

File

FILED

May 16, 2014

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By 

In the Matter of the Accusation of

No. H-5962 SAC

LEONARD IGNACIUS ILGUNAS,

OAH No. 2013030608

Respondent.

DECISION

The Proposed Decision dated April 1, 2014, 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 the real estate license and/or license rights; however, the right to a restricted real estate license is granted to Respondent.

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 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 6/6/2014.

IT IS SO ORDERED 5/7/2014.

REAL ESTATE COMMISSIONER



WAYNE S. BELL

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended
Accusation Against:

LEONARD IGNACIUS ILGUNAS,

Respondent.

Case No. H-5962 SAC

OAH No. 2013030608

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, Office of Administrative Hearings, on February 19, 2014, in Sacramento, California.

Stephanie K. Sese, Real Estate Counsel, represented complainant Tricia D. Sommers, a Deputy Real Estate Commissioner of the State of California.

Attorneys Steven L. Simas and Nicole P. Hanley represented respondent Leonard Ignacius Ilgunas, who was present throughout the hearing.

Evidence was received; and submission of the matter was deferred pending receipt of closing briefs. On March 12, 2014, respondent submitted a Closing Brief and Supplemental Declaration of Karen Wasson, which were marked respectively as Exhibits X and Y. On March 19, 2014, complainant filed a Brief in Rebuttal which was marked as Exhibit 12. The record was thereafter closed, and the matter was submitted for decision on March 19, 2014.¹

SUMMARY

Complainant seeks to discipline respondent's real estate salesperson license on the grounds that he was convicted of misdemeanor offenses including driving under the influence (DUI), exhibition of a firearm and driving while his license was suspended. Cause

¹ By letter dated March 20, 2014, respondent objected to any consideration being given to Complainant's Brief in Rebuttal to Respondent's Closing Brief. The objection is overruled. Complainant's objection to the admission of the Supplemental Declaration of Karen Watson is also overruled. Ms. Watson's declaration will be considered as administrative hearsay under Government Code section 11513, subdivision (d).

exists to discipline respondent's license on these grounds. Respondent has demonstrated sufficient rehabilitation to establish that he is capable of performing the duties of a real estate licensee in a manner consistent with public protection, safety, and welfare, but only under a restricted license. He should be allowed to continue licensed real estate activities with specified restrictions in place.

FACTUAL FINDINGS

1. The Bureau of Real Estate (Bureau) issued respondent Real Estate Salesperson License No. S/01426958 (license) on July 2, 2004. The license expires July 1, 2016, unless renewed or revoked. There is no history of prior discipline of respondent's license.

2. On February 19, 2013, complainant, acting solely in her official capacity, signed an Accusation seeking to discipline respondent's license on the ground that he was convicted of crimes that are substantially related to the qualifications, functions, or duties of a real estate licensee. On October 9, 2013, complainant filed a First Amended Accusation, adding a November 2, 2012 conviction as further cause for disciplinary action.

Respondent filed a timely Notice of Defense.

Criminal Convictions and Circumstances

3. On November 2, 2012, in the Humboldt County Superior Court, Case No. CR1204745, respondent pled no contest to, and was convicted of, a misdemeanor violation of Vehicle Code section 14601.5, subdivision (a), driving a motor vehicle with knowledge of a suspended license. He was ordered to pay \$1,235 in fines and fees, and placed on probation for three years.

4. On September 19, 2011, in the Alameda County Superior Court, Case No. H50786, respondent entered a plea of no contest and was convicted of the following misdemeanor offenses:

- a. Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol or drugs;
- b. Vehicle Code section 23152, subdivision (b), driving while having 0.08 percent or higher blood alcohol concentration.
- c. Penal Code section 417, subdivision (a)(2), exhibition of a firearm in a rude, angry, or threatening manner.
- d. Vehicle Code section 25631, knowingly purchasing any alcoholic beverage between the hours of 2:00 a.m. and 6:00 a.m.

Respondent was sentenced to 180 days in the Alameda County Jail with credit for 161 days served. He was placed on court probation for four years, and ordered to attend Alcoholics Anonymous (AA) meetings three times per week, or another alcohol rehabilitation program, and to complete a second offender DUI program. He will remain on criminal probation through November 2, 2015, unless terminated earlier.

