

7/28/19

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FILED
AUG - 2 2019
DEPT. OF REAL ESTATE
By *Zmi - Jca*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-05075 SD
)	
STEPHEN WILLIAM SMITH JR,)	<u>FIRST AMENDED</u>
)	<u>ACCUSATION</u>
)	
Respondent.)	
_____)	

This First Amended Accusation amends the Accusation filed on July 11, 2019. The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the State of California, for cause of Accusation against STEPHEN WILLIAM SMITH JR ("Respondent") alleges as follows:

1.

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the State of California, makes this Accusation in her official capacity.

2.

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

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FIRST AMENDED ACCUSATION

1 LICENSE HISTORY

2 3.

3 a. Respondent is presently licensed and/or has license rights under the Real
4 Estate Law, Part 1 of Division 4 of the California Business and Professions Code, as a real
5 estate salesperson ("RES"), Department of Real Estate¹ ("Department") license ID 01983156.

6 b. The Department originally issued Respondent's RES license on or about
7 September 12, 2016. Respondent's RES license is scheduled to expire on September 11, 2020.

8 c. On December 2, 2016, the Department issued Respondent a Mortgage Loan
9 Originator ("MLO") license endorsement, National Mortgage Licensing System and Registry
10 ("NMLS") No. 1018582. Respondent's MLO license endorsement is scheduled to expire on
11 December 31, 2019.

12 CAUSE FOR DISCIPLINE

13 (CRIMINAL CONVICTION)

14 4.

15 April 4, 2018; Vehicle Code 23152(a) – Felony

16 a. On January 19, 2018, in the Superior Court of California, County of San
17 Diego, in Case No. SCN382234, The People of the State of California vs. Stephen William
18 Smith, a felony complaint was filed against Respondent for violation of Vehicle Code Sections
19 23152(a) (driving under the influence of alcohol), a felony, and 23152(b) (driving under the
20 influence of having blood alcohol level of 0.08% or more), a felony. Both counts included
21 enhancements for Vehicle Code Sections 23550(a) (3 or more priors within 10 years) and
22 23578 (having a blood alcohol level of 0.15% or more).

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27 ¹ Between July 1, 2013 and July 1, 2018, the Department of Real Estate operated as the Bureau of Real Estate under the Department of Consumer Affairs.

1 b. On March 6, 2018, Respondent pled guilty to and was convicted for Vehicle
2 Code Section Vehicle Code Sections 23152(a) (driving under the influence of alcohol), a
3 felony, with enhancements for Vehicle Code Sections 23550(a) (3 or more priors within 10
4 years) and 23578 (having a blood alcohol level of 0.15% or more).

5 c. On April 4, 2018, the Court suspended the imposition of sentence and placed
6 Respondent on formal probation for 5 years under certain terms and conditions, including, in
7 part, 1 year jail (probation work furlough), attend DUI victim impact panel, payment of \$1,628
8 fine and court fees and other counseling programs as directed by probation officer.

9 (AGGRAVATING FACTORS)

10 5.

11 October 23, 2012; Vehicle Code 23152 (b) – Misdemeanor

12 a. On October 23, 2012, in the Superior Court of California, County of San
13 Diego, in Case No. CN311047, The People of the State of California vs. Stephen William
14 Smith, Respondent pled guilty to and was convicted for violation of Vehicle Code Section
15 23152(b) (driving under the influence of having blood alcohol level of 0.08% or more), a
16 misdemeanor, with enhancements for Vehicle Code Sections 23546(a) (2 or more priors within
17 10 years) and 23578 (having a blood alcohol level of 0.15% or more).

18 b. Also on October 23, 2012, the Court suspended the imposition of sentence
19 and placed Respondent on summary probation for 5 years under certain terms and conditions,
20 including, in part, 150 days jail (work furlough), enroll and complete multiple conviction
21 program, suspension of driver's license for 3 years, and payment of \$2,834 fine and court fees.

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6.

June 8, 2009; Vehicle Code 23152 (b) – Misdemeanor

a. On June 8, 2009, in the Superior Court of California, County of San Diego, in Case No. M073351, The People of the State of California vs. Stephen William Smith, Respondent pled guilty to and was convicted for violation of Vehicle Code Section 23152(b) (driving under the influence of having blood alcohol level of 0.08% or more), a misdemeanor, with enhancements for prior driving under the influence conviction (Case No. C281125).

b. Also on June 8, 2009, the Court suspended the imposition of sentence and placed Respondent on summary probation for 5 years under certain terms and conditions, including, in part, 96 hours jail, 20 days public service program, enroll and complete multiple conviction program, and payment of \$2,408 fine and court fees.

7.

July 11, 2008; Vehicle Code 23152 (b) – Misdemeanor

a. On July 11, 2008, in the Superior Court of California, County of San Diego, in Case No. C281125, The People of the State of California vs. Stephen William Smith, Respondent pled guilty to and was convicted for violation of Vehicle Code Section 23152(b) (driving under the influence of having blood alcohol level of 0.08% or more), a misdemeanor, with enhancements for Vehicle Code Section 23578 (having a blood alcohol level of 0.15% or more).

b. Also on June 8, 2009, the Court suspended the imposition of sentence and placed Respondent on summary probation for 5 years under certain terms and conditions, including, in part, 180 days jail stayed, 10 days public service program, enroll and complete a first conviction 9 month program, and payment of \$1,912 fine and court fees.

8.

The crime of which Respondent was convicted, as set forth in Paragraphs 4 above, by its facts and circumstances, bears substantial relationship under Section 2910, Title 10, Chapter 6, California Code of Regulations to the qualifications, functions or duties of a real

1 estate licensee and constitutes cause under **Code Sections 490 and 10177(b)** for the suspension
2 or revocation of the license and license rights of Respondent under the Real Estate Law.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(FAILURE TO REPORT)**

5 9.

6 Respondent did not report in writing to the Department a felony complaint being
7 filed against him and/or his felony conviction within thirty (30) days: Case No. SCN382234 –
8 felony complaint filed on January 19, 2018 and convicted on March 6, 2018.

9 10.

10 Respondent's failure to report his felony complaint as well as felony conviction
11 constitutes cause for discipline under **Code Section 10186.2²** of the license and license rights of
12 Respondent under the Real Estate Law.

13 **COSTS**

14 11.

15 **Code Section 10106** provides, in pertinent part, that in any order issued in
16 resolution of a disciplinary proceeding before the Department, the Commissioner may request
17 the administrative law judge to direct a licensee found to have committed a violation of this part
18 to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

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25 ² Pursuant to Business and Professions Code 10186.2: (a)(1) A licensee shall report any of the following to the
26 department: (A) The bringing of an indictment or information charging a felony against the licensee. (B) The
27 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.

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Dated at San Diego, California this 31 day of July, 2019.

cc: STEPHEN WILLIAM SMITH JR
Veronica Kilpatrick
Sacto.