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FILED

FEB 12 2019

DEPARTMENT OF REAL ESTATE
By B. Nicholas

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	
ALLAN MACDONALD,)	No. H-6659 SAC
)	
Respondent.)	OAH No. 2018050011
)	

STIPULATION AND AGREEMENT
AND DECISION AFTER REJECTION

This matter came to hearing before Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California, on September 27, 2018.

Real Estate Counsel Kyle T. Jones represented Complainant, Tricia Parkhurst, in her official capacity as a Supervising Special Investigator with the Department of Real Estate. Respondent ALLAN MACDONALD was represented by attorney Jeffrey S. Kravitz.

Evidence was received, the record was closed, and the matter was submitted for decision on September 27, 2018.

On October 9, 2018, the Administrative Law Judge rendered a Proposed Decision which the Real Estate Commissioner ("Commissioner") declined to adopt as his Decision herein.

1 Pursuant to Section 11517 of the Government Code of the State of California, Respondent was
2 served with notice of the Commissioner's determination not to adopt the Proposed Decision along
3 with a copy of the Proposed Decision. Respondent was notified that the case would be decided by
4 the Commissioner upon the record, the transcript of proceedings, and upon written argument
5 offered by Respondent and Complainant.

6 Written argument was submitted by Respondent. Written argument was submitted
7 by Complainant. The parties wish to settle this matter without further proceedings.

8 IT IS HEREBY STIPULATED by and between Respondent and the Complainant,
9 acting by and through Kyle T. Jones, Counsel for the Department, as follows for the purpose of
10 settling and disposing of the Accusation filed by Complainant.

11 1. It is understood by the parties that the Real Estate Commissioner may adopt the
12 Stipulation and Agreement as his Decision in this matter, thereby imposing the penalty and sanctions
13 on Respondent's real estate license as set forth in the "Order". In the event the Commissioner in his
14 discretion does not adopt the Stipulation and Agreement, the Stipulation shall be void and of no
15 effect; the Commissioner will review the transcript and the evidence in the case, and will then issue
16 his Decision after Rejection as his Decision in this matter.

17 2. The Order or any subsequent Order of the Commissioner made pursuant to
18 this Stipulation shall not constitute an estoppel, merger or bar to any further administrative or civil
19 proceedings by the Department with respect to any matters which were not specifically alleged to be
20 cause for accusation in this proceeding.

21 ORDER

22 All real estate licenses(s) and licensing rights of Respondent are revoked; provided,
23 however, a restricted real estate salesperson license shall be issued to Respondent pursuant to
24 Section 10156.5 of the Code if Respondent makes application thereof and pays to the Bureau the
25 appropriate fee for the restricted license within ninety (90) days from the effective date of this Order.

26 The restricted license issued to Respondent shall be subject to all of the provisions of
27

1 Section 10156.7 of the Code and to the following limitations, conditions, and restrictions imposed
2 under authority of Section 10156.6 of the Code:

3 1. The restricted license issued to Respondent may be suspended prior to
4 hearing by order of the Real Estate Commissioner in the event of Respondent's conviction or plea of
5 nolo contendere to a crime that is substantially related to Respondent's fitness or capacity as a real
6 estate licensee.

7 2. The restricted license issued to Respondent may be suspended prior to
8 hearing by order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that
9 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law,
10 Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

11 3. Respondent shall not be eligible to apply for the issuance of an unrestricted
12 real estate license nor the removal of any of the conditions, limitations, or restrictions attaching to
13 the restricted license until four (4) years have elapsed from the date of issuance of the restricted
14 license to Respondent.

15 4. With the application for license, or with the application for transfer to a new
16 employing broker, Respondent shall submit a statement signed by the prospective employing real
17 estate broker on a form approved by the Department which shall certify as follows:

18 (a) That the employing broker has read the Decision which is the basis
19 for the issuance of the restricted license; and

20 (b) That the employing broker will carefully review all transaction
21 documents prepared by the restricted licensee and otherwise exercise
22 close supervision over the licensee's performance of acts for which a
23 license is required.

