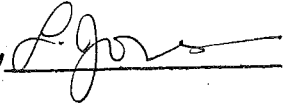


FILED

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

JUN 06 2013

DEPARTMENT OF REAL ESTATE

By 

In the Matter of the Accusation of

DAREN EDWARD BALEME,

Respondent.

)
) NO. H-5849 SAC

)
) OAH NO. 2012110228

DECISION

The Proposed Decision dated April 30, 2013, 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)(C) of the Government Code, the following corrections are made to Proposed Decision:

The last name of the Legal Intern, identified in Paragraph 2, is "Serbu".

The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 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 JUN 26 2013.

IT IS SO ORDERED June 5, 2013

REAL ESTATE COMMISSIONER



By: Jeffrey Mason

Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DAREN EDWARD BALEME,
Sacramento, California 95765

Respondent.

Case No. H-5849 SAC

OAH No. 2012110228

PROPOSED DECISION

Administrative Law Judge Allan H. Keown, State of California, Office Administrative Hearings, heard this matter on March 25, 2013 in Sacramento, California.

Richard K. Uno, Staff Counsel, Department of Real Estate Legal Division, assisted by Legal Intern Catalina Silva, appeared on behalf of complainant Tricia D. Sommers, a Deputy Real Estate Commissioner of the State of California.

Daren Edward Baleme, respondent, was present and represented himself throughout the hearing.

Evidence was received and the record was left open to allow respondent to submit further documentation related to the expungement of his 2005 conviction by April 5, 2013. On that date, respondent's submission was marked as an exhibit and admitted into evidence. The record was closed and the case submitted for decision on April 5, 2013.

FACTUAL FINDINGS

Procedural History

1. Tricia D. Sommers is a Deputy Real Estate Commissioner of the State of California (hereafter complainant). She made and brought an Accusation solely in her official capacity on June 27, 2012 seeking to revoke respondent's real estate license.

2. Respondent is presently licensed and/or has license rights under the provisions of Business and Professions Code sections 10000-11506 as a real estate broker.

Cause for Discipline – 2011 DUI Conviction

3. On or about October 13, 2011, in Case No. 62-107600, in the Superior Court of California, Placer County, respondent was convicted upon a plea of guilty to a felony violation of Vehicle Code section 23153, subdivisions (a) and (b), with an enhancement of a violation of Vehicle Code section 23578 (driving under the influence (DUI) with a blood alcohol of .15 percent or more).

4. The factual circumstances surrounding the 2011 DUI conviction were that respondent was arrested in Roseville on July 12, 2011. He had been driving his car on Atlantic Street, and numerous callers had stated that he was falling asleep at the wheel and swerving all over the road. Police officers responded to the scene at approximately 5:00 p.m. They noted that respondent while driving his vehicle had collided with a white Toyota 4Runner truck. Respondent's car had major front end damage and was resting on the train tracks that cross over Tiger Way. The truck had sustained major passenger side damage, and it was resting on the roadway on Tiger Way.

Respondent told the arresting officer that he did not realize that a collision had occurred; he did not know either what had happened or how it had happened. He stated that his address was "316 St. Lawrence," but there is no street or an address of "316 St. Lawrence" in the City of Roseville.

Respondent smelled strongly of alcohol, his speech was thick, and he kept repeating himself to the arresting officer. He stated that he had had "two Coors beers" at lunch that afternoon. His tongue was bloody, and he had a small amount of dry blood on his lips. He failed his field sobriety tests, his blood alcohol at the scene via the breath analysis registered .184/.180 percent and later .17 based upon lab results. An officer booked him in to the Roseville City jail.

5. Respondent testified about the events surrounding the accident: he had met some friends for lunch and had arrived late. They were drinking vodka martinis, something he did not drink. After several hours, he had consumed four martinis and several glasses of wine. He had never consumed martinis before, and he "has always been adamant about not drinking and driving." He stated that he is always the person who takes the keys and will not let someone else drive who has been drinking. He had never driven after drinking before, especially because he takes Cymbalta as an anti-depressant and it makes one very sick if mixed "in any excess at all" with alcohol.

6. At the hearing, respondent expressed deep sorrow and regret for his conduct and stated repeatedly that he was thankful that he had not injured any one seriously. He stated that he knew that he was too intoxicated to drive that afternoon and had phoned for a taxi, but he grew impatient and drove away anyway. He did not remember what he had done because he had blacked out.

