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FEB 25 2019

DEPARTMENT OF REAL ESTATE

By           *pdw*          

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	
	)	
RICHARD YEE YOUNG,	)	No. H-6711 SAC
	)	
Respondent.	)	OAH No. 2018091015
	)	

STIPULATION AND AGREEMENT  
AND  
DECISION AFTER REJECTION

The California Department of Real Estate filed an Accusation against RICHARD YEE YOUNG (Respondent), on September 12, 2018. On October 25, 2018, a hearing was held and evidence was received, the record was closed, and the matter was submitted.

On November 7, 2018, the Proposed Decision of the Administrative Law Judge was issued revoking Respondent's real estate salesperson license, with the right to apply for a restricted salesperson license.

On December 12, 2018, the Commissioner rejected the Proposed Decision of November 7, 2018.

The parties wish to settle this matter without further proceedings.

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1 IT IS HEREBY STIPULATED by and between RICHARD YEE YOUNG  
2 (Respondent), and the Complainant, acting by and through Megan Lee Olsen, Counsel for the  
3 Department of Real Estate (Department), as follows for the purpose of settling and disposing of  
4 the Accusation filed by Complainant.

5 1. It is understood by the parties that the Real Estate Commissioner  
6 (Commissioner) may adopt the Stipulation and Agreement (Stipulation) as his Decision in this  
7 matter, thereby imposing the penalty and sanctions on Respondent's application for a real estate  
8 license as set forth in the "Decision and Order". In the event the Commissioner in his discretion  
9 does not adopt the Stipulation, it shall be void and of no effect; the Commissioner will review the  
10 transcript and the evidence in the case, and will then issue his Decision after Rejection as his  
11 Decision in this matter.

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

#### 16 DETERMINATION OF ISSUES

17 By reason of the foregoing stipulations, admissions and waivers, and solely for  
18 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed  
19 that the acts and/or omissions of Respondent, as described in the Accusation, constitute grounds  
20 for the suspension or revocation of the licenses and license rights of Respondent under the  
21 provisions of Sections 490 (a) and 10177 (b) of the Business and Professions Code (Code).

#### 22 ORDER

23 1. All real estate licenses(s) and licensing rights of Respondent are revoked;  
24 provided, however, a restricted real estate salesperson license shall issue subject to the  
25 requirements of Section 10156.5 of the Code if within ninety (90) days of the effective date of  
26 the Order, Respondent makes application therefore and pays to the Department the appropriate  
27 fee for said license. The restricted license issued to Respondent shall be subject to all of the

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

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

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

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

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

19 a. That the employing broker has read the Decision which is  
20 the basis for the issuance of the restricted license; and

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

24 4. 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  
26 recent issuance of an original or renewal real estate license, taken and successfully completed the  
27 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal

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

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

13 6. All licenses and licensing rights of Respondent are indefinitely  
14 suspended unless or until Respondent pays the sum of \$1,351.80 for the Commissioner's  
15 reasonable cost of the investigation and enforcement which led to this disciplinary action. Said  
16 payment shall be in the form of a cashier's check made payable to the Department of Real  
17 Estate. The investigative and enforcement costs must be delivered to the Department of Real  
18 Estate, Legal Section at P.O. Box 137007, Sacramento, CA 95813-7007, prior to the effective  
19 date of this Order.

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21 2/5/2019

22 DATED

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MEGAN LEE OLSEN, Counsel  
DEPARTMENT OF REAL ESTATE

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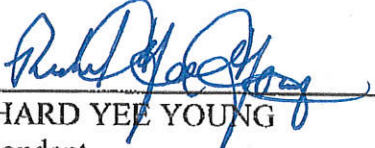
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I have read the Stipulation and Agreement and Decision After Rejection, and its terms are understood by me and are agreeable and acceptable to me. I willingly and voluntarily agree to enter into this Stipulation.