24 5. Respondent shall, within nine (9) months from the effective date of this
25 Order, present evidence satisfactory to the Commissioner that Respondent has, since the most recent
26 issuance of an original or renewal real estate license, taken and successfully completed the
27

1 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of
2 a real estate license. If Respondent fails to satisfy this condition, Respondent's real estate license
3 shall automatically be suspended until Respondent presents evidence satisfactory to the
4 Commissioner of having taken and successfully completed the continuing education requirements.
5 Proof of completion of the continuing education courses must be delivered to the Bureau of Real
6 Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013.

7 6. Respondent shall notify the Commissioner in writing within seventy-
8 two (72) hours of any arrest by sending a certified letter to the Commissioner at the Department of
9 Real Estate, P.O. Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of
10 Respondent's arrest, the crime for which Respondent was arrested and the name and address of the
11 arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute
12 an independent violation of the terms of the restricted license and shall be grounds for the
13 suspension or revocation of that license.

14 7. Respondent shall pay \$298.25 to the Department for the costs of
15 investigation and enforcement of this matter. Respondent's failure to pay the Department shall
16 constitute an independent violation of the terms of the restricted license and shall be grounds for the
17 immediate suspension or revocation of that license. Said payment shall be in the form of a cashier's
18 check or certified check made payable to the Real Estate Fund. Said check must be received by the
19 Department prior to the effective date of the order in this matter at the following address:

20 Department of Real Estate, Post office Box 137007, Sacramento, CA 95813-7007.

21 8. Respondent shall completely abstain from consuming alcoholic
22 beverages, or any drugs not otherwise prescribed for a medical condition. He shall continue his
23 regular attendance at AA meeting at least three times per week, and provide documentation of
24 attendance satisfactory to the Department upon request. The restricted license issued to Respondent
25 may also be suspended prior to hearing by Order of the Real Estate Commissioner in the event
26 Respondent violates this condition of probation.
27

2/12/19

DATED

KYLE T. JONES, Counsel
DEPARTMENT OF REAL ESTATE

I have read the Stipulation and Agreement and Decision After Rejection, and its terms are understood by me and are agreeable and acceptable to me. I willingly and voluntarily agree to enter into this Stipulation.

1/24/19

DATED

ALLAN MACDONALD
Respondent

I have reviewed the Stipulation and Agreement as to form and content and have advised my client accordingly.

1-31-19

DATED

JEFEREY S. KRAVITZ
Attorney for Respondent,

DECISION AND ORDER

The foregoing Stipulation and Agreement and Decision After Rejection is hereby adopted by the Real Estate Commissioner as his Decision and Order.

This Decision and Order shall become effective at 12 o'clock noon on

MAR 05 2019

IT IS SO ORDERED

February 12, 2019

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri

Flag.

FILED

NOV 16 2018

DEPARTMENT OF REAL ESTATE

By B. Nicholas

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	DRE No. H-6659 SAC
)	
ALLAN MACDONALD,)	OAH No. 2018050011
)	
Respondent.)	

NOTICE

TO: ALLAN MACDONALD, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated October 9, 2018, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated October 9, 2018, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on Thursday, September 27, 2018, and any written argument hereafter submitted on behalf of respondent and complainant.

Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Thursday, September 27, 2018, at the Sacramento office of the Department of Real Estate unless an extension of the time is granted for

1 good cause shown.

2 Written argument of complainant to be considered by me must be submitted within
3 15 days after receipt of the argument of respondent at the Sacramento Office of the Department of
4 Real Estate unless an extension of the time is granted for good cause shown.

5 DATED: November 8, 2018.

6 DANIEL J. SANDRI
7 ACTING REAL ESTATE COMMISSIONER

8 
9

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ALLAN MACDONALD,

Respondent.

Case No. H-6659 SAC

OAH No. 2018050011

PROPOSED DECISION

This matter was heard before Administrative Law Judge Heather M. Rowan, Office of Administrative Hearings, on September 27, 2018, in Sacramento, California.

Kyle T. Jones, Real Estate Counsel, represented complainant Tricia D. Parkhurst, Supervising Special Investigator for the Department of Real Estate (Department).

Allan MacDonald (respondent) represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on September 27, 2018.

