

FILED

AUG 17 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of

SANDRA E. SILVA,

Respondent.

)  
) NO. H-5184 SAC  
)  
)  
) OAH NO. 2009050017  
)  
)

DECISION

The Proposed Decision dated July 14, 2009, 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.

This Decision shall become effective at 12 o'clock noon on SEP - 7 2009

IT IS SO ORDERED 8/17/09

JEFF DAVI  
Real Estate Commissioner

Barbara J. Bigby

BY: Barbara J. Bigby  
Chief Deputy Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SANDRA E. SILVA,

Respondent.

Case No. H-5184 SAC

OAH No. 2009050017

**PROPOSED DECISION**

Administrative Law Judge Catherine B. Frink, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California on June 19, 2009.

Complainant was represented by Richard K. Uno, Counsel, assisted by Trevor Carson, law student.

Sandra E. Silva (respondent) was present and was represented by David Weiner, Attorney at Law.

Evidence was received and the matter was submitted for decision on June 19, 2009.

**FACTUAL FINDINGS**

*Procedural Background*

1. The complainant, Joe M. Carrillo, a Deputy Real Estate Commissioner of the State of California, filed the Accusation in his official capacity on March 26, 2009.

The Accusation was amended at hearing as follows: at Paragraph 4, page 2, line 7: change "Shasta" to "Sacramento."

2. Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate salesperson. Respondent's license was in full force and effect at all times relevant herein, and will expire on September 2, 2012, unless renewed.

### *July 26, 2007 Criminal Conviction*

3. On July 26, 2007, in the Superior Court of California, County of Sacramento, in Case No. 07T03347, respondent was convicted, upon her plea of nolo contendere, of a violation of Vehicle Code section 23152, subdivision (b), driving while having a blood alcohol level of .08 percent or higher, a misdemeanor.

4. The circumstances underlying the conviction are that, on June 2, 2007, respondent drove with a blood alcohol level of .15 percent. According to respondent, she left downtown Sacramento at about 1:00 a.m. after an evening of dinner and dancing. When attempting to make a lane change, she "nudged" in and out of the left lane to avoid a car that was "coming up fast." A California Highway Patrol (CHP) officer pulled her over, claiming she made an "erratic move." Respondent insists that she "passed the sobriety tests," and did not understand why the officer wanted to do a breathalyzer test as well. The report of CHP officer C. Sarabia, dated June 2, 2007, reflects that respondent's eyes were red and glassy; after she exited the vehicle she was "swaying in a rotational manner" when she stood on the sidewalk talking to the officer; and she failed to perform a series of pre-demonstrated and instructed field sobriety tests as instructed. The officer noted the odor of alcohol on respondent's breath. After respondent refused the breathalyzer (Preliminary Alcohol Screening Device), she was arrested and taken to the Sacramento County Jail, where a blood test was taken.

5. Imposition of sentence was suspended, and respondent was placed on informal probation for three years, subject to terms and conditions. Respondent was ordered to serve 48 hours in the county jail, with sheriff's work project recommended; pay fines and fees of about \$2,150; attend and complete a First Offender Drinking Driver Program; submit to blood alcohol chemical testing when offered by any peace officer with reasonable cause; not operate a motor vehicle after consuming any drugs or alcohol; not operate a motor vehicle unless properly licensed and insured; and comply with other standard terms and conditions. Respondent completed a three-month drinking driver program, which included weekly education sessions and group meetings. She satisfied the work project requirement by washing police cars for four days. Respondent testified that she paid a \$500 fine. The evidence did not establish whether she has paid any additional fines and fees assessed by the court.

6. Respondent's criminal probation is due to expire on July 26, 2010. However, on November 4, 2007, respondent was arrested for driving under the influence of alcohol or drugs (DUI), as set forth in Finding 8 below. This conduct constituted a violation of her criminal probation.

