed that something bad was on its way from the department as a result. As a result of this conviction respondent was placed on summary probation for five years and he is scheduled to complete his probationary term in December 2023. Respondent admitted that he was still on probation for his August 11, 2016, conviction at the time he incurred the December 2018 conviction.

14. Respondent admits he has an addiction to alcohol. In February 2019 he enrolled in the 18-month DUI program as ordered by the court. As part of that program he must attend Alcoholics Anonymous (AA) programs at least once per week. However, respondent attends AA programs on a daily basis in both Los Angeles and in San Diego, and attends different meetings depending on his son's schedule. Respondent has an AA sponsor since March 2019 with whom he meets once per week to go through the steps of AA. Respondent is currently on step five of the 12-step program. Respondent has also meets with a substance abuse counselor on a one-on-one basis as part of the 18-month DUI program. Respondent testified that his sobriety date is October 24, 2018, which is the day after his arrest resulting in his December 2018 conviction. He believes that the 18-month DUI program has helped him identify triggers in his life that lead him to alcohol and has provided him with coping

mechanisms and healthier outlets to deal with his stress, such as regular exercise and meditation. He has changed his friends to suit a sober lifestyle.

Respondent admitted that he had previously attended AA after his earlier DUI convictions in 2008 and 2010, and his disciplinary hearing resulting in his real estate broker's license being placed on restriction. He admitted that in 2014 he testified during that hearing that he was sober and would not drink alcohol again. He stated that he had not been drinking generally and was lulled into a "false sense of security" and did not attend AA on a regular basis. As a result, he started drinking alcohol again and had been out with friends drinking on "a couple of occasions" prior to his October 2018 arrest. On those occasions respondent took a "ride-share" instead of driving a vehicle. He believed that he was responsibly consuming alcohol at that time, but has since learned that no amount of alcohol is acceptable for him.

15. Respondent loves working in real estate and believes his is very good at his job. He wants to keep working in his chosen career field even with a restricted license. He also provided a written statement to the department, which was received into evidence. His written statement is dated June 20, 2019, and mirrored his testimony at the hearing.

Testimony of Sasan Mirkarimi

16. Sasan Mirkarimi is a licensed real estate broker employed at Big Block Realty as the general counsel and broker of record for that company. He supervises approximately 800 and 950 real estate salespersons and brokers at Big Block Realty. He testified at the hearing and a summary of the factual findings from his testimony are below. He has worked at Big Block Realty since June 2018, and he first met respondent at that time. Mr. Mirkarimi and respondent worked together for a total of

about five months at Big Block Realty. Mr. Mirkarimi has handled real estate transactions with respondent and reviewed his transactions during the five months that he and respondent worked together in 2018. Mr. Mirkarimi stated that respondent is very professional, is one of the more active commercial real estate agents in the company, and he has seen no issues with respondent's real estate transactions. Mr. Mirkarimi is aware of the accusation filed against respondent and his DUI convictions. Mr. Mirkarimi is willing to closely supervise respondent if he is permitted to continue practice as a real estate salesperson or broker. Mr. Mirkarimi wrote a letter regarding respondent's character that mirrored his testimony at the hearing.

Testimony of Elliot Lewis

17. Elliot Lewis is a licensed real estate broker and has been since 2008. Prior to that he was a licensed real estate salesperson since 2004. Mr. Lewis is a self-employed real estate broker with three real estate salesperson working for him. He testified at the hearing and a summary of his testimony is below. Mr. Lewis first met respondent in 2016 when they worked together on real estate transactions. Mr. Lewis has never supervised respondent. Mr. Lewis has worked with respondent on approximately six or seven real estate transactions. Mr. Lewis described respondent as very professional and he has never seen any issues with respondent's work. Mr. Lewis believes respondent is a good fiduciary and an asset to the real estate profession. He has never seen respondent intoxicated. Mr. Lewis is aware of the accusation in this matter and respondent's DUI convictions. Mr. Lewis is willing to vouch for respondent and would be happy to supervise respondent's work as a real estate salesperson or broker if he is allowed to have a restricted license. Mr. Lewis admitted he has never supervised a restricted real estate license, but would abide by any terms necessary. Mr.

Lewis wrote a letter in support of respondent that mirrored his testimony at the hearing.

Respondent's Documentary Evidence

18. Respondent provided multiple documents in support of his rehabilitation. He provided receipts from payment of his court fines and fees for his two 2016 convictions, and his 2018 conviction. He provided proof of enrollment in the 18-month DUI program that was court ordered from his 2018 conviction. He provided sign-in sheets showing his daily attendance to AA meetings from October 29, 2018, to June 21, 2019. He provided a letter dated January 29, 2019, from his counselor showing that respondent has attended weekly psychotherapy treatment beginning on January 18, 2019, regarding respondent's substance abuse. Respondent provided a notification dated January 15, 2019, to the department listing his December 21, 2018, conviction. He also provided a copy of his petition for dismissal of his May 10, 2016, conviction pursuant to Penal Code section 1203.4, and a copy of his motion for early termination of probation for his August 11, 2016, conviction and petition for dismissal of that conviction pursuant to Penal Code section 1203.4.