1/24/19

DATED



RICHARD YEE YOUNG  
Respondent

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DECISION AND ORDER

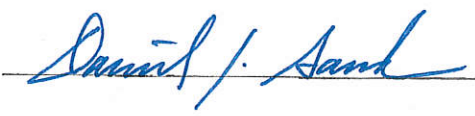
The foregoing Stipulation and Agreement and Decision After Rejection is hereby adopted by the Real Estate Commissioner as his Decision and Order.

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

MAR 18 2019

IT IS SO ORDERED February 21, 2019

DANIEL J. SANDRI  
Acting Real Estate Commissioner







BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RICHARD YEE YOUNG,

Respondent.

Case No. H-6711 SAC

OAH No. 2018091015

**PROPOSED DECISION**

Administrative Law Judge Wilbert E. Bennett, State of California, Office of Administrative Hearings, heard this matter on October 25, 2018, in Sacramento, California.

Megan Lee Olsen, Counsel, Department of Real Estate (Department), represented complainant Tricia D. Parkhurst, Supervising Special Investigator.

Respondent Richard Yee Young represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on October 25, 2018.

**FACTUAL FINDINGS**

*Procedural Background*

1. On September 12, 2018, complainant filed the Accusation in her official capacity. Complainant seeks to impose disciplinary action against respondent's real estate salesperson license based on a misdemeanor conviction for unlawfully driving while having .08 percent or more, by weight, of alcohol in his blood, which proximately caused bodily injury to another person.

2. Respondent is presently licensed and/or has license rights under the real estate law as a real estate salesperson.

*Criminal Conviction*

3. On January 2, 2018, in the Shasta County Superior Court, Case No. MCRDCRF170003362, respondent was convicted, by nolo contendere plea, of violating



Vehicle Code section 23153, subdivision (b) (driving while having .08 percent or more, by weight, of alcohol in his blood, causing bodily injury to another person), a misdemeanor. As part of the nolo contendere plea, respondent did not contest the following special allegations: that he violated Vehicle Code section 23577 by refusing to take a chemical test, and that he violated Vehicle Code section 23578 by driving with a blood alcohol content of .15 percent or higher. Pursuant to said conviction, respondent was placed on informal probation for a period of three years on certain terms and conditions, including service of 20 days in the county jail with a credit of two days for time served, completion of a six-month alcohol treatment (First Offenders) program, attendance and completion of a victim impact panel, installation and maintenance of an ignition interlock device on his vehicle for one year, a prohibition against possession or consumption of alcohol, a prohibition against driving with any measurable amount of alcohol in his system, and payment of applicable fines and fees.

4. The facts and circumstances underlying this conviction involved respondent's driving while under the influence of alcohol, on June 27, 2016, with a blood alcohol content of at least .15 percent. He had decided to drive home, late in the evening, after consuming alcohol at his girlfriend's house. On that occasion, respondent was arrested after colliding with a vehicle which had stopped in a highway traffic lane because of a previous multiple vehicle traffic collision. Respondent was unable to safely react to the hazard in the roadway ahead because he was driving while in an inebriated condition. The driver of the vehicle with which respondent collided sustained visible injuries, which included a contusion to his forehead above his right eye and a contusion to his left shin. Both of the vehicles involved in the collision sustained minor damage, as the left front corner of respondent's vehicle collided with the right side of the other vehicle. The investigating California Highway Patrol (CHP) officers determined that respondent was the primary cause of the traffic collision based on party statements, witness statements, and physical evidence.

Respondent refused to perform field sobriety tests, as requested by CHP officers. After agreeing to take a breath test, respondent failed to provide a sufficient breath sample, after multiple chances to do so, and thereafter agreed to submit to a blood test. Respondent then refused to do so without an attorney present. Based on respondent's refusal, a search warrant was obtained for a non-consensual blood test, and a blood sample was taken from respondent's arm.

