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APR 17 2015

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By S. Black

In the Matter of the Accusation of

MARK DANIEL HECKERT,

Respondent.

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CalBRE No. H-06039 SAC

OAH No. 2013120690

DECISION

The Proposed Decision dated March 19, 2015, 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.

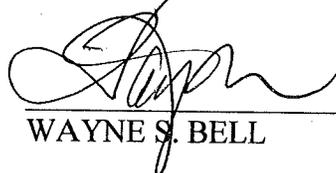
The Decision suspends or revokes one or more real estate licenses.

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 MAY 08 2015.

IT IS SO ORDERED 4/8/2015.

REAL ESTATE COMMISSIONER


WAYNE S. BELL

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

In the Matter of the Accusation Against:

MARK DANIEL HECKERT,

Respondent.

Case No. H-6039 SAC

OAH No. 2013120690

PROPOSED DECISION

Administrative Law Judge (ALJ) Wilbert E. Bennett, State of California, Office of Administrative Hearings (OAH), heard this matter on December 17, 2014, in Sacramento, California.

Annette E. Ferrante, Counsel, Bureau of Real Estate (Bureau), represented complainant Tricia D. Sommers, Deputy Real Estate Commissioner.

Jordan R. Morgenstern, Attorney at Law, represented respondent Mark Daniel Heckert, who was present.

Evidence was received, the record was closed, and the matter was submitted for decision on December 17, 2014. Thereafter, the record was reopened as more specifically set forth below. The matter was deemed submitted for decision on February 20, 2015.

On January 13, 2015, OAH received a copy of a letter, dated January 13, 2015, addressed to the Bureau of Real Estate, which was marked as Exhibit G, transmitting a copy of a minute order of the El Dorado County Superior Court in Case No. S12CRF0163. The minute order set aside and dismissed respondent's cocaine possession conviction and terminated the Proposition 36 drug treatment program (and probation) associated with that case, without prejudice, pursuant to Penal Code section 1210.10. On January 15, 2015, ALJ Bennett issued an Order Reopening Record, which was marked as Exhibit 12, to allow respondent to file a Motion to Reopen the Evidentiary Record to Submit Additional Evidence (Motion to Reopen). Based on respondent's failure to file a Motion to Reopen by the deadline of January 22, 2015, the record was closed and the matter was submitted for decision, as of January 25, 2015, by virtue of an Order Closing Record issued by ALJ Bennett, which was marked as Exhibit 13. However, on January 26, 2015, OAH received a letter from respondent's counsel, which was marked as Exhibit H, indicating that his office did not receive the Order Reopening Record, which was sent to an old office address which

had not been in use for several years. Respondent requested that counsel be provided additional time to submit a Motion to Reopen. On January 27, 2015, OAH issued an Order Extending Time to File Motion to Reopen Record, which was marked as Exhibit 14. Thereafter, pursuant to a stipulation of the parties (Stipulation to Reopen), which was marked as Exhibit 15, respondent submitted a copy of the above-referenced minute order of the El Dorado County Superior Court in Case No. S12CRF0163, which was admitted into evidence as Exhibit I, without objection, after complainant filed commentary. Complainant's commentary, which was marked as Exhibit 16, noted that "this minute order only pertains to Case No. S12CRF0163, and did not involve any other conviction or matter alleged in the Accusation to be grounds for license discipline." The matter was deemed submitted on February 20, 2015, which was the date of filing of complainant's commentary on the post-hearing evidence.