19. In addition to the letters of Mr. Mirkarimi and Mr. Lewis discussed above, respondent provided nine character reference letters in support of his rehabilitation. One letter is from respondent's current AA sponsor dated June 15, 2019, wherein his sponsor wrote that respondent is working the 12-step program and has a deeper understanding of his triggers that cause him to turn to alcohol. His sponsor further wrote that he has met with respondent for six months and has seen a positive change in his behavior and personal confidence.

A second letter dated January 11, 2019, was written by the pastor of the New Hope church where respondent has attended for the past 10 years. The pastor wrote that respondent attends church every Sunday and also attends outreach events where he volunteers. The pastor wrote that respondent is a respected, qualified and professional real estate professional and is committed to serving others.

A third letter dated January 10, 2019, was written by Adam Huss, a licensed real estate broker since 2004. Mr. Huss wrote that he knows about this accusation and has worked with respondent in a professional capacity for the past two years. He wrote that respondent acts with integrity and professionalism on the deals where they have worked together.

A fourth letter dated January 3, 2019, was written by respondent's wife. She wrote that she has known respondent for two years and first met him when she was searching for commercial real estate to purchase. She described him as very professional and also on a personal level to be a very caring and involved father. She wrote that she has spoken to him extensively about coping mechanisms he has implemented to prevent "further infractions."

A fifth letter dated January 10, 2018³, was written by Darren Samarel, a former client and colleague of respondent. He wrote that he has known respondent for over ten years and first met him when respondent was his real estate agent helping him

³ The January 10, 2018, date appears to be a typographical error and likely should be January 10, 2019, because the letter references the accusation filed on November 5, 2018.

find a home. Mr. Samarel raved about respondent's professionalism as a real estate agent.

The sixth letter dated February 11, 2019, was written by Pamela Bell, a real estate agent who has worked with respondent since April 2018. She described him as having integrity, dedication, and a strong work ethic. She wrote that he is professional and honest in his work.

The seventh letter dated January 2, 2019, was written by Jory Wolf, a family friend of respondent for over 20 years. Mr. Wolf wrote that he is aware of the accusation against respondent and believes that he has the "utmost integrity." Mr. Wolf has referred clients to respondent on multiple occasions and has heard nothing but praise from those clients regarding respondent's work.

The eighth letter dated February 7, 2019, was written by Richard Wolf, M.D., respondent's primary care physician since April 2015. Dr. Wolf wrote that he has seen respondent struggle with substance abuse. He wrote that he has seen respondent "take meaningful steps to address his use of alcohol and drugs. Dr. Wolf wrote that he has been seeing respondent on a monthly basis to assess respondent's progress with his "abstinence of the use of any alcohol and drugs," but does not write when he began to see respondent on a monthly basis.

The final letter dated June 7, 2019, was written by Christina Amaral, the organizer of a program called Body Centered Leadership, which is a quarterly event involving meditation, spiritual healing, yoga, holistic healing techniques, and mindfulness. Ms. Amaral wrote that she first met respondent in November 2018 when he and his then fiancée attended the event. She wrote that respondent utilizes the holistic techniques to cope with his stress and maintain his sobriety.

Costs

20. Complainant submitted a Statement of Investigation Costs, pursuant to Business and Professions Code section 10106, and requested investigation cost recovery in the amount of \$286.80. The statement included the name of the individual providing services, his or her hourly rate, and the number of hours spent on the investigation. Given the nature and scope of this investigation, these costs are reasonable. Complainant also submitted a Declaration of Enforcement Costs pursuant to Business and Professions Code section 10106 seeking \$845.50 in legal fees. The declaration included the name of the attorney providing services, her hourly rate, and the number of hours she spent on this matter. The attorney in this matter was professional and given the nature and scope of this matter, these costs are reasonable. The reasonable costs of investigation and enforcement of this matter is \$1,132.30.

LEGAL CONCLUSIONS

1. The object of an administrative proceeding aimed at revoking a real estate license is to protect the public. The object is to determine whether a licensee has exercised his privilege in derogation of the public interest and to keep the regulated business clean and wholesome. Disciplinary proceedings are not conducted for the purpose of punishing an individual but to protect the public. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

Burden and Standard of Proof

2. In an administrative license disciplinary proceeding, the burden of proof is upon the party asserting the affirmative. The charges must be established to a reasonable certainty. Guilt cannot be based on surmise or conjecture, suspicion or

theoretical conclusions, or upon uncorroborated hearsay. (*Smith, supra*, at p. 457.) The standard of proof in a disciplinary proceeding involving a professional license is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The key element of clear and convincing evidence is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.)

Applicable Statutes

3. Business and Professions Code section 10177, states in part:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following ...

[¶] ... [¶]

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

[¶] ... [¶]

(k) Violated any of the terms, conditions, restrictions, and limitations contained in an order granting a restricted license. . . .