5. On November 3, 2010, in the Contra Costa County Superior Court, Case No. 01-149676-9, respondent pled no contest to, and was convicted of, a misdemeanor violation of Vehicle Code section 23103, subdivision (a), reckless driving. He was placed on probation for two years and ordered to complete a level one alcohol program and pay \$1,258 in fines and fees.

6. The circumstances underlying respondent's 2012 conviction are that on August 24, 2012, a California Highway Patrol officer stopped respondent and determined that he was driving with a suspended driver license. Respondent explained that he was unaware at the time that the Department of Motor Vehicles (DMV) had suspended his license pending his installation of an ignition interlock device. On March 13, 2013, respondent submitted verification to the DMV that he had installed the device. DMV reinstated his driving privilege, effective February 27, 2013.

7. The circumstances underlying respondent's 2011 conviction are that on April 12, 2011, after 2:00 a.m., he was stopped by Livermore Police after it was reported that he had stolen some beer from a Chevron gas station in Livermore. Livermore Police Officer Andrew Graycar arrested respondent after a clerk from the Chevron station identified respondent. Officer Graycar conducted a search of respondent's vehicle and recovered a loaded semi-automatic 9 mm handgun in the trunk of respondent's vehicle. At the time of his arrest, respondent appeared obviously intoxicated.

Respondent explained that he went to the gas station to get some dog food. He purchased a can of dog food and a single 24-ounce beer for about five dollars. He denies stealing the items. Rather, he suggests that the clerk accused him of taking the items so that the clerk would not get in trouble for selling beer to him after 2:00 a.m. He acknowledged having a registered handgun in his trunk, and noted that the clerk knew about the gun from previous conversations with him.

8. The circumstances underlying respondent's 2010 conviction are that he was out celebrating on April 24, 2010, after he had made a sale. He had two beers and two shots. He was stopped just after midnight on April 25, 2010, by San Ramon Police Officer R. Gonzalez. At the time, respondent was observed to have "red/watery eyes, slight odor of an alcoholic beverage, and unsteady balance." He submitted to a breath test and his blood alcohol was measured at .10 percent at 1:11 a.m., and also at 1:13 a.m.

9. The above misdemeanor offenses are substantially related to the qualifications, functions or duties of a real estate licensee. Driving a motor vehicle with knowledge of a suspended license is substantially related because one is expected to comply with a statutory

requirement that a license, permit, or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(7).) As well DUI offenses involve a threat of doing substantial injury to the person or property of another. Persons driving while under the influence of alcohol are always a threat. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Finally, where one demonstrates a pattern of repeated and willful disregard of law, substantial relationship exists. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10).)

Factors in Aggravation, Mitigation, and Rehabilitation

10. As a matter in aggravation, on August 3, 1993, in the San Joaquin County Superior Court, Case No. LM007126A, respondent was convicted of a misdemeanor violation of Vehicle Code section 23152, subdivision (b), driving while having 0.08 percent or higher blood alcohol.

11. The Bureau has developed criteria for evaluating the rehabilitation of a licensee against whom an administrative proceeding for license discipline has been initiated.²

² Thus, title 10, California Code of Regulations, section 2912 provides as follows:

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 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.

(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 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 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, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

12. Respondent has indicated that he takes full responsibility for his actions. He acknowledged wrongdoing. He has recommitted to his sobriety and currently attends three Alcoholics Anonymous (AA) meetings per week. He has done so since his incarceration in April 2011. Respondent meets with his sponsor regularly, and serves as a sponsor himself. He averred that his sobriety date is April 11, 2011. He plans to continue with AA even after his court-ordered probation ends.

On March 13, 2013, respondent enrolled in an 18-month second offender program at Humboldt Alcohol Recovery Treatment (HART). HART provides program services for Humboldt County to individuals convicted of DUI or drug offenses. Respondent has attended HART regularly and has been compliant with program requirements. He has installed a Smart Start Interlock Device in his vehicle.

Respondent attempted to enter an outpatient program in hopes of establishing for the Bureau his willingness to do whatever it takes to demonstrate that he is safe to continue practicing as a real estate salesperson. He went in for an evaluation with Humboldt County Alcohol and Other Drug Programs on November 25, 2013. Respondent was advised that he did not meet the medical necessity criteria for outpatient treatment.

