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FILED

MAY 18 2017

BUREAU OF REAL ESTATE

By B. Nicholas

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
DANIEL JOSEPH NAVONE,) CalBRE No. H-6328 SAC
Respondent.) OAH No. 2016040947

ORDER DENYING RECONSIDERATION

On, March 29, 2017, a Decision was rendered in the above-entitled matter. The Decision was to become effective on April 19, 2017, and was stayed by separate Order to May 19, 2017.

On April 18, 2017, Respondent petitioned for reconsideration of the Decision of March 29, 2017.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of March 29, 2017, and reconsideration is hereby denied.

IT IS SO ORDERED 5/18/17

WAYNE S. BELL
REAL ESTATE COMMISSIONER

Daniel J. Sandri
By: DANIEL J. SANDRI
Chief Deputy Commissioner

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APR 19 2017

BUREAU OF REAL ESTATE

By B. Nicholas

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

DANIEL JOSEPH NAVONE,

Respondent.

No. H-6328 SAC

ORDER STAYING EFFECTIVE DATE

On March 3, 2017, a Decision was rendered in the above-entitled matter to become effective on April 19, 2017.

On April 18, 2017, Respondent filed a Request for Stay of Effective Date so that he may file a Petition for Reconsideration of the Decision of March 3, 2017.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of thirty (30) days. The Decision of March 3, 2017, shall become effective at 12 o'clock noon on May 19, 2017.

DATED: 4/19/17

WAYNE S. BELL
REAL ESTATE COMMISSIONER

Daniel J. Sand

FILED

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

MAR 29 2017

BUREAU OF REAL ESTATE

By B. Nicholas

In the Matter of the Accusation of

DANIEL JOSEPH NAVONE,

Respondent.

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CalBRE No. H-6328 SAC

OAH No. 2016040947

DECISION

The Proposed Decision dated March 3, 2017, 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.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on **APR 19 2017**

IT IS SO ORDERED

3/29/17

WAYNE S. BELL
REAL ESTATE COMMISSIONER

Daniel J. Sandri

By: DANIEL J. SANDRI
Chief Deputy Commissioner

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

In the Matter of the Accusation against:

DANIEL JOSEPH NAVONE,

Respondent.

Case No. H-6328 SAC

OAH No. 2016040947

PROPOSED DECISION

This matter was heard before Tiffany L. King, Administrative Law Judge, Office of Administrative Hearings, State of California, on February 1, 2017, in Sacramento, California.

Richard K. Uno, Legal Counsel, represented Tricia Parkhurst (complainant) in her official capacity as a Supervising Special Investigator with the Bureau of Real Estate (Bureau), Department of Consumer Affairs, State of California.

Gilbert Somera, Attorney at Law, represented respondent Daniel Navone, who was present throughout the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on February 1, 2017.

FACTUAL FINDINGS

1. Complainant filed the Accusation against respondent. Complainant seeks to discipline respondent's broker license based upon his 2015 conviction and his failure to disclose that conviction and the underlying criminal charges, as described below.
2. The Bureau issued respondent an original salesperson license on April 9, 1990, and a broker license on November 27, 1996. At all relevant times herein, respondent did business as Premier Real Estate Group, Inc. in Stockton, California. His broker license

expired on February 3, 2017.¹ Prior to the instant Accusation, respondent has never been subject to Bureau discipline.

3. Respondent timely filed a notice of defense. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Respondent's Criminal Conviction

4. On August 20, 2015, in the San Joaquin County Superior Court, Case No. SF130030A, respondent pled no contest to, and was convicted of, violating Penal Code section 243, subdivision (d) (battery causing serious bodily injury), a misdemeanor. Imposition of sentencing was suspended. Respondent was placed on three years' probation, ordered to pay fines and fees and to complete 480 hours of community service. Respondent did not report his misdemeanor conviction to the Bureau.

5. The circumstances underlying respondent's conviction occurred on November 6, 2014. Respondent was attending a social event for work and punched an off-duty police officer, rendering the officer unconscious.

6. Respondent has complied with all terms of his probation, including paying all fines and fees and completing his court-ordered community service. He will remain on probation on August 20, 2018, unless released sooner.

Factors in Aggravation, Rehabilitation, and Mitigation

7. Respondent is 53 years old. He is divorced and has a son and daughter, both age 13, for whom he shares legal custody with his ex-wife. Respondent has worked in the real estate business for 28 years, and has never received a complaint against him. Since 2002, he has been self-employed and operated Premier Real Estate Group. Presently, he employs five realtors.

8. Respondent testified about the circumstances leading to his conviction. A couple months prior to the battery incident, he was dining at a restaurant with a friend. A woman, whom respondent did not know at the time, began talking to his friend. When his friend excused himself to use the restroom, the woman began talking to respondent. After introducing herself as "Kelly," the woman insulted respondent and intimated that respondent

¹ No evidence was introduced at hearing as to whether respondent had applied for license renewal. "The lapsing or suspension of a license by operation of law or by order or decision of the department or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the department of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee, or to render a decision suspending or revoking such license." (Bus. & Prof. Code, § 10103.)

was a bad person because he had divorced his wife and left his children. Respondent was "taken aback" by this character attack from a total stranger, noting that she appeared to be intoxicated. Moreover, he and his wife had divorced eight years earlier, share custody of their two children, and have maintained a good relationship. Feeling uncomfortable with this interaction, respondent left the restaurant. Sometime later, respondent learned that his girlfriend knew Kelly, her last name was "Atherns," Ms. Atherns worked at the same hair salon his ex-wife patrons, and her boyfriend was a police officer for the Stockton Police Department.

9. On November 6, 2014, respondent attended a fundraiser event for Ducks Unlimited at the Civic Auditorium in Stockton, California. Approximately 300 people were in attendance, including Ms. Atherns and her boyfriend, Sean Johansen. Respondent had not met Mr. Johansen prior to the fundraiser. Ms. Atherns approached respondent and stated she wanted to apologize. Respondent retorted, "I think you're a horrible person, I have nothing to say." Ms. Atherns walked away. Respondent saw Ms. Atherns talking to Mr. Johansen, whom respondent presumed was Ms. Atherns's boyfriend. As she was talking with Mr. Johansen, Ms. Atherns was pointing at respondent. Mr. Johansen then approached respondent and introduced himself. Respondent believed Mr. Johansen was intoxicated based on his arrogant demeanor. Respondent walked away to another table.

10. Mr. Johansen followed respondent, grabbed respondent's shoulder, and asked him something about a car.² Respondent did not know what he was talking about, and told Mr. Johansen to remove his hand from respondent's shoulder. The tension between the two men escalated. Mr. Johansen threatened to "kick [respondent's] ass," and told respondent he "didn't know what else" Mr. Johansen could do to him. Mr. Johansen was noticeably smaller than respondent.³ Notwithstanding their size difference, respondent was aware that Mr. Johansen was a police officer and took his threat seriously. Mr. Johansen walked away from the table and toward the exit, and motioned for respondent to follow him. Respondent looked around the room for security personnel, but found none. He then moved toward the middle of the room and in the opposite direction of Mr. Johansen. Mr. Johansen approached respondent a third time, grabbed respondent's left arm, and had his other arm extended. Respondent reacted by striking Mr. Johansen in the face one time with his right fist. Mr. Johansen fell to the ground and appeared unconscious. A security officer came up to respondent and asked what had happened. Respondent asked him, "Where were you?"

11. Stockton police officers Celentano and Villalobos were the first to respond to the scene. They found Mr. Johansen lying on the ground unconscious and summoned an

² Respondent testified that he learned that evening that he had purchased a vehicle which Mr. Johansen previously owned for a brief time. Respondent did not purchase the vehicle from Mr. Johansen, and did not know him at the time of the purchase.

³ Respondent testified he is six feet two inches tall and weighed approximately 215 pounds at the time of the incident. He approximated Mr. Johansen was five feet ten inches tall and weighed 180 pounds.

ambulance. Officer Villalabos made contact with and detained respondent. Five minutes later, Officer Serna arrived at the scene. He observed Mr. Johansen lying on his back on the ground. He had a one-inch laceration on the left side of his upper lip which was bleeding, and a small abrasion at the middle of the back of his head which was also bleeding. By now, Mr. Johansen was conscious, but appeared disoriented and confused. Officer Serna attempted to take Mr. Johansen's statement, but he responded "What happened?" several times. Mr. Johansen was transported to the hospital and advised the laceration to his lip required stitches. Officer Serna questioned him again at the hospital. However, Mr. Johansen had no recollection of the incident, repeatedly asking "what happened?" and "Someone hit me?"

12. Respondent was taken into custody and transported to the police department, where Officer Celentano took respondent's statement. Respondent stated he had already spoken with one officer and did not want to "re-tell his story."⁴ Respondent then asked, "Why do people have to do this kind of stuff? Is it because I drive his old car? I'll give the car back." He continued that Mr. Johansen "just could not leave me alone. I mean, I'm twice as big as him. I did not mean to hurt him."

13. Respondent was arrested and released on bail. On January 1, 2015, the court ordered respondent to have no contact with, and not come within 100 feet of, Mr. Johansen. On July 16, 2015, respondent was formally charged with three felony crimes. By this time, respondent was under considerable stress and had lost 35 pounds. He had trouble sleeping, for which he required medical treatment. He was also worried that his children would learn about the incident. Ultimately, in August 2015, as part of a plea deal with the district attorney and to avoid his family enduring a criminal trial, respondent pled no contest to misdemeanor battery.

14. Respondent finished his court-ordered community service in May 2016 and reported his hours to the district attorney as follows:

- (a) Kids Take a Stand, 2016 charity event, more than 80 hours
- (b) Waterloo Athletic Club, more than 80 hours
- (c) Children's Home Auxiliary, 40 hours
- (d) Stockton Unified School District Preschool Program, 60 hours
- (e) Women's Center Youth and Family Services, more than 40 hours
- (f) St. Basil Greek Festival, more than 60 hours

⁴ Any statement respondent made to Officer Villalabos while he was detained at the scene was not introduced at hearing.

(g) Lambda Theta Phi Golf Classic (2015), 40 hours

(h) Kids Take a Stand, 2015 charity event, more than 80 hours

15. As ordered by the court, respondent has had no contact with Mr. Johansen since the incident. At hearing, he maintained that he acted out of self-defense and that he feared for his safety as Mr. Johansen was a police officer, was intoxicated, and may have been armed with a weapon. When questioned, respondent asserted he accepted responsibility for his actions. However, he then stated, "I wish there had been another resolution to the problem, but I don't know how I could. He wouldn't leave me alone and take no for an answer." He maintained this was an "isolated incident" which will not recur, and that he had not been in a physical altercation previously since college.

16. Respondent failed to notify the Bureau of the bringing of felony charges against him or his misdemeanor conviction within 30 days, as required by Business and Professions Code 10186.2. At hearing, respondent did not try to excuse his error but explained that, after he entered the plea, "everything came to a halt" abruptly and he "blanked out about it." On September 30, 2015, respondent signed and submitted to the Bureau a Confidential – Interview Information Statement and Conviction Detail Report (a Bureau form), wherein he disclosed the misdemeanor conviction.

Discussion

17. Respondent's conviction of battery resulting in serious bodily injury is substantially related to the qualifications, functions or duties of real estate broker as respondent willfully caused injury to another person. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

18. California Code of Regulations, title 10, section 2912, sets forth the Bureau's criteria for evaluating the rehabilitation of a licensee who is facing potential discipline on the basis of his criminal conviction. These criteria include, in relevant part:

- (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 Bureau. ...

[¶] ... [¶]

- (c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

[¶] ... [¶]

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

[] ... []

- (g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

[] ... []

- (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 ...

19. Respondent has a stable family life and shares custody of his children with his ex-wife. He is self-employed and runs a successful real estate group. He has paid all fines and fees associated with his conviction and completed his court-ordered community service.

20. On the other hand, respondent was convicted 18 months ago and the underlying conduct occurred a little more than two years ago. Respondent remains on informal probation until August 2018. His conviction has not been expunged nor his probation terminated early. Although respondent may be fully compliant with his probationary terms and conditions, minimal weight is afforded to such compliance given the expectation of good behavior associated with probation. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

21. Respondent's attitude has changed little since the commission of his criminal act. While respondent asserted he did not intend to hurt Mr. Johansen, he maintains that he feared for his safety and acted in self-defense, and that he does not know what he could have done differently. There was no evidence offered to contradict respondent's version of events; no witnesses to the incident were called to testify. It was also undisputed that Mr. Johansen was not an innocent bystander and had been arguing with respondent earlier in the evening. Rather, the evidence indicated that this was an isolated incident. There was no evidence that respondent had a propensity for violence before the incident or since. Still,

respondent was significantly larger in size than Mr. Johansen. He was sober while the latter was noticeably intoxicated. They were surrounded by dozens of bystanders. In light of these facts, it is troubling that respondent insists he had no alternative than to strike Mr. Johansen with such force as to render him unconscious. Respondent had many options – he could have walked away; shoved Mr. Johansen away; called the police; or asked someone nearby for help.

22. Respondent also failed to notify the Bureau of the bringing of felony charges against him or his misdemeanor conviction within 30 days as required. He testified credibly that he “blanked out about it” after his criminal case abruptly ended. However, this does not excuse his responsibility to promptly report such matters to the Bureau. Real estate licensees are expected to be “honest, truthful and worthy of the fiduciary responsibilities which they will bear.” (*Harrington v. Dept. of Real Estate* (1989) 214 Cal.App.3d 394, 402.) Brokers are required to make numerous statutory disclosures in real estate transactions; therefore, respondent’s failure to disclose the felony charges and misdemeanor conviction to the Bureau is concerning.

23. Considering all of the Bureau’s relevant criteria for assessing rehabilitation, respondent did not establish sufficient rehabilitation to justify retaining his broker license.

Costs of Investigation and Enforcement

24. Complainant has requested that respondent be ordered to pay investigation costs in the amount of \$835.25, and enforcement costs in the amount of \$925.60, for total cost of \$1,760.85. The investigation costs are supported by a Certified Statement of Investigation Costs which provided detail regarding the general tasks performed, the time spent on each task and the method of calculating the costs. Complainant also submitted a Certified Statement of Costs to support its prosecution costs which included similar detailing of the tasks performed, time spent, and calculation method used. The scope of work and amounts charged by complainant are reasonable in light of the allegations and legal issues in this matter. Therefore, the total of complainant’s reasonable costs for investigation and enforcement is \$1,760.85.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and non-penal. They are not intended to punish the licensee, but rather to protect the public. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)

2. Complainant bears the burden of proving that the charges in the Accusation are true. (Evid. Code, § 115.) The standard of proof in an administrative action seeking to

suspend or revoke a professional license is “clear and convincing evidence.” (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Applicable Law

3. 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 set forth in Findings 4 and 17, respondent’s conviction is substantially related to the qualifications, functions, or duties of a licensee, and therefore, cause exists to discipline respondent’s license under Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b).

4. Additionally, a real estate license may be disciplined if the licensee fails to report a misdemeanor or felony conviction or “the bringing of an indictment or information charging a felony against the licensee,” within 30 days. (Bus. & Prof. Code, § 10186.2.) As set forth in Finding 16, respondent failed to report the bringing of felony charges against him or his misdemeanor conviction within 30 days. Accordingly, cause exists to discipline respondent’s license under Business and Professions Code section 10186.2.

5. As set forth in Findings 17 through 23, when all of the relevant factors are considered, respondent did not establish sufficient rehabilitation to justify allowing him to retain his broker license.

Costs

6. Business and Professions Code section 10106 provides that 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. As set forth in Finding 24, complainant’s costs in the amount of \$1,760.85 are reasonable when considering the scope of the investigation in light of the alleged misconduct, and the activities, hourly rates, and time for each activity.

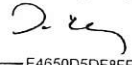
Zuckerman v. Board of Chiropractic Examiners (2002) 29 Cal.4th 32 lists additional factors for consideration in determining the amount of costs to be assessed under statutory provisions such as Business and Professions Code section 125.3. Those additional factors include whether the licensee was successful at hearing in getting charges dismissed or reduced, the licensee’s subjective good faith belief in the merits of his or her position, whether the licensee raised a colorable challenge to the proposed discipline, and the financial ability of the licensee to pay. In applying those factors here, it is determined that respondent shall pay the Bureau’s claimed costs.

ORDER

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

2. Respondent shall pay the Bureau of Real Estate the amount of \$1,760.85 as reimbursement for the costs of investigation and enforcement of this matter.

DATED: March 3, 2017

DocuSigned by:

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TIFFANY L. KING
Administrative Law Judge
Office of Administrative Hearings