FACTUAL FINDINGS

Procedural Background

1. On November 12, 2013, complainant filed the Accusation in her official capacity. Complainant seeks to impose disciplinary action against respondent's real estate broker license based on the following: (a) a misdemeanor drunk driving conviction sustained on May 4, 2011; (b) a failure to disclose that conviction on a license renewal application dated October 7, 2011, and on a designated officer license renewal application dated July 26, 2012; (c) a misdemeanor conviction for drunk driving, with a prior, and a felony conviction for possession of a controlled substance, which were sustained on October 19, 2012; (d) a failure to disclose, on the renewal application dated July 26, 2012, the pending criminal charges which resulted in the latter two convictions; (e) a failure to report to the Bureau, within 30 days, the pending criminal charges which resulted in the felony conviction sustained on October 19, 2012; and (f) a failure to report to the Bureau, within 30 days, the convictions sustained on October 19, 2012.

2. Respondent is presently licensed and/or has license rights under the real estate law as a real estate broker. Respondent's license was issued on October 15, 2003, and is scheduled to expire on October 14, 2015.

Criminal Convictions

3. On May 4, 2011, in the El Dorado County Superior Court, Case No. S11CRM0368, respondent was convicted, by guilty plea, of violating Vehicle Code section 23152, subdivision (a) (driving while under the influence of alcohol), a misdemeanor. Pursuant to said conviction, respondent was placed on summary probation for a period of four years on certain terms and condition, including service of two days in the county jail, completion of a three-month mandatory alcohol/drug program, obedience to all laws, and payment of applicable fines and fees. That probation was revoked on October 17, 2012, because respondent committed a drunk driving offense on April 29, 2012, but was subsequently reinstated.

4. The facts and circumstances underlying this conviction involved an incident which occurred on March 20, 2011. On that occasion, respondent's vehicle was the subject of a police enforcement stop in the South Lake Tahoe area, at approximately 10:36 p.m. The police officers observed the commission of multiple traffic violations, as respondent was traveling at an unsafe speed on roads covered with snow and ice, and was crossing the dividing lines into the oncoming traffic lane. At one point, respondent's vehicle was in a full sideways skid. After the enforcement stop, respondent was arrested after exhibiting objective signs of intoxication and performing poorly on field sobriety tests. He told the police officers that he had consumed two or three pint-sized Pacifico beers, and had smoked marijuana earlier in the afternoon.

5. On October 19, 2012, in the El Dorado County Superior Court, Case No. S12CRM0434, respondent was convicted, by nolo contendere plea, of violating Vehicle Code section 23152, subdivision (a) (driving while under the influence of alcohol), a misdemeanor. As part of the plea, respondent admitted the prior conviction set forth in Finding 3 above. Pursuant to the October 19, 2012 conviction, respondent was placed on summary probation for a period of four years on certain terms and condition, including service of 10 days in jail, with a credit for time served of two days, completion of an 18-month multiple offender program, installation of a vehicle interlock device for one year, a prohibition against using alcohol, a prohibition against knowingly possessing or using illegal/restricted dangerous drugs, including marijuana, and payment of applicable fines and fees.

6. The facts and circumstances underlying this conviction involved an incident which occurred on April 29, 2012, when respondent drove his vehicle while under the influence of alcohol. On that occasion, respondent's vehicle was the subject of a police enforcement stop in the South Lake Tahoe area, after his girlfriend reported that he was drinking and driving. Respondent had consumed alcohol at the funeral service of a friend, and had driven home. After being stopped, respondent performed poorly on field sobriety tests, and was arrested for driving while under the influence of alcohol.

7. On October 19, 2012, in the El Dorado County Superior Court, Case No. S12CRF0163, respondent was convicted, by nolo contendere plea, of violating Health and Safety Code section 11350, subdivision (a) (unlawful possession of a controlled substance), a felony. Pursuant to said conviction, respondent was placed on formal probation for a period of three years on certain terms and conditions, including completion of a Proposition 36 drug treatment program, a prohibition against possessing or owning any firearms, a prohibition against using alcohol, a prohibition against knowingly possessing or using illegal/restricted dangerous drugs, including marijuana, and payment of applicable fines and fees.