FACTUAL FINDINGS

1. The Department issued respondent Real Estate Broker License No. B/01320729 (license) on July 12, 2006. The license will expire July 25, 2022, unless renewed or revoked. There is no history of prior discipline of respondent's license.

2. On March 20, 2018, complainant, acting solely in her official capacity, signed an Accusation seeking to discipline respondent's license on the ground that he was convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee, and that he failed to report that conviction. Respondent filed a timely 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 Conviction

3. On April 6, 2017,¹ in Butte County Superior Court, Case No. 17CF00972, respondent pled no contest to, and was convicted of violating Vehicle Code section 23153, subdivision (b), driving with a blood alcohol level of .08 or greater (DUI), and causing bodily injury, a felony, with an enhancement under Penal Code section 12022.7, causing injury to more than one individual. Respondent was sentenced to 120 days in jail, which he served on ankle monitoring, and thereafter placed on formal probation for three years, ending on June 1, 2020. He was also ordered to pay fees, fines, and restitution. Respondent was also ordered to complete DUI school, level one. Finally, at a restitution hearing, respondent was ordered to pay restitution in the amount of \$152,500. The settlement negotiations between respondent's insurance company and the victims are on-going.

4. The circumstances underlying this conviction are that on January 3, 2017, respondent left a motel where he had been drinking alcohol for several days, and proceeded to drive his car. When he attempted to make a right turn, but lost control of his car and caused a head-on collision with another car. Following the collision, respondent walked away from the scene and toward a nearby bike path, where he was apprehended, administered field sobriety tests, and arrested. Respondent blood alcohol level was .19 percent. The driver and passenger of the other vehicle sustained injuries.

Failure to Update the Department with a Change of Background

5. Pursuant to Business and Professions Code section 10186.2, subdivision (a)(1)(B), a licensee is required to report to any felony conviction to the Department within 30 days of the conviction. (*Id.* at subd. (a)(2).) Respondent was convicted on April 6, 2017. As of February 28, 2018, the Department had no record of having received a notice of conviction from respondent. Respondent admitted at hearing that he did not update the Department regarding his conviction. Until he renewed his license, he was unaware of the duty to disclose.

Evidence in Aggravation, Mitigation, and Rehabilitation

6. Respondent was licensed as a real estate salesperson in 2001. In 2006, he obtained a broker's license. He operated his own brokerage for several years, but closed the brokerage when it was not financially feasible to continue. He is now an associate broker at Blue Team Realty, Inc., in Paradise, California.

7. When respondent was in his 20's, he realized he had a problem with alcohol. He first got sober on July 11, 1987. He remained sober for 26 and one half years with no relapse. During this time, he lived in and near Monterey and was actively involved in Alcoholics Anonymous (AA) and Narcotics Anonymous (NA). He attended meetings, had

¹ The Accusation states respondent's conviction date was June 1, 2017, which was the date of sentencing.

service positions, and participated in the "Hospitals and Institutions" program, which brings AA and NA meetings to those places where individuals might have limited access to recovery means.

8. In 1990, respondent moved back to Paradise, where he spent more time with his family, including raising his two children. He volunteered for the local Little League for many years, even after he son was no longer playing. More recently, he volunteered his time for Feather River Hospital in its endeavor to recruit professional staff by introducing candidates to the area, and consultant with the hiring team.

9. Eventually, respondent stopped attending AA and NA meetings. In 2013, respondent began drinking alcohol again. At first, he drank occasionally and socially. By 2016, he was bingeing on alcohol. In late December of 2016, respondent and his girlfriend had a fight. He left the home and went to a motel, where he drank alcohol for several days. On January 3, 2017, he left the motel by car to get food. He caused an accident that injured two people.

10. At the time of the accident, respondent got out of his car and saw people coming toward him, yelling at him. He was drunk, scared, and not thinking clearly. He walked away from the scene, across the street to a bike path. Respondent lay down on the bike path, where he was approached by an officer. Respondent acknowledged at hearing that he had been drinking alcohol, that he should not have driven, and that he caused injuries to the driver and passenger of the other vehicle. He expressed great remorse for his actions that caused their injuries, and relieved that the injuries were not worse than they were.