13. Respondent has paid all fines and costs, and has otherwise complied with all terms of his criminal probation. His criminal probation will end November 2, 2015. He plans to file for early termination of probation in May 2014. Respondent's license to operate a motor vehicle was reinstated by DMV on February 27, 2013. He noted that he has continued to lead a sober and law-abiding life since his most recent conviction.

14. In 2012, respondent attended the Eureka Community Health Center for treatment with a behavioral health consultant, Elizabeth Drabkin. They met every two weeks over several months. Respondent worked through issues around the loss of his parents, alcohol use, anger and depression. He noted that this was the first time that he realized he had these issues from early childhood, and believes that he benefited from this therapy. By letter to the Bureau dated December 10, 2013, Ms. Drabkin confirmed her counseling sessions with respondent in early 2012. She indicated that that respondent had bettered himself both emotionally and professionally. She opined that he "has used cognitive behavior therapy to gain skills and any further troubling behavior would be uncharacteristic of the person that he is today."

15. Respondent has two brothers. They are close, having suffered difficult losses as children, and being orphaned at an early age. Since July 2012 he has resided with his older brother, Andrius Darius Ilgunas. Andrius noted that since respondent moved in with

(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.

him he has seen "a marked improvement in his demeanor and ambitions." He confirmed that respondent has abstained from drinking alcohol, and that he attends AA three to four times per week. Andrius indicated that respondent is dedicated to both his clients and to his family. He is an excellent uncle to Andrius's daughter. Andrius is fully aware of respondent's convictions. He noted: "Despite his horrible mistakes, it does not change my opinion of Leonard's sincerity, honesty, and willingness to provide the best service to his clients..." He believes that respondent's past problems with alcohol were because he "chose the wrong form of medicine" to cope with past trauma in his life. Andrius testified credibly to respondent's commitment to improve and to become a contributing member of his profession and greater community. It does appear that respondent now enjoys a stable and supportive family life.

16. Respondent participates in community volunteer activities. He has organized and raised money for an annual "Toys for Kids" drive. He participated on a scholarship subcommittee where he evaluated applicants for scholarships awarded by the Humboldt Association of Realtors (HAR). He served on HAR's Angel Committee, which assists HAR members during hardships brought on by unforeseen circumstances. He has also served on HAR's Professional Standards Committee, as well as its Grievance Committee. The latter reviews disciplinary complaints on an as needed basis. And he has been on HAR's Bylaws Subcommittee.

17. Respondent has studied to maintain his knowledge and skills as a real-estate salesperson. He has completed 45 hours of ethics training in the following areas: consumer protection, fair housing, trust funds, ethics and risk management.

He has been involved with his local Buddhist temple over the past two years. He is drawn to Buddhism because of its focus on being selfless and considering others first.

18. Respondent has worked under licensed real estate broker Karen Wasson since February 6, 2012. Ms. Wasson traveled from Eureka to testify on his behalf. She owns Eweneek Properties in Eureka, California. She is aware of respondent's criminal history. She supports him fully and noted that she has never known him to do anything that was inappropriate or of an unprofessional nature while on the job. The two share similar business philosophies. They are committed to putting their clients' interests above monetary gain. For example, it is not uncommon for them to reduce commissions in recognition of the financial hardship community members are experiencing. Ms. Wasson believes respondent to be ethical in his dealings with clients, and sensitive to clients' needs. She reviews documents in connection with his real estate transactions and has found "everything in order." She has never observed him to drink, or under the influence of alcohol at work. She described respondent as a good employee who is diligent, honest and who works hard on his client's behalf. She hopes one day to retire and have him take over her business.

19. Respondent submitted a number of character reference letters, briefly summarized below:

a. Respondent's AA sponsor, Brady, has known him since November 14, 2011. By letter dated September 19, 2013, he confirmed that respondent has consistently attended AA meetings since September 2011, and almost every AA function, charity event and outreach program available in Humboldt County. Brady speaks to respondent by phone two days each week, and sees him three to four times each week at AA meetings. He opined that respondent leads an abstinent life.

b. Adam Russ submitted a letter dated August 9, 2013. Respondent has been available to support Mr. Russ in maintaining his sobriety. He wrote: "I have learned through Leonard that being sober and treating others as you wanted to be treated is actually how the world revolves. He's a straight up honest person who cares for others well-being and will show you the beauty in life."

c. Joe Williams is a registered addiction specialist. By letter dated December 13, 2013, he confirmed that respondent was assessed at the Humboldt County Alcohol and Other Drug Programs and found not to meet medical necessity criteria for outpatient treatment.