8. The facts and circumstances underlying this conviction involved a domestic dispute incident which occurred on April 19, 2012, at approximately 2:33 a.m. Respondent's girlfriend reported a domestic dispute, and stated that respondent had left their residence while intoxicated and was possibly armed with a handgun. On that occasion, the responding police officers located respondent near his residence. Respondent displayed objective signs

of intoxication, and was also determined to be under the influence of a controlled substance. After a verbal dispute with his girlfriend, respondent had left his residence on foot. The police officers discovered a white powdery substance concealed on respondent's person, which he identified as cocaine. Respondent admitted to police officers that he had ingested the cocaine approximately one hour prior to the police contact, after consuming alcohol at a bar. He further admitted to recreational use of cocaine for a few months, along with alcohol and marijuana use.

Failure to Disclose May 4, 2011 Conviction

9. Respondent submitted his license renewal application on October 7, 2011, and his designated officer license renewal application on July 26, 2012. On each application, respondent certified under penalty of perjury that the answers and statements given in the application were true and correct. Despite this certification, respondent provided incorrect information on each application as hereafter set forth. Question No. 4 on each application asked whether respondent had been convicted of a misdemeanor or felony within the six-year period prior to the filing of the application. Respondent falsely answered "No" to this question on each application, whereas, in truth and in fact, he had sustained a misdemeanor conviction for drunk driving on May 4, 2011, as set forth in Finding 3 above.

Failure to Disclose Pending Charges

10. As set forth above, respondent submitted his designated officer license renewal application on July 26, 2012. On that application, respondent certified under penalty of perjury that the answers and statements given in the application were true and correct. Despite this certification, respondent provided incorrect information as hereafter set forth. Question No. 5 on the application asked whether respondent had any criminal charges pending against him. Respondent falsely answered "No" to this question, whereas, in truth and in fact, misdemeanor criminal charges for violation of Vehicle Code section 23152, subdivision (a) (driving while under the influence of alcohol), and subdivision (b) (driving while having .08 percent or more, by weight, of alcohol in blood), were pending against him at the time of his application, as well as a felony criminal charge for violation of Health and Safety Code section 113701.1, subdivision (a) (possession of a controlled substance with a firearm), and a misdemeanor criminal charge for violation of Health and Safety Code section 11550, subdivision (a) (unlawful possession of a controlled substance). The former two charges had been filed on June 5, 2012, and resulted in respondent's October 19, 2012 drunk driving conviction, while the latter two charges had been filed on June 12, 2012 and resulted in respondent's October 19, 2012 felony conviction for unlawful possession of a controlled substance.

Failure to Report Felony Indictment

11. As set forth in Finding 10, respondent failed to report the bringing of an indictment charging him with a felony offense for possession of a controlled substance with a

firearm, which was filed on June 12, 2012, to the Bureau within 30 days, as required by Business and Professions Code section 10186.2, subdivisions (a)(1)(A) and (a)(2).

Failure to Report Convictions Within 30 Days

12. As set forth in Findings 5 and 7, respondent failed to report his two October 19, 2012 convictions to the Bureau within 30 days, as required by Business and Professions Code section 10186.2, subdivisions (a)(1)(B) and (a)(2).

Factors in Aggravation, Mitigation, or Rehabilitation

13. Respondent was originally issued a real estate broker license in October 2003, and has no prior discipline. Commencing in October 2004, he was the designated officer broker of RE/MAX Tahoe Realty Today, Inc., until April 2014, when he cancelled his designation because of this pending disciplinary matter. During his tenure as a licensee, he has engaged in extensive charitable activities in the South Lake Tahoe area.

