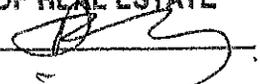


FEB 24 2020

DEPT. OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of: SHAWN STEVE CASEY Respondent))))	DRE No. H-05058 SD OAH No. 2019090370
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DECISION

The Proposed Decision dated January 21, 2020, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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

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

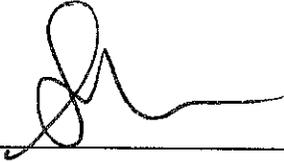
The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on March 16, 2020

IT IS SO ORDERED

2/3/20

SANDRA KNAU
ACTING REAL ESTATE COMMISSIONER



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

In the Matter of the Accusation Against:

SHAWN STEVE CASEY, Respondent

Case No. H 05058 SD

OAH No. 2019090370

PROPOSED DECISION

Russel T. Little, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on December 19, 2019, in San Diego, California.

Steve Chu, Counsel, Department of Real Estate, State of California, represented complainant Supervising Special Investigator Veronica Kilpatrick, Department of Real Estate (department), State of California.

Shawn Steve Casey, respondent, appeared on his own behalf.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 19, 2019.

FACTUAL FINDINGS

Jurisdictional Matters

1. On July 30, 2015, the department issued real estate salesperson license number 01984765 to respondent. Respondent's license will expire on July 29, 2023, unless renewed.

2. On March 14, 2019, complainant signed the accusation seeking disciplinary action against respondent's license. The accusation alleged respondent was convicted of a substantially related crime pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b), based on an October 2017 conviction for driving under the influence of alcohol with a prior felony DUI.

3. The accusation also alleged, as disciplinary factors "in aggravation", respondent's four prior convictions. These convictions consisted of an October 1999 DUI conviction, an April 2002 DUI conviction, an August 2002 conviction for DUI and driving with a suspended driver license, and a 2009 DUI conviction.

4. Respondent timely filed a notice of defense; this hearing ensued.

Convictions

5. On May 15, 2017, in the Superior Court of California, County of San Diego, Case No. SCD270829, respondent was convicted of violating Vehicle Code section 23152, subdivision (a), with enhancement under Vehicle Code section 23550.5, subdivision (a) (driving under the influence of alcohol with prior felony DUI), a felony.

The court remanded respondent to the custody of the Sheriff for 365 days, and placed respondent on formal probation for five years to expire on May 14, 2022. The court also ordered respondent to pay a fine of \$1,628 and fees.

PRIOR CONVICTIONS

6. On October 5, 2009, in the Superior Court of California, County of San Diego, Case No. SCD220142, respondent was convicted of violating Vehicle Code section 23152, subdivision (a), with enhancement under Vehicle Code section 23550, subdivision (a) (driving under the influence of alcohol with a prior DUI), a felony.

7. On August 26, 2002, in the Superior Court of California, County of San Diego, Case No. M867656, respondent was convicted of violating Vehicle Code sections 23152, subdivision (a) (driving under the influence of alcohol), and section 14601.5, subdivision (a) (driving while license suspended by DUI conviction), misdemeanors.

8. On April 16, 2002, in the Superior Court of California, County of San Diego, Case No. M867656, respondent was convicted of violating Vehicle Code sections 23152, subdivision (a) (driving under the influence of alcohol), a misdemeanor.

9. On October 14, 1999, in the Superior Court of California, County of San Diego, Case No. T210835, respondent was convicted of violating Vehicle Code sections 23152, subdivision (a) (driving under the influence of alcohol), a misdemeanor.

Respondent's Testimony

10. Respondent testified at the hearing. The following is a summary of his testimony.

Respondent graduated from high school in 1998. He did not attend college but instead helped with his family's restaurant business. His family's restaurant business closed in 2007 and respondent was then employed as a freelance interpreter until 2012.

Respondent obtained his real estate salesperson license in 2015. He disclosed four DUI convictions on his application. These convictions are listed as "in aggravation" in the accusation. The department issued the license without inquiry or objection to or allegation that these prior convictions were related to the qualifications of a real estate licensee.

From February 2016 until his incarceration in May 2017, respondent worked with Avenu Realty Group. From August 2019 to present, respondent has worked with broker Darren Glenn Iba at Realty Moves in San Diego.

Respondent testified about his history of alcohol abuse. His family operated a restaurant and bar. Drinking alcohol was an accepted way of dealing with "family issues."