d. Jessica Chapman was one of respondent's clients. By letter to the Bureau dated October 19, 2013, Ms. Chapman indicated that she believed he always had her best interests in mind and noted that his "due diligence, knowledge to negotiate price and terms was awesome." She described herself as a single mother who, because of her price range, many realtors "would not stay in contact or try to assist me in my search." Ms. Chapman was aware that respondent attended AA three times a week and that he had to schedule showings around these meetings. She described him as "a great asset to this small rural community."

e. R.H. Parker and his wife purchased two homes through respondent. He is aware of respondent's criminal history. By letter dated September 15, 2013, Mr. Parker noted that respondent is an exceptional real estate salesperson that he would recommend to family and friends because of his "devotion to clients and professionalism." He described respondent as "a great asset to this community and it would be a huge loss to people trying to purchase or sell real estate because of his sincerity to his clients."

f. Jody Harper is a mortgage loan officer who worked with respondent when the two were employed at Ming Tree Mortgage, and now with respondent in his capacity as a real estate salesperson. He has prequalified some of respondent's clients. Mr. Harper offers his "total support" for respondent, noting that his clients "are most important to him before even himself" and that he has witnessed respondent "make ethical choices and I believe him to be an honest and trustworthy person." He noted the incidents in the Amended Accusation and believes they "do not demonstrate who he is with his clients or in the real estate business in any way."

20. The Bureau's criteria for determining whether a licensee has been sufficiently rehabilitated include "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 [Bureau]." (Cal. Code Regs., tit. 10, § 2912, subd. (a).) Respondent's most recent conviction was November 2, 2012, so he does not satisfy this criterion. It is noted, however, that driving with a suspended license was the least serious of respondent's offenses, and that more than two years have passed since the more serious DUI offenses.

21. Respondent will be on criminal probation through September 19, 2015, and November 2, 2015, for his more recent convictions. It is understood that rehabilitative efforts require more than simply completing criminal probation. (See, *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [little weight is given to person's good behavior while on probation or compliance with terms of such probation because such conduct is expected].) And that the amount of evidence required to establish rehabilitation varies according to the seriousness of the conduct at issue. (*In re Menna* (1955) 11 Cal. 4th 975, 987, 991.)

Here, respondent has acknowledged wrongdoing, thereby taking an essential step towards rehabilitation. A change in attitude from that which existed at the time of the commission of the criminal act in question is one of the criteria developed by the Department to evaluate rehabilitation. (Cal. Code Regs., tit. 10, § 2911, subd. (n); *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal. 3d 933, 940 ["Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation."]) Thus, respondent has shown that he is on the road to rehabilitation.

Importantly, respondent presented evidence of his commitment to rehabilitation and leading a life of sobriety. The testimony of his brother and letters of support provide compelling evidence that he is committed to his sobriety through programs such as AA and HART, that he has a stable and supportive home environment, and that he is able to perform the functions and duties of a real estate salesperson in a manner that is safe to the public. No issues have been raised concerning client complaints. The issues raised in the Accusation are largely alcohol-related.

22. When all the evidence is considered, respondent has presented sufficient evidence of rehabilitation to demonstrate his ability to continue performing the duties of a real estate licensee in a manner consistent with public protection, safety, and welfare. However, such should only be under a restricted license, conditions of which include abstention from alcohol and drugs, compliance with the terms of his criminal probation, attendance at AA meetings, and licensed practice limited to his current arrangement with his real estate broker, Karen Wasson.

Costs of Investigation and Enforcement

23. Pursuant to Business and Professions Code section 10106, subdivision (a), complainant has requested costs of investigation and enforcement prior to hearing in the total sum of \$4,921.15. This amount is based on the cost of the time of the Bureau's attorney,

Stephanie K. Sese, spent on this matter (\$3,328.60), as well as the time Bureau staff spent investigating this matter (\$1,592.55). At hearing, complainant introduced, without objection, a declaration signed by Ms. Sese whereby she declared that she spent 37.40 hours working on this matter. The declaration itemized the time she spent by date, type of activity, and amount of time spent, and specifies an hourly rate of \$89. Complainant also introduced, without objection, her own declaration attesting that the Bureau's investigation staff spent a total of 25.45 hours in this matter. Hourly rates varied from \$37 to \$80, depending upon job classification.