14. With respect to his failure to disclose conviction and criminal record information on his renewal applications, respondent, at hearing, admitted not providing accurate and truthful answers on his renewal applications. He stated that he was in a "glazed" condition when he filled out the applications. In addition to his testimonial acknowledgment of dishonesty in completing the renewal applications, respondent had previously submitted a letter to the Bureau, dated December 16, 2014, which he expressly adopted and incorporated into his sworn testimony. In that letter, he acknowledged that he had made "some big mistakes, not least of which was not disclosing in a timely manner the details of [his] convictions as well as [not] answering the questions on [his] renewal applications accurately and truthfully." While accepting full responsibility for his actions, he provided the following explanation:

During the period from 2011 to 2012, my life was very turbulent due to having substance abuse issues which gave way to bad decisions and avoidance of my problems; also due to my deteriorated relationship with my longtime girlfriend, my legal troubles with arrests, and then the near fatal health issues I experienced shortly thereafter. I was mentally and emotionally compromised. When I signed the renewal application, I just wanted it to be over with and not tell anyone what had happened.

At the time, I don't think I was capable of making rational decisions. I was scared and afraid of losing the one thing I had left, which was the business I had built and the people I love to work with that I consider my family. I know it is not an excuse for my actions. In retrospect, a year had passed before my head really seemed to clear and I could think straight again. Looking

back, had I had the clarity to make a good decision, I would have put the renewal application aside and complete [sic] it when I was more lucid. But, my decision making process was compromised and I failed to make the right decision.

15. Respondent testified regarding the circumstances underlying his two drunk driving convictions and his cocaine possession conviction. He described the 2011-2012 time frame in which his criminal conduct occurred as the "worst time of [his] life" because of his use of alcohol. He attributed his alcoholism during this time frame to his involvement in a "toxic" relationship with his girlfriend, which terminated in May 2012, while he was incarcerated. The relationship was characterized by physical and verbal abuse by his girlfriend, from which he tried to escape by consumption of alcohol. He stated that "I didn't want to go home so I started hanging out at bars." At the time of his arrest on April 19, 2012, on the cocaine possession charge, he had been using cocaine recreationally, on a once or twice-a-week basis for three months. He attributed his cocaine usage to alcoholism, rather than considering it as a separate substance abuse problem. He averred that excessive drinking led him to make "bad decisions" with regard to cocaine usage, and that alcohol was his "drug of choice." He consumed cocaine only when it was offered by associates at the bars which he frequented. He admitted to prior usage of cocaine many years previously.

16. Respondent testified that his sobriety date was April 30, 2012, the day after his last arrest for drunk driving. He submitted Alcoholics Anonymous (AA) meeting sign-up sheets reflecting his attendance of 30 meetings between April 30, 2012, and August 21, 2012, ten meetings between January 16, 2013, and March 21, 2013, and 108 meetings between March 20, 2014, and July 23, 2014. As required by his criminal probations, he completed a three-month drug and alcohol counseling program on April 18, 2013, and an 18-month multiple offender program on June 26, 2014. His attendance at AA meetings is separate and apart from any requirements of his criminal probations. In his explanatory letter to the Bureau, which he adopted as his sworn testimony, he stated, "I attend Alcoholics Anonymous several times a week, and provide service to the group as often as I can, while passing the message forward to people who still suffer from the disease." He further stated, "[t]his [Alcoholics Anonymous] program has saved my life." He has recently assumed a six-month service position in charge of the Monday night AA group meetings. He also stated that he has changed his entire outlook on life, and that his plan is "to keep on the clean and sober path [while] helping others to achieve sobriety."

17. Respondent asserted that during the 2011-2012 time frame, when he was consuming alcohol and cocaine to escape a dysfunctional domestic relationship, he did not allow personal problems to affect his professional work. He averred that since his April 30, 2012 sobriety date, he no longer frequents bars, and has discontinued associations with cocaine users. He has been involved in charitable activities since the start of his company in 2004, including the following: donating the use of his company moving truck to approximately 12 community/charitable organizations, and participating in local blood and food drives. Respondent has continued his charitable involvements since sustaining his convictions.

18. Respondent submitted testimony from six witnesses, including professional associates and a client, regarding his reputation and character. This testimony is hereafter summarized in pertinent detail.