#### *Factors in Aggravation, Mitigation, or Rehabilitation*

5. Respondent is 63 years old, divorced, with no children. He has held a real estate salesperson license since 2010, and has no record of prior discipline. He denied that he had a substance abuse problem, although noting that he had sustained a prior drunk driving conviction in 1998. While he has not participated in any alcohol treatment programs independent of court-ordered programs, respondent averred that he has not consumed alcohol since December 2017. As noted above, respondent is prohibited from alcohol consumption or possession, by the terms of his three-year probation, until January 2021.

6. Respondent stated that he is in compliance with the terms of his criminal probation, including payment of required fines and fees totaling approximately \$2,200. His drunk driving offense occurred in June 2016. Independent of the criminal conviction, the Department of Motor Vehicles suspended respondent's driver's license for 12 months, commencing in February 2018, for his refusal to submit to a chemical test. Subsequent to respondent's license suspension, he has hired a driver, and used Uber drivers, to assist him in showing real estate properties to clients.

7. Respondent submitted a supporting character reference letter from LaDonna Dennett, who is the office and transaction manager at Real Living Real Estate Professionals (Real Living) in Redding. That entity is respondent's employing broker. Ms. Dennett has known respondent for eight years, since he commenced employment at Real Living. She described respondent as "a true asset to our company, and an excellent representative to the realtor community." Ms. Dennett further noted that respondent "outperforms most other agents by 2 or 3 times annually," and takes time for his files and his clients "to ensure that the file is complete and the client is satisfied."

8. Respondent presented character reference testimony from two persons who have known him in a professional capacity. Josh Domke is the vice-president and broker at Real Living. Mr. Domke described respondent as "a role model who exhibits high standards" for his company. He indicated concurrence with the content of the letter submitted by La Donna Dennett (noted in Finding 7 above), which he had previously reviewed. Mr. Domke noted that respondent has paid a driver and used Uber drivers since his driver's license suspension went into effect, and has continued to generate robust sales as one of his top agents. Mr. Domke, as an employing broker, is amenable to the issuance of a restricted license to respondent, with its attendant supervision requirements.

Steve Hixenbaugh is a fellow employee and colleague who has known respondent for eight years, since respondent commenced employment at Real Living. Mr. Hixenbaugh has been a real estate salesperson since May 2003. He described respondent as "an ethical real estate professional who tries to do the right thing."

9. Respondent testified regarding his drunk driving conviction. He expressed remorse, accepted responsibility, and acknowledged his "stupidity" in deciding to drive home after consuming alcohol. It has been judicially recognized, however, that mere remorse is insufficient to establish full rehabilitation, which requires an acknowledgment of wrongdoing and sustained exemplary conduct over an extended period of time. (See, *In re Menna* (1995) 11 Cal.4th 975, 991.)

10. In assessing respondent's rehabilitation and current fitness for licensure in light of the Department's public protection mandate, the nature of respondent's conviction must be considered. Respondent's drunk driving conviction, by nolo contendere plea, involved driving with a blood alcohol content of .15 percent or more, which is twice the legal limit, and caused bodily injury. The seriousness of respondent's criminal conduct cannot be overemphasized. A drunk driving offense, by its nature, creates a risk of death or serious

injury to others. The severity of such an offense is magnified when the drunk driving reflects a blood alcohol level of twice the legal limit and, in fact, resulted in bodily injury to another person.

11. The Department has adopted criteria for evaluating whether a licensee has been rehabilitated since he or she sustained the convictions(s) or committed the act(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 or wrongful act; (2) successful completion or early discharge from probation or parole; (3) abstinence from the use of alcohol for not less than two years if the criminal conviction was attributable in part to the use of alcohol; and (4) payment of any fine imposed in connection with the conviction. (Cal. Code Regs., tit.10, § 2912, subds. (a)(1), (e), (f), & (g).)