Respondent's objection to complainant's request for additional post-hearing costs is sustained. Under Business and Professions Code section 10106, subdivision (c), costs include investigative and enforcement costs *up to the date of the hearing*.

Respondent did not otherwise produce any evidence that the amount of costs requested is unreasonable.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Complainant has the burden of proving each of the grounds for discipline alleged in the Accusation. (See, e.g., *Small v. Smith* (1971) 16 Cal.App.3d 450, 457 [affirming judgment denying writ of mandate filed by former licensee whose broker license was revoked].) She must do so by producing clear and convincing evidence to a reasonable certainty in support of those allegations. (See, e.g., *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212 [discussing the appropriate standard of proof in license discipline proceedings].) Clear and convincing evidence is evidence that leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (See, *In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

Applicable Law

2. A real estate license may be disciplined if the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 490, subd. (a); 10177, subd. (b).) As discussed in Factual Finding 9, respondent's misdemeanor convictions were substantially related to the qualifications, functions, or duties of a real estate licensee. (Cal. Code Regs., tit. 10, § 2910, subds. (a)(7), (8) & (10).)

3. Cause exists to discipline respondent's real estate salesperson license pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b), by reason of the matters set forth in Findings 3 through 8.

Conclusion

4. For the reasons explained in Factual Findings 11 through 22, respondent has demonstrated sufficient rehabilitation to justify the Bureau allowing him to continue engaging in real estate activities under a restricted license. Any restricted real estate salesperson license should be issued to respondent with conditions that include abstention from alcohol and drugs, compliance with the terms of his criminal probation, attendance at AA meetings, and licensed real estate practice limited to his current arrangement with real estate broker Karen Wasson.

Costs of Investigation and Enforcement

5. Business and Professions Code section 10106 provides, in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the department, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

[¶] ... [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the commissioner or the commissioner's designated representative, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

California Code of Regulations, title 1, section 1042, subdivision (b), states the following about cost recovery:

Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

(1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other

costs, the bill, invoice or similar supporting document shall be attached to the Declaration.

(2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: 1) the licentiate's success in getting the charges dismissed or reduced; 2) the licentiate's subjective good faith belief in the merits of his or her position; 3) whether the licentiate raised a colorable challenge to the proposed discipline; 4) the licentiate's financial ability to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Id.* at p. 45.)

6. As set forth in Factual Finding 23, complainant has presented sufficient detail to support her request for costs based on work performed by the Bureau's investigations staff. (Cal. Code of Regs., tit. 1, § 1042, subd. (b)(1).) Ms. Sese's declaration is prima facie evidence of the reasonableness of the costs based on the time she spent prior to hearing in this matter. (Bus. & Prof. Code, § 10106, subd. (c).) Respondent offered no evidence to rebut such evidence. Therefore, after considering the relevant evidence and the pertinent *Zuckerman* factors, costs in the amount of \$4,921.15 are reasonable and are awarded as set forth in the Order below.

ORDER

All licenses and licensing rights of respondent Leonard Ignacius Ilgunas under the Real Estate Law are REVOKED; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

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.

The restricted license issued to respondent may also be suspended prior to hearing by Order of the Real Estate Commissioner in the event respondent violates any term or condition of his two criminal probations (Case Nos. CR1204754 and H50786).

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 two years have elapsed from the effective date of this Decision.

4. Respondent's employment shall be restricted to his current broker and employer, Karen Wasson with Eweneek Properties. Should respondent change employment, he 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 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.

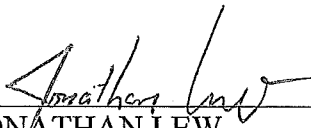
5. Respondent shall completely abstain from consuming alcoholic beverages, or any drugs not otherwise prescribed for a medical condition. He shall continue his regular attendance at AA meetings at least three times per week, and provide documentation of attendance satisfactory to the Bureau upon request. The restricted license issued to respondent may also be suspended prior to hearing by Order of the Real Estate Commissioner in the event respondent violates this condition of probation.

6. 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.

7. Respondent shall pay \$4,921.15 as the reasonable cost of investigation and enforcement of this case. He may pay these costs over time according to a payment plan acceptable to the Bureau of Real Estate, but such period shall not exceed two years.

DATED: April 1, 2014



JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings