

FILED

DEC 17 2021

DEPT. OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of:)	DRE No. H-05214 SD
)	
ALEXANDRA GABRIELLE COSETTI,)	OAH No. 2021080679
)	
Respondent.)	

DECISION

The Proposed Decision dated November 15, 2021, 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.

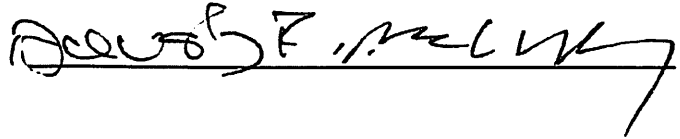
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The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached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

This Decision shall become effective at 12 o'clock noon on JAN 6 2022.

IT IS SO ORDERED 12 . 14 . 21

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

A handwritten signature in black ink, appearing to read "Douglas R. McCauley", written over a horizontal line.

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

In the Matter of the Accusation Against:

ALEXANDRA GABRIELLE COSETTI, Respondent

Agency Case No. H-05214 SD

OAH No. 2021080679

PROPOSED DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by telephone/videoconference on October 27, 2021.

Andrea Bentler, Staff Counsel, represented complainant Veronica Kilpatrick, Supervising Special Investigator, Department of Real Estate (department), State of California.

Alexandra Gabrielle Cosetti, respondent, represented herself.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on October 27, 2021.

FACTUAL FINDINGS

Background

1. On October 14, 2017, the department issued real estate salesperson license number 02041395 to respondent. There is no history of discipline imposed against the license. The license expired on August 13, 2021.¹

2. On March 10, 2021, complainant, in her official capacity, signed the accusation alleging as causes for discipline that respondent was convicted in 2019 for felony driving under the influence (DUI) causing injury. Complainant seeks the revocation of respondent's license and recovery of investigation and enforcement costs.

3. Respondent timely filed a notice of defense This hearing followed.

2019 DUI Conviction

4. On April 4, 2019, in the Superior Court of California, San Diego County, on her plea of nolo contendere, respondent was convicted of a felony violation of Vehicle Code section 23153, subdivision (b), driving with a blood alcohol concentration (BAC) greater than 0.08 percent, with enhancements under Vehicle Code section 23578 (BAC greater than 0.15 percent) and 23558 (causing bodily injury to another). The court placed respondent on formal probation for five years; ordered her to complete a

¹ The license certification submitted by complainant was signed on April 26, 2021, and complainant did not submit an updated certification; the current status of the license is thus unknown.

substance abuse treatment and recovery program; and ordered payment of fines, fees, and restitution.

5. The circumstances of the offense were obtained from an arrest/investigation report by the California Highway Patrol. On September 28, 2018, respondent was driving a vehicle on the highway at a speed of approximately 90 miles per hour, and while overtaking another vehicle, veered into that vehicle's lane, striking the other vehicle. The responding officer believed respondent was under the influence of alcoholic beverages and blood was collected at the hospital. The report documented minor injuries only: respondent's passenger had a contusion to the head, and the other driver had pain to the thumb, nose, and lip. There was no evidence of respondent's BAC, except an allegation in the criminal complaint that it exceeded 0.20 percent.

Respondent's Testimony

6. Respondent's testimony is summarized as follows: Respondent accepted full responsibility for her actions that led to her arrest for driving under the influence. She consumed alcoholic beverages at a work party but was not planning on driving home. In fact, she had fallen asleep at the party, but her broker, who was arrested for DUI the week before, woke up respondent and asked her for a ride home. Respondent admitted that it was a mistake and poor judgment. All she remembers about the collision is that she was on the highway, when her passenger told her to slow down, respondent turned to look at her, and she struck another vehicle. Her passenger suffered a detached retina and broken nose. The occupants of the other vehicle had only minor injuries that did not require medical attention. Her BAC was measured at 0.27 percent.

7. Respondent has complied with all the terms of her probation. She moved from Napa to San Diego, which required her probation to be transferred. She has since returned to Napa because her father was diagnosed with cancer. She has a little more than two years left on her criminal probation.

8. Respondent has been sober since her arrest. She completed, and submitted a certificate of completion for, a six-month rehabilitation program, which was not required by her probation. The program consisted of two group meetings and one one-on-one session per week.

9. She continues to work for the same broker. At the time of her arrest, respondent was working on obtaining her broker's license. It is still her hope that she will be able to obtain this license. Respondent submitted completion certificates for several real estate courses, each 45 hours in length, in the following areas: real estate appraising, real estate economics; real estate finance, mortgage loan brokering, real estate practice, real estate principles, and property management.

10. Respondent volunteers every weekend serving food at a homeless shelter.

11. Respondent's testimony was sincere, contrite, and credible.

Character References

12. Respondent submitted character reference letters from eight individuals who attested to respondent's involvement in the community and abstinence from alcohol since her arrest. Her broker, who was respondent's passenger in the collision, also wrote a letter speaking very highly of respondent and her character.