### *May 16, 2008 Criminal Conviction*

7. On May 16, 2008, in the Superior Court of California, County of Sacramento, Case No. 07T06136, respondent was convicted, after a jury trial, of misdemeanor violations

of Vehicle Code sections 23152, subdivision (a), DUI with a prior (Count 1), and 14601.2, subdivision (a), driving with a suspended license (Count 3).<sup>1</sup>

8. The circumstances underlying the conviction are that, on November 4, 2007, respondent spent the day with friends at a sporting event, during which she claims she consumed five or six drinks. On the way home, one of respondent's friends got into an argument with her boyfriend, who called the police. When officers arrived, they found respondent sitting in the driver's seat of her parked vehicle; according to respondent, the keys were not in the ignition. The arresting officer noted the strong odor of alcohol on respondent's breath. She performed poorly on the field sobriety tests at the scene, and her blood alcohol level was measured at between 0.12 percent and 0.144 percent.

9. As a consequence of the conviction, respondent was sentenced to 180 days in county jail; the sentence was suspended, and respondent was placed on informal probation for four years. She was ordered to serve 90 days in county jail on Count 1, and 30 days in county jail on Count 3, with credit for time served of one day, consecutive to time serving on Case No. 07T03347 (the conviction set forth in Finding 3). Respondent was ordered to enroll in the SB38 (second DUI) program; pay fines and fees totaling \$1,765; submit to blood alcohol chemical testing when offered by any peace officer with reasonable cause; not operate a motor vehicle after consuming any drugs or alcohol; not operate a motor vehicle unless properly licensed and insured; and comply with other standard terms and conditions.

Respondent served two months in jail, and completed the remainder of her jail sentence in February of 2009 through the sheriff's work project, two days per week. Respondent is currently enrolled in an 18-month SB 38 drinking driver program, which consists of weekly two-hour meetings, alternating between education classes and group sessions, as well as one-on-one sessions with a counselor. Her criminal probation is due to expire on May 16, 2012.

### *Respondent's Rehabilitation*

10. Respondent does not believe she has a "drinking problem," and does not consider herself an alcoholic. She does not attend Alcoholics Anonymous or any other 12-

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<sup>1</sup> Respondent was also convicted of violating Vehicle Code section 23152, subdivision (b), driving while having a blood alcohol level of .08 percent or higher, with a prior (Count 2). However, respondent was sentenced on Counts 1 and 3 only; sentencing on Count 2 was stayed, pursuant to Penal Code section 654, which states:

(a) An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other.

(b) Notwithstanding subdivision (a), a defendant sentenced pursuant to subdivision (a) shall not be granted probation if any of the provisions that would otherwise apply to the defendant prohibits the granting of probation.

step program. In a written statement submitted to the Department of Real Estate (department) on January 20, 2009, respondent stated: "I do not drink anymore." At hearing, respondent admitted that she drinks "on occasion," and she had last consumed alcohol about a month and a half before the hearing. She considers herself a "social drinker."

11. In explaining the conduct leading to her convictions, respondent stated that it was "just a certain time in [her] life," and that she was "going through some things." In her statement to the department, she described the incidents as "a streak of bad luck." She felt she had paid a "painful price" for her mistakes, and that her work was not affected by these problems in her personal life.

12. Respondent is a single mother. She has two adult children and one child who is 13 years old, for whom she is the sole support. Respondent is very involved in youth sports, and "being there" for her children. Her work as a real estate salesperson has given her financial stability as well as the scheduling flexibility to attend her children's activities.

13. Respondent submitted two letters of support, each dated June 17, 2009, which were received in evidence and considered to the extent permitted under Government Code section 11513, subdivision (d).<sup>2</sup> The first letter was from Danny Camarena, a part owner of the Keller Williams Realty office in Elk Grove. The letter stated that Mr. Camarena has known respondent since May of 2004 as an associate of Keller William Realty's Sacramento office. Mr. Camarena stated that respondent "has always been professional and dedicated to her clients and fulfilling her fiduciary responsibilities." He attested to her "superior integrity in her Real Estate transactions." The second letter was from Robert Lorigan, president of Florin Little League. This letter describes respondent as a "model volunteer" for the past 10 years, during which she has been an active board member, team mom, and snack bar advisor. Neither of these letters reflect any knowledge of respondent's criminal convictions.