After his 2009 DUI conviction, respondent stopped drinking alcohol. He attended Alcoholics Anonymous (AA) meetings two or three times a week. He had a sponsor but he did not complete the 12 steps of AA. His sobriety lasted until 2017. Respondent was arrested under suspicion of driving under the influence of alcohol on January 19, 2017.

Respondent admitted the accusation accurately described the history of his convictions.

As a result of respondent's 2017 DUI conviction, he was sentenced to 365 days in custody. While in custody, respondent completed a five-week Criminal Conduct & Substance Abuse Treatment class and a 30-hour Cognitive Behavioral Therapy class. These classes were required by his court sentence. His wife visited him several times a week. Her support helped him through "a very tough time." While in custody, respondent reflected on his next step in life and what sobriety meant to his future.

Respondent was released from custody on May 17, 2018. Under the terms of his probation, respondent entered The Way Back recovery home for men on June 21, 2018. He successfully completed the 120 days of the program. While in the program, respondent attended two AA meetings each week and participated in alcohol education and relapse prevention classes.

On March 28, 2019, as required by his probation, respondent began his 18-month multiple offender program. The program requires group counseling, alcohol and drug education, and biweekly individual interviews.

Respondent acknowledged that as part of his sentencing for the 2017 DUI conviction, he is on formal probation until 2022.

Respondent's current sobriety date is January 21, 2017. He admitted to being an alcoholic and he understands the significance of remaining sober. He attends church with his mother, who, along with his wife, provide a solid foundation for his recovery. In addition to weekly group meetings through the multiple offender program, respondent attends AA meetings at least once a week.

Respondent's testimony was direct and contrite. He sincerely acknowledged the problems alcohol has caused in his life.

Additional Evidence

11. Respondent also provided copies of four letters of professional recommendation from two clients, a co-worker at Realty Moves and his former broker at Avenu Realty Group. They were all aware of respondent's convictions and this accusation.

Catherine A. Pearson, a licensed realtor at Realty Moves, has known respondent for more than 10 years and has worked with him for six months. Ms. Pearson wrote that respondent is a dedicated and hardworking real estate professional. He is "an honest and trustworthy person with high ethical and moral standards."

Franchesea Meram, a licensed real estate broker at Avenu Realty Group, has worked with respondent "on and off" between February 2016 and July 2019. Ms. Meram wrote that respondent "was held in high regard" by his clients and demonstrated a "positive work ethic."

Marcie Mata, a CIO of Leadership in The Clouds, has known respondent for nine years. Ms. Mata wrote that respondent is committed to and passionate about helping his clients. She noted the positive "strides he has taken toward personal development."

Bertha Gamboa has known respondent for five years as a realtor and a friend. Ms. Gamboa wrote that respondent is "very knowledgeable and professional as a realtor." She asked in her letter that we review the facts and respondent as a person "today" and not in the past.

12. Respondent provided copies of San Diego County Probation Department receipts for his scheduled appointments with his probation officer from March 21, 2019 through November 19, 2019.

13. Respondent also provided a letter from Richard Freitas, intake counselor at The Way Back, confirming his successful participation in the program; a certificate of achievement from The Way Back, dated October 19, 2018; certifications of completion of two classes he successfully completed in jail; and respondent's appointment schedule for the 18-month multiple offender program.

Costs of Investigation and Enforcement

14. Complainant requested cost recovery against respondent pursuant to Business and Professions Code section 10106. Complainant certified the investigative costs in the amount of \$535.90. Complainant's counsel submitted a declaration for enforcement costs in the amount of \$445. The certifications provided complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b).

LEGAL CONCLUSIONS

Purpose of Discipline

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

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

Burden and Standard of Proof

3. 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.)

Applicable Code Sections

4. Business and Professions Code section 490, subdivision (a) provides:

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.

5. Business and Professions Code section 10177 provides in part:

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

[11] . . . [11]

(b)(1) Entered a plea of guilty or no contest, 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. . . .

Substantial Relationship

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

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:

[¶] . . . [¶]

(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.

Substantial Relationship

7. Convictions alone will not support a denial of a license unless the crime substantially relates to the qualifications, functions, or duties of the business or profession in question. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.)

8. Complainant alleged all of respondent's convictions were substantially related to the qualifications, functions or duties of a real estate licensee, but alleged the 2017 DUI conviction as cause for discipline. The remaining convictions were alleged in aggravation.