7. On December 13, 2011, respondent's motion to reduce the felony charges to a misdemeanor was granted based upon his age, minor traffic history, lack of any criminal history since 2005, and the fact that the victim's injuries were not serious. He was sentenced to formal probation of three years; to serve 60 days in jail; enroll in the first offender program; complete at least one Alcoholics Anonymous (AA) meeting per week; pay restitution to the victim if necessary; and pay all fines, penalties, and assessments as required.

8. Respondent continues to serve out his formal probation, which will not be completed until December 13, 2014. He reports regularly to his probation officer about his compliance with the terms of his probation, including his attending AA meetings.

9. Respondent's 2011 DUI conviction bears a substantial relationship under California Code of Regulations, title 10, section 2910, subdivision (a)(8) to the qualifications, functions, or duties of a real estate licensee. That subdivision provides cause for discipline against real estate licenses where the conviction involved the "[d]oing of any unlawful act with the ... threat of doing substantial injury to the person or property of another."

Factor in Aggravation -- 2005 Assault Conviction

10. On or about January 24, 2005, in the Superior Court of the State of California, County of Placer, Case No. 62-47661, respondent was convicted by guilty plea of a misdemeanor violation of Penal Code section 245, subdivision (a)(1) (assault with a deadly weapon/inflicting corporal injury on a spouse or cohabitant). He was sentenced to three years of probation and required to have only peaceable contact with the victim. He was ordered to participate in and complete a 52-week batterers' program as well as psychological therapy.

11. Respondent's conviction was expunged on July 9, 2007 by the Placer County Superior Court pursuant to Penal Code section 1203.4

12. Based upon the meager evidence in the record, the factual circumstances surrounding the misdemeanor assault conviction were that respondent hit his wife with a motorcycle helmet in 2004. Respondent stated that the incident happened primarily because he had mixed pain medications, required by dental surgery, with his anti-depressant medications. No alcohol was involved. He averred that he had only kicked the helmet into her and had not hit her personally.

13. Respondent submitted a character reference letter from his ex-wife, Lisa Baleme, the victim of the 2004 assault, which she had written on September 28, 2011, to the Placer County Superior Court in relation to the 2011 DUI conviction. Ms. Baleme emphatically stressed in that letter that alcohol was not involved in the 2004 incident. It was caused, she explained, by the stress of their 13-year-old son's teenage boys' birthday party combined with respondent's having taken pain killers for dental work that caused an extremely severe reaction with the other medications he was taking (*i.e.*, Effexor and Wellbutrin). She accepted full responsibility for her part in the altercation, and she stated that each had forgiven and "moved on." She denied emphatically being an "abused wife." She stated that respondent had "performed perfectly on all of the [aspects] of the probation and noted that the misdemeanor had been expunged by Judge Kearney in 2007.

14. As complainant correctly points out, the fact that a conviction has been expunged does not prohibit an agency from relying upon the conviction to deny or revoke a license in California. (See *Krain v. Medical Board of California* (1999) 7 Cal.App.4th 1416, 1421; *Ready v. Grady* (1966) 243 Cal.App.2d 113, 116.) Here, however, it appears that respondent's 2005 misdemeanor conviction is not sufficiently similar or recent with respect to the 2011 DUI conviction. The necessary connection is too attenuated. Stated differently, there is insufficient evidence to connect respondent's domestic violence conviction to the public interest in 2013 regarding respondent's California real estate license: *i.e.*, to provide a basis for aggravation in this case.

Factor in Aggravation – Failing to Appear During Currently Pending Criminal Charges in Las Vegas, Nevada

15. On May 1, 2009, the Clark County District Attorney filed a criminal complaint in the Las Vegas Township Justice Court. He alleged that respondent had cashed three checks between August 1 and 8, 2008, in the total amount of \$10,000. The checks were to obtain cash and/or gaming chips, drawn upon Redding Bank of Commerce and made payable to Caesars Palace Hotel and Casino in Las Vegas. Respondent was not present in court for his arraignment on May 5, 2009, and an arrest warrant was issued. On March 30, 2010, respondent appeared in court after having been arrested on a bench warrant based upon his failure to appear on May 5, 2009. Defense counsel moved to place the matter on calendar and recall the arrest warrant. Respondent was arraigned on April 2, 2010. He was in custody and present, advised of the charges, waived the reading of the complaint, was advised of the date (April 30, 2010) set for his preliminary hearing, and released on his own recognizance (O/R).

16. On April 30, 2010, the date set for the preliminary hearing, respondent was not present in the courtroom. Defense counsel's motion to continue the preliminary hearing was granted, and O/R was continued.