14. Respondent was employed from 2003 to 2008 at Keller Williams Realty. According to respondent's January 20, 2009 statement to the department, "[t]he fees were too high at Keller Williams. With the market [she] had to find a company that did not charge such high fees." According to respondent's statement, she has been employed as a real estate salesperson by Elite Realty Services from 2008 to the present. Respondent did not provide any testimony or evidence from her employing broker reflecting knowledge of her criminal convictions, or a willingness to provide additional supervision of respondent if she were to be granted a restricted license.

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<sup>2</sup> Government Code section 11513, subdivision (d) states in pertinent part, "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. ..."

## LEGAL CONCLUSIONS

### *Applicable Statutes and Regulations*

1. Prior to its amendment, effective January 1, 2008, Business and Professions Code section 490 stated:

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. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which 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 the provisions of Section 1203.4 of the Penal Code.

2. Business and Professions Code section 490, as amended effective January 1, 2008, states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(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. Any 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 the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

3. Business and Professions Code section 493 states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

4. Prior to its amendment, effective January 1, 2008, Business and Professions Code section 10177, subdivision (b), stated:<sup>3</sup>

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an

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<sup>3</sup> Complainant's Accusation acknowledges the burden of proving that respondent's July 26, 2007 misdemeanor conviction was for a crime involving moral turpitude.

applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock 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 involving moral turpitude, 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.

5. Business and Professions Code section 10177, subdivision (b), as amended effective January 1, 2008, states:

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, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock 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.

6. California Code of Regulations, title 10, section 2910, subdivisions (a)(8), (a)(10), (a)(11), and (c), state:

(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 Department within the meaning of Sections 480 and 490 of the Code if it involves:

- (8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent of doing substantial injury to the person or property of another.
  - (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.
- (c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

7. California Code of Regulations, title 10, section 2912, states:

The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code 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.

- (a) The passage of not less than two years since the most recent criminal conviction that is 'substantially related' to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)

- (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 education or vocational training courses for economic self-improvement.
- (l) Significant or 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 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.

#### *Moral Turpitude*

8. A criminal act involves moral turpitude if it involves a serious breach of a duty owed to another or to society. (*In re Stuart K. Lesansky* (2001) 25 Cal.4th 11, 16; [citing *In re Johnson* (1992) 1 Cal.4th 689, 699; *In re Calaway* (1977) 20 Cal.3d 165, 169-170; *In re Higbie* (1972) 6 Cal.3d 562, 569-570].) Acts of moral turpitude are acts which involve "bad character" and "readiness to do evil." (*People v. Zataray* (1985) 173 Cal.App.3d 390, 400.) "Moral turpitude has also been described as any crime or misconduct committed without excuse, or any 'dishonest or immoral' act not necessarily a crime. (*In re Higbie* (1972) 6 Cal.3d 562, 569.)" (*Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1027.) A crime of moral turpitude is "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*In re Craig* (1938) 12 Cal.2d 93, 97.)