11. Respondent understands that his actions were "stupid," and that he has to live with the consequences and the guilt stemming from his decision to drink and drive. He characterized the experience as "humbling," and took it as an opportunity to address why he abandoned his sobriety, and to recommit to AA. He saw a counselor weekly for more than 15 months following his arrest. He now attends five to eight AA meetings per week. He has a sponsor, attends meetings as well as book study groups, has service positions in meetings, and considers his sobriety to be "first and foremost" in his life. He knows that his life is better when he maintains sobriety and works his AA program.

12. Respondent also has changed his social habits and associates. His friends now include individuals who are engaged in business endeavors and are interested in building their businesses. He is a member of the California and National Associations of Realtors, as well as his local association in Chico. He finds meaning and self-worth through his position as an associate broker, his family, friends in AA, and living a healthy lifestyle. He is paying his court fees and fines on a monthly basis.

13. Respondent completed the court-ordered Chemical Dependency Awareness Program in September 2017. He learned to identify the triggers that give him a desire to drink alcohol, and how to prevent acting on those triggers. He made connections with others in the group, and learned more about himself and his recovery through sharing and listening.

CHARACTER REFERENCES

14. Lori Eiler, L.C.S.W., is respondent's therapist. She submitted a letter on his behalf, and testified at hearing. Ms. Eiler saw respondent for individual counseling for a year and a half. She described respondent's life prior to his relapse as "in a substantial amount of chaos." He entered counseling with a desire to rebuild his sober living and create a "solid structured life." Ms. Eiler wrote that respondent has demonstrated a commitment to his sobriety by his daily AA meeting attendance, meetings with his sponsor, and his rigorous honesty in his sessions with her.

15. Chris Smith, B.S.W., is respondent's AA sponsor. He wrote a letter on respondent's behalf. Mr. Smith has known respondent for 10 years, and has seen "remarkable change" in respondent's behavior since his relapse, and recommitment to sobriety. He believes that respondent used the accident he caused by drinking and driving as a catalyst to improve and to ensure that he does not make such decisions again. Mr. Smith has seen respondent's genuine remorse, his effort at maintaining stability in his sobriety, and his daily practice of making amends for his mistakes by remaining committed to recovery.

16. Cindy Haskett is a realtor and the owner of Blue Team Realty, Inc. She submitted a letter on respondent's behalf. She has known respondent since 1999, when they both worked for Coldwell Banker. In 2016, when she decided to open her own office, she asked respondent to join her. Ms. Haskett is aware of respondent's conviction, and the events that led to it. She is impressed with his work to "turn his life around" and dedicate himself to his new path, including sobriety. She noted that respondent has expressed remorse for his actions, and wishes to make amends. Ms. Haskett wrote that she has seen "nothing but improvement" in respondent.

Discussion

17. The Bureau has set forth the rehabilitation criteria to be applied when reviewing whether a licensee who has been convicted of a crime should be disciplined. (Cal. Code Regs., tit. 10, § 2912.) The relevant rehabilitation criteria include: (1) the passage of not less than two years since the most recent criminal conviction; (2) the severity of the act or crime; (3) the licensee's history of convictions that are substantially related to the qualifications, or duties of a real estate agent; (4) payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment; (5) restitution paid; (6) stability of family life and fulfillment of parental and familial responsibilities; (7) abstinence from the use of alcohol for not less than two years if the criminal conviction was attributable at least in part to the use of alcohol; (8) completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement; (9) significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; (10) new and different social and business relationships from those which existed at the time of the criminal conduct; and (11) change in attitude from that which existed at the time of the conduct in question.

18. Respondent was convicted of a felony less than two years ago, and will be on probation until April 2020. Two people were injured as a result of the accident he caused by drinking and driving. He continues to pay his court fees and fines, and restitution is currently being addressed by respondent's insurance company. Though respondent has not been convicted of additional crimes since his 2017 DUI, little weight is given to good behavior while one is on probation. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099 ["Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a bar applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole"].)