4. Business and Professions Code section 490, states in 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. . . .

[¶] ... [¶]

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code. . . .

5. Business and Professions Code section 10186.2 provides:

(a) (1) A licensee shall report any of the following to the department:

(A) The bringing of a criminal complaint, information, or indictment charging a felony against the licensee.

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(C) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government.

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, the conviction, or the disciplinary action.

(b) Failure to make a report required by this section shall constitute a cause for discipline.

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

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall

be 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 if it involves:

[11] ... [11]

(10) Conduct which demonstrates a pattern of repeated and willful disregard of law.

(11) Two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs.

7. California Code of Regulations, title 10, section 2912 sets forth the criteria developed by the department pursuant to Business and Professions Code section 482, subdivision (b), for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee. Those criteria include:

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

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

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

(B) The licensee's history of criminal convictions and/or license discipline that are "substantially related" to the qualifications, functions, or duties of a real estate licensee.

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

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

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

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

- (f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.
- (g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.
- (h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.
- (i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.
- (j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.
- (k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.
- (l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

- (1) Testimony of applicant.
- (2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.
- (3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.
- (4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.
- (5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

8. Business and Professions Code section 10106 provides that in any order issued in pursuant to a disciplinary proceeding before the department, the administrative law judge may make a proposed finding with regard to the reasonable costs of investigation and enforcement of the case, and may direct a licensee found to

have committed a violation to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

9. Business and Professions Code section 10131, subdivision (e), defines the business of a real estate broker as a person who sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract for compensation.

Evaluation

10. Respondent has sustained three recent convictions, two misdemeanor convictions in 2016 for driving without a valid license and driving with a suspended license, as well as a December 2018 conviction for driving a vehicle under the influence of alcohol with prior DUI convictions within the past ten years. Additionally, respondent has had at least two other DUI convictions in 2010 and 2009, as well as a reckless driving conviction involving alcohol in 2008. Respondent has a very long history of abusing alcohol. He sustained his 2018 DUI conviction while still on probation from his August 11, 2016, conviction. Additionally, respondent failed to report his two 2016 convictions, and the underlying citations for each of these convictions, to the department despite the requirement he do so under the terms of his restricted license. Respondent's testimony that he did not understand those convictions were required to be reported to the department lacked credibility. While respondent has taken steps toward sobriety, including admitting he is an alcoholic, his sobriety date is October 24, 2018, only about nine months ago. Given his long history of alcohol abuse, insufficient time has passed to demonstrate sufficient rehabilitation such that respondent's licensure, even on a restricted basis, is appropriate. Upon consideration of all the evidence provided, public protection requires revocation of respondent's real estate license.

Cause for Discipline

11. Cause exists to impose discipline upon respondent's real estate broker's license under Business and Professions Code, sections 10177, subdivision (b), and 490, based upon respondent's two 2016 misdemeanor convictions for driving on a suspended license, and driving without a valid license, as well as his 2018 conviction for driving under the influence of alcohol with a BAC of at least 0.08 percent with a prior DUI conviction in the past ten years.

12. Cause exists to impose discipline upon respondent's real estate broker's license under Business and Professions Code section 10177, subdivision (k), for violations of the terms of his restricted real estate broker's license by failing to notify the department of his two 2016 convictions, as well as the underlying misdemeanor citations resulting in those convictions.

13. Cause exists to impose discipline upon respondent's real estate broker's license under Business and Professions Code section 10186.2, subdivision (a)(1)(B), for failing to report to the department his two 2016 misdemeanor convictions.

Cost of Investigation and Enforcement

14. The first amended accusation in this matter sought an order to reimburse the bureau for its reasonable costs of investigation and enforcement under Business and Professions Code 10106.

15. The Statement of Costs and declaration complainant introduced in support of her request for costs of investigation and enforcement constitutes prima facie evidence of the reasonableness of the costs incurred. (Bus. & Prof. Code, § 10106, subd. (c).) Respondent did not introduce any evidence to rebut that evidence.

16. In *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court held that licensing boards must exercise their discretion to reduce or eliminate cost awards to ensure that they do not deter licensees with potentially meritorious claims from exercising their right to an administrative hearing. All the *Zuckerman* factors have been considered. In this matter respondent is unemployed and recently filed for bankruptcy. Given his financial status, it is unlikely he is able to pay the costs associated with the investigation and prosecution of this matter. Accordingly, the total costs of \$1,132.30 should be reduced to \$566.15.

17. Complainant is awarded reasonable costs of investigation and enforcement in the amount \$566.15.

ORDER

1. All licenses and licensing rights issued to respondent, ^{Jason R. Klein} Robert E. Chartier, under the Real Estate Law are revoked.

2. Respondent shall pay the department its costs of investigation and enforcement in the amount of \$566.15 ^{due at reinstatement of real estate} within 90 days of the effective date of this ^{license} order.

DATE: August 6, 2019

DocuSigned by:

73AD8C82D0DE42D
DEBRA D. NYE-PERKINS

Administrative Law Judge

Office of Administrative Hearing