Jessie Schue, respondent's business partner for ten years, testified that "things bottomed out" during the 2011-2012 time frame, when respondent was erratic in work attendance and suffered from health problems. She is aware of respondent's ongoing attendance at AA meetings since 2012, and has no current concerns regarding respondent's substance abuse issues. She never saw respondent drinking at work, and attributed his substance abuse and alcoholism problems to involvement in a "bad relationship." Ms. Schue has her own real estate broker license, and does not have a financial interest in respondent's retaining his license. She succeeded respondent as the designated officer of her real estate company. While Ms. Schue never saw respondent engage in practices potentially injurious to clients, she noted that he has returned to work "with a new attitude" since 2012. Over the years, respondent coordinated the involvement of his real estate company in various charitable efforts, including local food and blood drives, and donated the use of the company moving truck to various community groups.

David Kurtzman is a semi-retired California and Nevada real estate broker who merged his company with respondent's company in 2008. He testified that respondent has always been "involved and knowledgeable in conducting real estate transactions." He described respondent's conviction history as "out of character," although he did know that respondent "spent a lot of time in bars." He expressed awareness of respondent's current involvement with AA. Mr. Kurtzman described respondent's failure to disclose his convictions to the Bureau as "out of character," and stated that, prior to that, he "had no question concerning [respondent's] discharge of his ethical responsibilities as a broker."

Jessie Yohnka has been a real estate salesperson in respondent's company since 2004. He still works under respondent's tutelage, although he does not have a financial interest in respondent's retaining his broker license. His employing broker is RE/MAX Corporation, whose designated officer broker is no longer respondent but is now Jessie Schue. Based on respondent's professional tutelage over the years, Mr. Yohnka described him as someone for whom he has "the utmost professional respect." He stated that he has dealt with his own substance abuse issues, and that, at respondent's urging, he has been attending AA meetings since May 2014. With regard to the issue of respondent's continued sobriety, Mr. Yohnka stated that he "[doesn't] see [respondent] returning to drugs or alcohol" because "[respondent] realizes the folly of his ways and what is at stake," and "the negative energy from his ex-girlfriend is gone."

Lloyd Aronoff has been a broker-associate at respondent's company since 2008. He has been a real estate broker since 1981. Mr. Aronoff described respondent as "ethical and trustworthy" in professional real estate matters, although he was not aware of respondent's failure to disclose his convictions to the Bureau. Alicia Estrada has been an office administrator at respondent's company since April 2013. She has personal knowledge that he regularly leaves the office at 5:30 p.m. to attend AA meetings.

Discussion

19. In considering the circumstances underlying respondent's convictions, his conduct is aggravated by the following circumstance: he engaged in criminal conduct by committing a second drunk driving offense and a cocaine possession offense while on probation for his first drunk driving offense. Such conduct indicates a breach of the trust imposed upon him by the court system to refrain from further violations of law.

20. Respondent expressed remorse for the conduct which resulted in his convictions and for his dishonesty in completing the license renewal applications. In view of the gravity of his conduct, he stated that he is amenable to the issuance of a restricted real estate license, either as a real estate broker or as a real estate salesperson. However, mere remorse does not indicate rehabilitation, which must be demonstrated by sustained conduct over an extended period of time. (See, *In re Menna* (1995) 11 Cal.4th 975, 991.) Similarly, compliance with the terms of a criminal probation is not a sufficient indicator of a licensee's rehabilitation and is accorded minimal weight. (See, *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [little weight is given to person's good behavior while on probation because such conduct is expected].)