9. Respondent's five DUI convictions are substantially related to the qualifications, functions and duties of a real estate license under the department's substantial relationship criteria because of the number of convictions and their involvement with driving and the consumption of alcohol. (Cal. Code Regs., tit. 10, § 2910, subdivision (a) (10) and (11).)

Cause Exists to Discipline Respondent's License

10. Cause exists to discipline respondent's real estate salesperson license. Respondent's 2017 felony DUI conviction is cause to revoke or suspend respondent's license pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b). In aggravation, respondent was convicted of a felony DUI in

2009, two misdemeanor DUIs in 2002 and another misdemeanor DUI in 1999. These convictions are substantially related to the qualifications, functions, or duties of a licensee. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10) & (a)(11).)

Rehabilitation

11. California Code of Regulations, title 10, section 2912, establishes the criteria to consider when evaluating rehabilitation. The criteria include consideration of the nature and severity of the act or omission, the licensee's total criminal record, the time that has elapsed since the act, whether the licensee complied with the terms of criminal probation, whether the conviction has been expunged, whether the licensee has made restitution, abstinence from the use of alcohol, and whether the licensee can demonstrate significant and conscientious community involvement, stability of family life, and fulfillment of parental and familial responsibilities subsequent to the criminal conviction. These criteria were considered in this decision.

12. The amount of evidence required to establish rehabilitation varies according to the seriousness of the misconduct at issue. (*In re Menna* (1995) 11 Cal.4th 975, 987.) 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.) The evidentiary significance of an applicant's 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.)

13. Since persons under the direct supervision of judicial or correctional authorities are required to behave in an exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or

continue inappropriate behavior while under supervision. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

It has been two and one-half years since respondent's 2017 felony DUI. He is on formal probation until May 14, 2022. Respondent served his time in jail and paid the fines and restitution. Thus far, he has complied with his terms of probation and remained clear of further violations.

Respondent regularly attends AA meetings. He began his 18-month multiple offender program in March 2019. He has the support of his family and co-workers. Respondent provided evidence of compliance with terms of his probation. No witnesses testified on his behalf and there was no evidence of his participation in community service activities or recovery programs other than those required by his probation.

Evaluation

14. Respondent's 2017 DUI conviction was his first since obtaining his salesperson license in July 2015. The four prior DUI convictions were disclosed to the department in respondent's salesperson application. The department did not oppose respondent's application and issued respondent an unrestricted salesperson license.

Complainant seeks a decision "imposing disciplinary action" against respondent. Complainant does not specifically seek revocation.

Respondent admitted being an alcoholic. He testified that he was sober for approximately eight years until his 2017 DUI. As a result of his 2017 DUI conviction, respondent spent a year in jail and he is serving five years of formal probation. Respondent provided evidence of compliance with formal probation that includes the

18-month multiple offender program. Since his release, respondent has been actively involved with his sobriety and recovery, albeit under the terms of probation. He provided evidence of rehabilitation in the form of letters attesting to his excellent work reputation and good character.

15. Based upon the evidence presented there is cause to impose discipline against respondent's license resulting from respondent's 2017 DUI conviction. His prior DUI convictions are considered in determining the extent of discipline, but in fairness, as these prior convictions were not cause to deny or restrict respondent's license previously, they do not support revocation of his license. While respondent has struggled with alcoholism since high school, he has clearly felt the impact of his failure to maintain sobriety by spending a year in jail. It is concluded that the public will not be at risk by permitting respondent to have a restricted real estate salesperson license under Business and Professions Code section 10156.7.

Cost Recovery

16. Complainant seeks the costs of investigation and prosecution in the amount of \$980.90. These costs are found reasonable under California Code of Regulations, title 1, section 1042, subdivision (b).

Respondent did not oppose the award. Costs are awarded in the amount of \$980.90.

ORDER

All licenses and licensing rights issued to respondent Shawn Steve Casey under the Real Estate Law are revoked; provided, however, that a restricted real estate

salesperson license shall be issued to respondent under Business and Professions Code section 10156.5, if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the issuance of such a restricted license and \$980.90 in investigation and prosecution costs within 90 days from the effective date of this Decision. The restricted license shall be subject to all provisions of Business and Professions Code section 10156.7 and shall be subject to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

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

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

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a

statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

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

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

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

6. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to

timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATE: January 21, 2020

DocuSigned by:

Russel T. Little

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RUSSEL T. LITTLE

Administrative Law Judge

Office of Administrative Hearings