17. On June 25, 2010, the date to which the preliminary hearing had been continued a second time, respondent was not present in court. Defense counsel's motion for a continuance to check on resolution of the case was granted, and O/R was again continued. The same set of facts pertained on July 30, 2010.

18. On August 27, 2010, the time set for a preliminary hearing, respondent again was not present in court. Defense counsel filed a written waiver of his right to a preliminary hearing. Respondent was bound over to District Court as charged, but the bindover was stayed on the condition that respondent pay \$11,794.51 to the District Attorney's bad check unit. If the required amount is paid, then the court has noted that it will entertain a possible dismissal. If not, then the court intends to bind respondent over to the District Court. His O/R status is continuing in the case.

19. There are no further official notations in the court file. However, at the hearing respondent testified that he did not know that there had been a problem with the checks; if he had known, he stated that he would have "dealt with it." He was stopped for a defective tail light in California on March 7, 2010, at which point the outstanding arrest warrant in Las Vegas was detected. That resulted in his being bussed from California to Las Vegas. He stated that he had never been "directed" to Nevada and assumed that the case would be transferred to California. He currently is involved in negotiations with the District Attorney's office to "rectify the situation." He has not made any payments to date.

20. Complainant has alleged as aggravation only respondent's failure to appear personally three times during the proceedings, even though he has been represented each time by counsel and retains his O/R status. Complainant has not alleged any substantive misconduct. Because no conviction has resulted and respondent retains his O/R status, these ongoing proceedings in Las Vegas, Nevada do not provide a basis in aggravation for purposes of this hearing. Without evidence from the Nevada prosecution of this case regarding its view(s) of respondent's three nonappearances, there is insufficient moral or ethical opprobrium to connect them to the public interest in California regarding his real estate license.

Rehabilitation Evidence

21. In California Code of Regulations, title 10, section 2912, the Department of Real Estate has set forth criteria to guide its decisions to revoke or suspend real estate licenses based upon a licensee's rehabilitation from a criminal conviction. In this case, the complainant points to subdivisions (a), (b), (e), (m)(1), and (m)(5) of section 2912 as bases for finding the lack of rehabilitation and, thus, revocation of respondent's license. In relevant part, they provide as follows:

- (a) The passage of not less than two years from 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.

[¶]...[¶]

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

[¶]...[¶]

- (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.

[¶]...[¶]

- (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.

22. In addition to these regulatory guideposts, at the hearing complainant correctly pointed to several well-recognized, long-standing principles that guide judicial considerations of rehabilitation from criminal conduct in the licensing arena. Evidence of rehabilitation is more persuasive if it is offered after a period of probation has been accomplished, at which time it can be shown that the licensee has reattained the standard of fitness to practice his profession. (See *In re Giddens* (1981) 30 Cal.3d 110, 116 citing *In re Petty* (1981) 29 Cal.3d 356, 362.) That is, "remorse does not demonstrate rehabilitation....[A] truer indication of rehabilitation will be presented if [a licensee] can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice [his profession]." (*In re Menna* (1995) 11 Cal.4th 975, 991 citing *In re Conflenti* (1981) 29 Cal.3d 120, 124-125; see also *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 942 (adequate showing of rehabilitation of seven and nine years with exemplary record as sufficient to show rehabilitation).)

23. Respondent testified with respect to his rehabilitation regarding each of the charges in the Accusation. First, he averred a number of times that he could not be any more remorseful for his 2011 DUI conviction. He has willingly taken any and all penalties that have been given for his crime, only caring about whether anyone was hurt and about what had happened to the other driver. He was extremely relieved to know that the victim did not suffer any long-term injuries. Second, the 2004 incident with his wife did not involve alcohol; it resulted from his mixing pain medication from his dentist with his anti-depressant medications. He hit her with a motorcycle helmet, never personally or physically. He pointed to the letter that she had written previously in his behalf with respect to the 2011 DUI conviction as evidence of his deep remorse and regret and resolve never to repeat that conduct. And third, with respect to the ongoing criminal matter involving not sufficient funds checks in 2008, he stated that a payment plan is being negotiated to "rectify the situation."

24. Respondent also presented evidence with respect to his 2011 DUI conviction regarding the number of AA meetings he had attended (in excess of 112), the completion of his jail sentence, the completion of the Mothers Against Drunk Driving program, and his attendance at all required DUI classes.

25. Respondent also presented 17 character reference letters from family, professional colleagues, and friends. These, plus his testimony that he has been involved in thousands of real estate transactions with not one complaint, are impressive and clearly praiseworthy.