9. In deciding whether a conviction necessarily involved moral turpitude, a court must look to the statutory definition of the particular crime, and only if the least adjudicated elements of the crime necessarily involved moral turpitude does the conviction involve moral turpitude. (*People v. Forster* (1994) 29 Cal.App.4th 1746, 1756-7.) Inquiry into collateral acts to determine whether a conviction was for an offense involving moral turpitude is not permitted. (*Lorenz v. Board of Medical Examiners* (1956) 46 Cal.2d 684, 687.) As the

California Supreme Court stated in *Adams v. Commission on Judicial Performance* (1994) 8 Cal.4th 630, 655-656:

In professional license-revocation cases, involving revocation based upon conviction of a crime involving moral turpitude, this court has considered the issue whether a license may be revoked on the basis of mere proof of conviction, without any consideration of the specific facts underlying the conviction. In these cases we have held: "Only if the minimum elements for a conviction necessarily involve moral turpitude and a conviction cannot be had without proof of facts showing moral turpitude, can the conviction be held to be of an offense involving moral turpitude." (*Cartwright v. Board of Chiropractic Examiners* (1976) 16 Cal.3d 762, 766-767, quoting *Lorenz v. Board of Medical Examiners* (1956) 46 Cal.2d 684, 687.)

10. Vehicle Code section 23152, subdivision (b), states:

(b) It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

For purposes of this article and Section 34501.16, percent, by weight, of alcohol in a person's blood is based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

11. A single DUI offense has been held not to involve moral turpitude as a matter of law. (*In re Kelley* (1990) 52 Cal.3d 487). Consequently, respondent's 2007 misdemeanor conviction for driving with a blood alcohol level of .08 percent or greater was not a crime of moral turpitude within the meaning of Business and Professions Code section 10177, subdivision (b), as promulgated prior to January 1, 2008.

### *Substantial Relationship*

12. Respondent's 2008 misdemeanor conviction for driving with a blood alcohol level of .08 percent or higher, with a prior conviction for violation of Vehicle Code section 23152, subdivision (b), was substantially related to the qualifications, functions and duties of a real estate salesperson within the meaning of California Code of Regulations, title 10, section 2910, subdivisions (a)(8), doing of any unlawful act with the intent or threat of doing substantial injury to the person or property of another,<sup>4</sup> and (a)(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. Taken together with respondent's conviction for driving with a suspended license, respondent's 2008 criminal convictions were substantially related to the qualifications, functions and duties of a real estate licensee as defined in California Code of Regulations, title 10, section 2910, subdivisions (a)(10), conduct which demonstrates a pattern of repeated and willful disregard of law.

### *Cause for Discipline*

13. No cause for discipline of respondent's license and licensing rights pursuant to Business and Professions were established pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), as promulgated prior to January 1, 2008, by reason of Finding 3, and Legal Conclusions 8 through 11. Respondent's 2007 conviction is subject to the statutory requirements in effect at the time. Since a single conviction for driving with a blood alcohol level of .08 percent or higher is not a crime of moral turpitude, it cannot form the basis for a separate cause for disciplinary action.

14. Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent's license and licensing rights pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), by reason of Findings 6, 7, 8, and 9, and Legal Conclusion 12, in that respondent has been convicted of crimes that are substantially related to the qualifications, functions and duties of a real estate salesperson.

### *Rehabilitation*

15. Pursuant to Business and Professions Code section 482, subdivision (b), the Department has developed criteria to evaluate the rehabilitation of a licensee after a criminal conviction, which are set forth in California Code of Regulations, title 10, section 2912. In this case, less than 14 months have passed since respondent's most recent conviction. (Finding 7). Respondent has not completed the court-ordered 18-month DUI course (Finding

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<sup>4</sup> A misdemeanor violation of Vehicle Code section 23152, subdivision (b), constitutes "a misdemeanor conviction involving physical injury or the threat of physical injury to another person." (*People v. Eribarne* (2004) 124 Cal.App.4th 1463, 1647.) "It is commonly understood that '[d]runken drivers are extremely dangerous people.'" (*People v. Eribarne, supra*, 124 Cal.App.4th at 1468, citing *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 899. See also, *People v. Canty* (2004) 32 Cal. 4th 1266, 1279; *Burg v. Municipal Court* (1983) 35 Cal.3d 257, 262.)