Cost Recovery

13. Complainant requested cost recovery against respondent pursuant to Business and Professions Code section 10106. The declaration by complainant certified investigative costs in the amount of \$663.25. Complainant's counsel submitted a declaration for prosecution costs in the amount of \$537.60.

14. The evidence established that complainant's reasonable costs of investigation and enforcement totaled \$1,200.85. The certifications that were provided complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b).

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. 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.)

Relevant Statutory and Regulatory Authority

2. Business and Professions Code section 490 provides in relevant 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.

(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.

3. Pursuant to Business and Professions Code section 10177, subdivision (b), the commissioner may suspend or revoke a license if the licensee has been convicted of a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate license.

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

(a) When considering whether a license should be . . . suspended or revoked on the basis of the conviction of a crime . . . the crime . . . 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 or threat of doing substantial injury to the person or property of another.

(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.

Evaluation

5. Cause exists to revoke or suspend respondent's license pursuant to Business and Professions Code sections 490, subdivision (a) and 10177, subdivision (b). Respondent's convictions for driving under the influence with a BAC almost four times the legal limit is substantially related to the qualifications, functions and duties of a real estate licensee. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

6. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger, supra*, at p. 856.)

7. California Code of Regulations, title 10, section 2912, sets forth the following criteria to be considered by the department to determine rehabilitation of a licensee who have been convicted of a crime:

(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 [department'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, or escheat to the State of these monies or other properties if the victim(s) cannot be located.

(c) Expungement of the conviction(s) 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 and/or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance and/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 and/or other evidence of rehabilitation submitted by the licensee.

(2) Evidence from family members, friends and/or other persons familiar with the licensee's previous conduct and with subsequent attitudes and/or behavioral patterns.

(3) Evidence from probation or parole officers and/or law enforcement officials competent to testify as to licensee'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 convictions, misdemeanor convictions, or other conduct that provides grounds to discipline a real estate licensee, which reflect an inability to

conform to societal rules when considered in light of the conduct in question.

8. 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.) Similarly, the absence of prior discipline is an important mitigating circumstance, but it is only a particularly strong factor when the professional has engaged a professional practice for a substantial period of time. (*Waysman v. State Bar* (1986) 41 Cal.3d 452, 457.) Evidence of good conduct during a period of supervision such as parole or probation is an important factor in rehabilitation, but good behavior is normally expected of someone who is under supervision of the criminal justice system. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Thus, evidence of good behavior while someone is still on parole or probation diminishes the weight of his or her alleged good conduct.

9. In September 2018, respondent was involved in a single DUI incident with a very high BAC, resulting in a collision that caused moderate injury to her passenger. Respondent is scheduled to remain on formal probation until April 2024. Respondent credibly testified that she has maintained her sobriety since the incident and submitted proof of completion of a six-month rehabilitation program that required attendance three times per week. Respondent submitted very positive character references and she volunteers in her community. Because this appears to be an isolated incident, the public will be protected by permitting respondent to apply for and hold a restricted real estate salesperson license.

Cost Recovery

10. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5, which is similar to Business and Professions Code section 10106, did not violate due process. But it was incumbent on the board in that case to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not "deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing." (*Ibid.*)

The Supreme Court set forth five factors to consider in deciding whether to reduce or eliminate costs: whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; whether the licensee had a "subjective" good faith belief in the merits of his or her position; whether the licensee raised a "colorable challenge" to the proposed discipline; whether the licensee had the financial ability to make payments; and whether the scope of the investigation was appropriate in light of the alleged misconduct. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3 since the language in the cost recovery regulation at issue in *Zuckerman* and section 125.3 are substantially the same.

11. Respondent presented no evidence to establish that she does not have the financial ability to pay the costs requested. She did raise a colorable challenge to the proposed discipline and successfully obtained a reduction in the proposed discipline. After applying the *Zuckerman* criteria, it is concluded that it is reasonable to require respondent to pay the prosecution and investigation costs in the amount of \$1,000.

ORDER

All licenses and licensing rights issued to respondent Alexandra Gabrielle Cosetti 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 \$1,000 in prosecution costs within 90 days from the effective date of this Decision, unless otherwise ordered by the department through a payment plan. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and shall be subject to the to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

- 1. During the period of restriction, respondent shall report any arrest to the board within 72 hours of the occurrence of the arrest, or if incarcerated following arrest, within 72 hours of release from incarceration.**
- 2. The restricted license issued to respondent may be suspended prior to hearing by order of the commissioner in the event of respondent's conviction or plea of nolo contendere to a crime that is substantially related to respondent's fitness or capacity as a real estate licensee.**
- 3. The restricted license issued to respondent may be suspended prior to hearing by order of the 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.**

4. 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 two years have elapsed from the effective date of this decision and order.

5. 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 bureau certifying that:

(a) the employing broker has read the decision and order in this matter; and

(b) 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.

6. Respondent shall, within nine months from the effective date of this decision and order, 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 the respondent presents such evidence. The commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

7. 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: November 15, 2021


Adam Berg (Nov 15, 2021 10:11 PST)

ADAM L. BERG

Administrative Law Judge

Office of Administrative Hearings