26. But when all of the rehabilitation evidence is considered in light of the criteria set forth in California Code of Regulations, title 10, section 2912, the predominant facts are that respondent is still serving probation from his DUI 2011 DUI conviction and will be on probation until December 2014. Given the recency and seriousness of the 2011 DUI conviction; the fact that he is still on probation for that conviction; the administrative guidance set forth in California Code of Regulations, title 10, section 2912, subdivisions (a), (b), and (m)(1); and the relevant principles related to the judicial consideration of rehabilitation evidence previously noted in Finding 22, *supra*, it is not consistent with the public interest to determine that respondent is sufficiently rehabilitated and thereby allow him to retain his real estate broker license. Accordingly, his real estate license must be revoked.

Complainant's Request for Costs

27. Business and Professions Code section 10106 provides that the Department of Real Estate is authorized to request that an administrative law judge "direct a licensee found to have committed a violation of [the Real Estate Law] to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

28. The Department has submitted two declarations in support of its request for costs in this case: one for \$1,000.05 for investigation and one for \$1,361.70 for enforcement. Each was admitted into evidence without objection by respondent. The Department is entitled to costs in this case in the sum of \$2,361.75 from respondent.

LEGAL CONCLUSIONS

Cause for Discipline – 2011 DUI Conviction

1. Pursuant to Business and Professions Code sections 490, subdivision (a) and 10177, subdivision (b), the Department is authorized to suspend or revoke a license on the ground that a real estate licensee has been convicted of a crime if the crime is substantially related to the qualifications, functions, or duties of a real estate licensee.

2. Pursuant to California Code of Regulations, title 10 section 2910, subdivision (a)(8), respondent's 2011 DUI conviction for driving under the influence of alcohol or a drug causing physical injury, enhanced by an admission of a blood alcohol level of greater than .15 percent, bears a substantial relationship to the qualifications, functions, or duties of his real estate license. (Finding 9.) That subdivision authorizes complainant to revoke licenses where the conviction involves the "[d]oing of any act with the intent or threat of doing substantial injury to the person or property of another."

3. Significantly, the California Supreme Court has regularly emphasized the importance of the Legislature's purpose "in proscribing *driving* while under the influence, the legislative purpose primarily is to *protect the public* and guard against the threat of injury to others." (See, e.g., *People v. Canty* (2004) 32 Cal.4th 1266, 1279 (emphasis in original).) And the Court similarly had emphasized in 1979 that it was "crystal clear to us that courts in the formulation of rules on damage assessment and in weighing the deterrent function must recognize the severe threat to the public safety which is posed by the intoxicated driver. The lesson is self-evident and widely understood. Drunken drivers are extremely dangerous people." (*Taylor v. Superior Court* (1979) 24 Cal.3d 890, 899.) That respondent's license must be revoked in light of this jurisprudence is clear. (See Findings 3 through 9.)

Factor in Aggravation – 2005 Assault Conviction

4. The 2005 misdemeanor conviction for a violation of Penal Code section 245, subdivision (a)(1) is insufficient to constitute a factor in aggravation with respect to a decision to revoke respondent's license. (Finding 14.) That conclusion is not necessary to the decision with respect to revocation given the severity of the 2011 DUI conviction.

Factor in Aggravation – Failing to Appear During Currently Pending Criminal Charges in Las Vegas, Nevada

5. Respondent's failure to appear in the ongoing, still-unresolved criminal proceeding in Las Vegas, Nevada involving the cashing of \$10,000 worth of NSF checks in 2008 is not a matter in aggravation of the 2011 DUI conviction. (Findings 15 through 20.)

Rehabilitation Evidence

6. As set forth in Findings 21 through 26, although respondent offered some evidence of rehabilitation, he did not establish that he has engaged in sufficient rehabilitation to demonstrate that it would be consistent with the public interest to allow him to continue transacting real estate business in California. (See *Goldberg v. Barger* (1974) 37 Cal.App.3d 987, 996-997.) His license must therefore be revoked. (See Finding 26.)

Complainant's Request for Costs

7. Complainant is entitled to reimbursement for costs from respondent in the sum of \$2,361.75 pursuant to Business and Professions Code section 10106. (Findings 27 and 28.)

ORDER

The license and all licensing rights of respondent Daren Edward Baleme to act as a real estate broker under the Real Estate Law in the State of California are hereby REVOKED, and respondent is ordered to pay complainant \$2,361.75 in costs.

DATED: April 30, 2013



ALLAN H. KEOWN
Administrative Law Judge
Office of Administrative Hearings