21. In assessing respondent's rehabilitation, several factors must be considered in light of the Bureau's public protection mandate. While respondent asserts that he has been fully rehabilitated from his drug and alcohol offenses, there are several concerning issues bearing on the extent of his rehabilitation. At the outset, it must be stated that respondent's explanation for his drunk driving and cocaine possession offenses, i.e., involvement in a toxic relationship with his girlfriend, lacks substantial credibility. Such an explanation minimizes his own conduct and characterizes himself as a victim, rather than acknowledging his own role as a free agent. Significantly, his testimony bears an inherent contradiction: at one point he stated that his drug and alcohol usage was to escape a bad relationship with his girlfriend, while at another point he stated that his girlfriend actually participated with him in his cocaine usage. Thus, respondent has failed to take an essential step towards complete rehabilitation by fully acknowledging wrongdoing. (See, *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."].) In this regard, it must be noted that although respondent and his witnesses identified his relationship with his girlfriend as the cause of his substance abuse problems, his girlfriend's timely requesting law enforcement intervention on two occasions (involving his second drunk driving arrest and his cocaine possession arrest) may have minimized health and safety risks to himself and others. Furthermore, respondent's somewhat cavalier characterization of his cocaine usage as incidental to his alcoholism is concerning, and may indicate a lack of insight regarding his propensity for addictive behavior.

22. Respondent is currently on probation for his first drunk driving conviction, which was sustained in May 2011. That probation was revoked because of his second drunk driving conviction in October 2012, but was subsequently reinstated and is scheduled to terminate in May 2015. Respondent is also currently on probation for his second drunk

driving conviction, which is scheduled to terminate in October 2016. With respect to his cocaine possession conviction, the court, on December 12, 2014, ordered reduction of the charge to a misdemeanor and change of probation from formal probation to summary probation. A motion for early termination of that probation, scheduled to expire in October 2015, was granted on January 9, 2015. The court's minute order specifically acknowledged "proof of [respondent's] community contributions." Implicit in the court's granting of early discharge from that probation is that respondent had paid all of the associated fines and fees.

23. The Bureau has developed criteria for evaluating whether a licensee has been rehabilitated since he suffered the conviction(s) constituting grounds for license discipline. (Cal. Code Regs., tit. 10, § 2912.) The criteria relevant here are (1) the passage of at least two years since the licensee's most recent conviction; (2) expungement of conviction or convictions resulting in administrative disciplinary proceeding; (3) successful completion or early discharge from probation; (4) 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; (5) new and different social relationships from those which existed at the time of the commission of the acts in question; (6) significant or conscientious involvement in community programs designed to provide social benefits or to ameliorate social problems; and (7) change in attitude from that which existed at the time of the commission of the acts in question. (Cal. Code Regs., tit. 10, § 2912, subds. (a) (c), (e), (f), (i), (l) & (m).)

24. The application of these criteria indicates that respondent is progressing towards rehabilitation, but that his rehabilitation is not complete. Respondent's most recent convictions occurred approximately two years and four months ago, which are of somewhat recent vintage for the purpose of assessing rehabilitation. As noted above, successful completion of probation is given little weight because of the expectation of good behavior while on probation. In this instance, the minimal weight given to respondent's early discharge from probation for the cocaine possession conviction is counterbalanced and outweighed by the fact that he engaged in criminal behavior while on probation for his drunk driving convictions, thereby breaching the trust imposed upon him by the court system. Additionally, he remains on probation for his drunk driving offenses. As noted by case law, rehabilitation must be demonstrated by sustained conduct over an extended period of time. (See, *In re Menna*, *supra*, 11 Cal.4th 975, 991.) Furthermore, respondent's attitude towards his substance abuse offenses indicates incomplete rehabilitation to the extent that he focuses on the dynamics of a dysfunctional personal relationship as the underlying cause of aberrant behavior, rather than on his own actions as a free agent. Additionally, as noted above, his cavalier attitude towards his cocaine usage is concerning.