9). Respondent will remain on criminal probation until May of 2012. Respondent has not engaged in additional education for professional self-improvement since the events that gave rise to her criminal convictions. Respondent's family life is relatively stable (Finding 12). Respondent produced some evidence attesting to her good character (Finding 13). However, respondent did not introduce testimony or other evidence from a prospective employing broker indicating familiarity with the facts and circumstances surrounding her convictions and expressing a willingness to closely supervise respondent's activities as a real estate salesperson should she be permitted to remain licensed (Finding 14).


16. Respondent does not acknowledge that she has a problem with alcohol, despite the fact that she sustained two alcohol-related driving convictions within a 12-month period. The fact that respondent was on criminal probation at the time she sustained her second alcohol-related conviction is considered as a factor in aggravation, particularly as it relates to respondent's willingness or ability to comply with conditions of a restricted license. Respondent is apparently in compliance with the terms of her most recent probation; however, compliance with the law when one is on court ordered release "does not necessarily prove anything but good sense." (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473.) When a person is on criminal probation or parole, rehabilitation efforts are accorded less weight, "[s]ince persons under the direct supervision of correctional authorities are required to behave in exemplary fashion..." (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Therefore, an insufficient period of time has passed for respondent to demonstrate rehabilitation.

17. Under all the facts and circumstances herein, it would be contrary to the public interest to permit respondent to retain a real estate license, with or without restrictions.

#### ORDER

All licenses and licensing rights of respondent Sandra E. Silva under the Real Estate Law are revoked pursuant to Legal Conclusions 14-17.

Dated: 7/14/09



CATHERINE B. FRINK  
Administrative Law Judge  
Office of Administrative Hearings

FILED

APR - 1 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

1 RICHARD K. UNO, Counsel (SBN 98275)  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007  
5  
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7  
8 Telephone: (916) 227-2380

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of )

13 SANDRA E. SILVA, )

14 Respondent. )

No. H-5184 SAC

ACCUSATION

15  
16 The Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner of  
17 the State of California, for cause of Accusation against SANDRA E. SILVA, (hereinafter  
18 "Respondent"), is informed and alleges as follows:

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20 Complainant makes this Accusation against Respondent in his official capacity.

21 2

22 Respondent is presently licensed and/or has license rights under the Real Estate  
23 Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "the Code") as a  
24 real estate salesperson.

25 3

26 On or about July 26, 2007, in the Superior Court of the State of California,  
27 County of Sacramento, Case No. 07T03347, Respondent was convicted of violating Section

1 23152(b) of the California Vehicle Code (Driving Under the Influence of Alcohol or Drug), a  
2 misdemeanor and a crime which involves moral turpitude and bears a substantial relationship  
3 under Section 2910, Title 10, California Code of Regulations (herein Regulations) to the  
4 qualifications, functions or duties of a real estate licensee.

5 4

6 On or about May 16, 2008, in the Superior Court of the State of California,  
7 County of Shasta, Case No. 07T06136, Respondent was convicted of violating Section 23152(a)  
8 of the California Vehicle Code (Driving Under the Influence of Alcohol or Drug with a Prior  
9 DUI) and Section 14601.2(a) of the California Vehicle Code (Driving with a Suspended  
10 License), both misdemeanors which bear a substantial relationship under Section 2910 of the  
11 Regulations to the qualifications, functions or duties of a real estate licensee.

12 5

13 The facts alleged in Paragraph 3 and 4, above, constitute cause under Section  
14 10177(b) and Section 490 of the Code for suspension or revocation of Respondent's license  
15 under the Real Estate Law.

16 WHEREFORE, Complainant prays that a hearing be conducted on the  
17 allegations of this Accusation and that upon proof thereof, a Decision be rendered imposing  
18 disciplinary action against all licenses and license rights of Respondent under the Code, and for  
19 such other and further relief as may be proper under provisions of law.

20  
21   
22 JOE M. CARRILLO  
Deputy Real Estate Commissioner

23 Dated at Sacramento, California,  
24 this 26 day of March, 2009.