12. The application of these criteria indicates that respondent is not fully rehabilitated, but is on the road to rehabilitation. On the positive side of the ledger, respondent is fully compliant with his criminal probation, has paid all of his criminal fines, and has abstained from alcohol for almost two years. He has no record of prior discipline. Additionally, based on character reference evidence from respondent's professional colleagues and his employing broker, and his own testimony, there appears to be minimal risk of recidivism. The evidence further established that, while on probation, respondent has been able to function as a real estate salesperson in an effective and lawful manner, notwithstanding legally imposed prohibitions on alcohol consumption and driving. On the negative side of the ledger, respondent's conviction date is only 10 months ago, he remains on probation until January 2021, and full rehabilitation requires sustained exemplary conduct over an extended period of time. Respondent's compliance with his criminal probation requirements is necessarily discounted because of the expectation of good behavior associated with probation. (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].) On balance, the positive factors outweigh the negative factors in assessing respondent's rehabilitation profile. Respondent appears to be taking appropriate steps towards rehabilitation, although his rehabilitation is not complete and he has a ways to go.

13. As discussed below, cause exists to discipline respondent's license. Discipline is warranted because respondent's criminal conduct reflected a serious lack of judgment which created a threat of substantial injury to others. Complainant, in closing argument, expressed understandable concerns regarding respondent's rehabilitation, including whether sufficient time has passed to permit a showing of full rehabilitation. Based on the totality of the evidence presented, while his rehabilitation may not be complete, respondent has established that he has been sufficiently rehabilitated from a serious offense so that he may be allowed to retain licensure on a restricted basis. Therefore, respondent's unrestricted license should be revoked, and he should be issued a restricted license with the restrictions specified in the Order below.

### *Costs of Investigation and Enforcement*

14. Complainant offered declarations that supported investigative costs of \$884.55 and enforcement costs of \$467.25. The reasonableness of the claimed costs was not challenged by respondent.

The Department is entitled to recover \$1,351.80 in costs.

### LEGAL CONCLUSIONS

1. Business and Professions Code section 493 permits the Department 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 respondent's conviction.

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 convicted of a drunk driving offense: driving with a blood alcohol level of .08 percent or more, under circumstances wherein his driving caused a bodily injury, he refused to take a chemical test to measure his blood alcohol content, and his blood alcohol content while driving was at least .15 percent, approximately twice the legal limit. (Findings 3 and 4.) Such a crime is deemed to be substantially related to the qualifications, functions, or duties of a real estate licensee. (See, Cal. Code Regs., tit. 10, § 2910, subd. (a)(8) ["Doing of any unlawful act . . . with the intent or threat of doing substantial injury to the person or property of another"].) In this instance, by driving in an extremely inebriated condition, respondent's conduct constituted a threat of substantial injury to others, and, in fact, caused bodily injury. Vehicle Code section 23593, subdivision (a), provides legislative recognition of such a threat: "[I]t is extremely dangerous to human life to drive while under the influence of alcohol." Therefore, respondent's drunk driving offense constitutes cause for license discipline pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b).

3. A professional license may be disciplined only upon "clear and convincing evidence to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853-856.)

4. Clear and convincing evidence established cause for discipline of respondent's license pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b), in that respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a real estate salesperson, by reason of Findings 3 and 4, and Legal Conclusions 1 and 2.

5. 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 5 through 13 above, it is determined that it would not be contrary to the public interest to allow respondent to retain his real estate salesperson license on a restricted basis, on appropriate terms and conditions.

6. 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 law. Evidence is required to support an award.

7. Complainant provided sufficient evidence to support an award of the costs of investigation and enforcement in the amount of \$1,351.80, as set forth in Finding 14.

#### ORDER

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

- a. 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.
- b. 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.
- c. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for the removal of any of the conditions, limitations or restrictions of a restricted license until three years have elapsed from the effective date of this Decision.

- d. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that he 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.
- e. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

Respondent Richard Yee Young shall pay \$1,351.80 to the Department of Real Estate as its costs of investigation and enforcement of this case.

DATED: November 7, 2018

DocuSigned by:  
*Wilbert E. Bennett*  
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WILBERT E. BENNETT  
Administrative Law Judge  
Office of Administrative Hearings