An additional concern which respondent failed to adequately address is the falsification of his renewal applications on two occasions. Such acts reflect unfavorably upon the qualifications of honesty and integrity required of a real estate licensee, who must frequently act in a fiduciary capacity. (See, *Harrington v. Dept. of Real Estate* (1989) 214 Cal. App. 3d 394, 402.) While his subsequent sobriety and participation in addictive behavior support groups address the substance abuse issues which led to his criminal history,

respondent has not similarly addressed the issues of honesty and integrity called into question by his dishonest conduct. His explanation that he was in a "glazed" condition when he filled out the applications is considered to be of limited mitigatory value. However, his acknowledgment of his essential dishonesty in completing the applications demonstrates some acceptance of responsibility for his actions. Such an acknowledgment of wrongdoing shows that he is in the process of rehabilitation from his dishonest acts.

On the positive side of the ledger, respondent has engaged in substantial rehabilitation efforts. Although respondent portrayed himself as the victim of physical and verbal abuse from his domestic partner and blamed his alcohol and drug use on that personal relationship, he has taken actions to address his substance abuse issues through participation in addictive behavior support groups. He has maintained his abstinence from the use of controlled substances or alcohol for two years and ten months. He has maintained a significant involvement in community programs designed to provide social benefits. He is no longer involved in the personal relationship which, from his perspective, caused his substance abuse problems. He no longer frequents bars or associates with cocaine users. However, based on the totality of the circumstances presented, including mitigating and aggravating factors and evidence of less than complete rehabilitation, it would not be consistent with the public interest to allow respondent to retain a real estate broker license, even on a restricted basis.

25. As discussed below, cause exists to discipline respondent's real estate broker license. Although respondent has taken some appropriate steps towards rehabilitation, as noted above, his rehabilitation is not complete. Because he is still on criminal probation, an insufficient amount of time has passed for him to demonstrate sufficient rehabilitation to retain his real estate license, even on a restricted basis. As noted by the case law referenced in Finding 20 above, rehabilitation must be demonstrated by sustained conduct over an extended period of time, and the rehabilitation value of probation compliance is discounted by the expectation of a person's good behavior while on probation. Therefore, respondent's real estate broker license should be revoked.

Costs of Investigation and Enforcement

26. Complainant offered a declaration that supported investigative costs of \$659.80 and enforcement costs of \$667.50. The reasonableness of the claimed costs was not challenged by respondent.

The Bureau is entitled to recover \$1,327.30 in costs.

LEGAL CONCLUSIONS

1. Business and Professions Code section 493 permits the Bureau to inquire into the circumstances surrounding the commission of a crime, by one of its licensees, to

determine if the crime is substantially related to the qualifications, functions, or duties of a real estate licensee. In this case, such an inquiry results in the conclusion that the requisite substantial relationship exists with respect to each of respondent's convictions.

2. A real estate license may be disciplined when 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).) Respondent was twice convicted of driving while under the influence of alcohol. (Findings 3-6.) Such crimes are deemed to be substantially related to the qualifications, functions, or duties of a real estate licensee. (See, Cal. Code Regs., tit. 10, § 2910, subds. (a)(10) ["Conduct which demonstrates a pattern of repeated and willful disregard of law."], 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."].) Respondent's second drunk driving offense is deemed to meet the substantial relationship requirement for an additional reason: it reflects respondent's failure to comply with a court probation order for the first offense requiring obedience to all laws. (See, Cal. Code Regs., tit. 10, § 2910, subd. (a)(9) ["Contempt of court or willful failure to comply with a court order."].) Therefore, cause for discipline exists pursuant to Business and Professions Code section 490, subdivision (a), and 10177, subdivision (b), for each of the aforementioned reasons.

3. Respondent was convicted of possession of cocaine when the underlying factual circumstances involved his personal use of cocaine. (Findings 7 and 8.) Such a crime, when considered together with respondent's two drunk driving offenses, is deemed to be substantially related to the qualifications, functions, or duties of a real estate licensee. (See, Cal. Code Regs., tit. 10, § 2910, subds. (a)(10) ["Conduct which demonstrates a pattern of repeated and willful disregard of law."], 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."].) Respondent's cocaine possession offense is deemed to meet the substantial relationship requirement for a second reason: it reflects respondent's failure to comply with a court probation order for his first drunk driving offense, which required obedience to all laws. (See, Cal. Code Regs., tit. 10, § 2910, subds. (a)(9) ["Contempt of court or willful failure to comply with a court order."].) Therefore, cause for discipline exists pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b), for each of the aforementioned reasons.