19. While these factors certainly suggest not enough time has passed since respondent's conviction, respondent presented sufficient evidence of rehabilitation, and specifically of his sobriety that was persuasive and credible. He voluntarily underwent counseling following the accident, and continued his sessions weekly for over a year. He currently attends five to eight AA meetings per week, which are not court-mandated, is active in the AA community, works regularly with his sponsor, and has service commitments at meetings.

20. Respondent has accepted full responsibility for his actions. He acknowledged wrongdoing. He expressed remorse regarding the accident and pain he caused. He was also able to articulate insight into his actions, and his relapse after more than 26 years of sobriety. He made use of the court-ordered DUI course – learning from participants, sharing his experiences, and identifying the triggers that were giving him a desire to drink alcohol.

21. Respondent is an active participant in his realty community. He is a member of the California and National Associations of Realtors, as well as his local association in Chico. He assisted the Feather River Hospital in physician recruitment by introducing recruits to the local area. And he is a past volunteer for the Paradise Little League. While his children are grown, he maintains relationships with them, and sees his elderly father frequently.

22. 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 the Department developed to evaluate rehabilitation. (Cal. Code Regs., tit. 10, § 2912, subd. (m); *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. His letters of support and his therapist's testimony provide compelling evidence that he is committed to his sobriety through continuing therapy, and applying the tenets of AA on a daily basis. No issues have been raised concerning client complaints. He persuasively testified that he has a stable and supportive family 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.

23. 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. A restricted license should issue with certain conditions, including 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, Cindy Haskett. Issuing a restricted license for a four-year period will run over two years beyond respondent's court-imposed probation, and allow sufficient time to ensure that respondent is complying with the Department's rules and regulations.

Costs of Investigation and Enforcement

24. 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 \$298.25. The Department provided a Certification of Costs by its attorney, Kyle T. Jones, describing the work done on the matter. The reasonableness of the requested costs is discussed in Legal Conclusions 5 and 6.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Complainant bears the burden of proving, by clear and convincing evidence, that the charges in the Accusation are true and that the requested discipline against respondent's license should be imposed. (Evid. Code, §§ 500; 115; *Small v. Smith* (1971) 16 Cal.App.3d 450.) 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.)

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).) In California Code of Regulations, title 10, section 2910, the Bureau has set forth criteria for determining whether a conviction is substantially related to the qualifications, functions or duties of a licensee. Among those substantially related crimes is "[d]oing any unlawful act with the intent or threat of doing substantial injury to the person or property of another." (*Id.* at subd. (a)(8).) Respondent's conviction for driving under the influence and causing injury to another person is substantially related to the qualifications, functions, or duties of a real estate licensee.

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), pursuant to Factual Findings 3 and 4.

4. A real estate licensee must report to the Department within 30 days if he is convicted of any crime. (Bus. & Prof. Code, § 10186.2, subd. (a)(1)(B).) Respondent failed to report his conviction to the Department. Cause exists to discipline respondent's real estate license pursuant Factual Finding 5.

Conclusion

5. For the reasons explained in Factual Findings 17 through 23, respondent has demonstrated sufficient rehabilitation to justify the Department allowing him to continue engaging in real estate activities under a restricted license for four years. A 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 Cindy Haskett.

Costs of Investigation and Enforcement

6. 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.

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.)

7. As set forth in Factual Finding 23, complainant has presented sufficient detail to support her request for enforcement costs based on work performed by the Department's staff. (Cal. Code of Regs., tit. 1, § 1042, subd. (b)(1).) Complainant's cost bill in the amount of \$298.25 is reasonable in this matter. Taking the *Zuckerman* factors into consideration, complainant established that respondent should be ordered to pay these costs in full.

ORDER

All licenses and licensing rights of respondent Allan MacDonald under the Real Estate Law are REVOKED; provided, however, a restricted real estate salesperson license shall be issued pursuant to section 10156.5 of the Business and Professions Code. 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 criminal probation.

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

4. Respondent's employment shall be restricted to his current broker and employer, Cindy Haskett, Blue Team Realty, Inc. 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 Department 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 \$298.25 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 Department.

DATED: October 9, 2018

DocuSigned by:
Heather M. Rowan
F06C72C19C3B4DA...

HEATHER M. ROWAN
Administrative Law Judge
Office of Administrative Hearings