4. A real estate licensee may be disciplined for procuring, or attempting to procure, a license, or license renewal, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in a license renewal application. (Bus. & Prof. Code, § 10177, subd. (a).) Respondent falsely failed to disclose his May 4, 2011 misdemeanor drunk driving conviction in his license renewal application on October 7, 2011, and in his designated officer license renewal application on July 26, 2012. (Finding 9.) Therefore, cause for discipline exists pursuant to Business and Professions Code section 10177, subdivision (a), for each of such failures.

5. Respondent falsely failed to disclose, in his license renewal application dated July 26, 2012, the pendency of the following criminal charges: (1) misdemeanor criminal charges for violation of Vehicle Code section 23152, subdivisions (a) and (b) (which resulted in his October 19, 2012 conviction for drunk driving); (2) a misdemeanor criminal charge for violation of Health and Safety Code section 11550, subdivision (a) (which resulted in his October 19, 2012 conviction for possession of cocaine), and a felony criminal charge for violation of Health and Safety Code section 11370.1, subdivision (a) (possession of a controlled substance with a firearm.) (Finding 10.) Therefore, cause for discipline exists pursuant to Business and Professions code section 10177, subdivision (a).

6. A real estate licensee may be disciplined for failure to report, to the Bureau, the bringing of an indictment against him charging a felony, within 30 days of its occurrence. (Bus. & Prof. Code, § 10186.2, subds. (a)(1)(A), (a)(2), and (b).) Respondent failed to report, to the Bureau, the bringing of an indictment charging him with a felony offense for possession of a controlled substance with a firearm, within 30 days of its occurrence. (Finding 11.) Therefore, cause for discipline exists pursuant to Business and Professions Code section 10186.2, subdivisions (a)(1)(A), (a)(2), and (b).

7. A real estate licensee may be disciplined for failure to report a conviction of any felony or misdemeanor to the Bureau within 30 days. (Bus. & Prof. Code, § 10186.2, subds. (a)(1)(B), (a)(2), and (b).) Respondent failed to report his October 19, 2012 convictions for felony cocaine possession and misdemeanor drunk driving to the Bureau within 30 days. (Findings 5, 7, and 12.) Therefore, cause for discipline exists pursuant to Business and Professions Code section 10186.2, subdivision (a)(1)(B), (a)(2), and (b).

8. Cause exists to discipline respondent's real estate broker license, as noted in Findings 3 through 12, and Legal Conclusions 1 through 7. In determining the appropriate discipline, the central question is what level of discipline is necessary to protect the public. Disciplinary proceedings to suspend or revoke a real estate license are not conducted for the primary purpose of punishing an individual. (*Small v. Smith* (1971) 16 Cal. App.3d 450, 457.) Based upon all of the matters set forth in Findings 13 through 25 above, it is determined that public protection requires that respondent's real estate broker license be revoked.

9. Business and Professions Code section 10106 permits the Real Estate Commissioner to request an administrative law judge hearing a disciplinary matter to direct a licensee to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case, except as otherwise provided by the law. Evidence is required to support an award.

10. Complainant provided sufficient evidence to support an award of the costs of investigation and enforcement in the amount of \$1,327.30.

ORDER

1. All licenses and licensing rights of respondent Mark Daniel Heckert under the Real Estate Law are REVOKED.

2. Respondent Mark Daniel Heckert shall pay \$1,327.30 to the Bureau of Real Estate as its costs of investigation and enforcement of this case.

Dated: March 19, 2015

Wilbert E. Bennett

WILBERT E. BENNETT
Administrative Law Judge
Office of Administrative Hearings