

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

FILED

NOV 14 2013

BUREAU OF REAL ESTATE

By K. Contreras

In the Matter of the Accusation of)
EDWARD DOCKSUNG KANG,) NO. H-11539 SF
Respondent.) OAH NO. 2013050815
_____)

DECISION

The Proposed Decision dated October 3, 2013, 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 revokes your real estate broker license and your mortgage loan originator endorsement to that license on grounds of the conviction of a crime but grants you the right to a restricted real estate broker license.

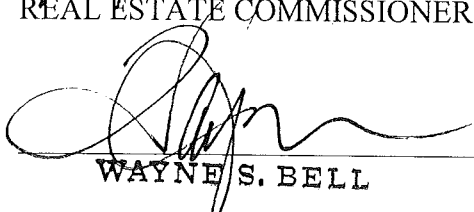
The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of Respondent.

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

DEC - 4 2013

IT IS SO ORDERED

11/7/2013
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 of:

EDWARD DOCKSUNG KANG,

Respondent.

Case No. H-11539 SF

OAH No. 2013050815

PROPOSED DECISION

Administrative Law Judge Regina J. Brown, State of California, Office of Administrative Hearings, heard this matter on September 3, 2013, in Oakland, California.

Real Estate Counsel Stephanie K. Sese represented complainant Robin S. Tanner, Deputy Real Estate Commissioner, State of California.

Respondent Edward Docksung Kang represented himself.

The matter was submitted on September 3, 2013.

FACTUAL FINDINGS

1. Respondent Edward Docksung Kang is licensed and has licensing rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a real estate broker and mortgage loan originator with the Bureau of Real Estate (bureau). Respondent's real estate broker license, which was originally issued on July 31, 1994, is current and will expire on July 12, 2014.

2. Since, December 4, 2010, respondent has held mortgage loan originator license endorsement number 314496. Respondent subsequently permitted it to expire. On March 12, 2013, respondent's license endorsement was reinstated.¹

¹ License endorsements are valid for a period of one year and expire on the 31st of December each year. (Bus. & Prof. Code, § 10166.02, subd. (c).)

3. Complainant Robin S. Tanner, acting in her official capacity as a Deputy Real Estate Commissioner, filed an accusation against respondent. The accusation alleges that respondent has been 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 an indictment or information charging a felony was brought against him. Respondent filed a notice of defense.

4. The District Attorney filed a felony complaint² against respondent on April 5, 2012. The felony complaint alleged two felony counts of driving under the influence of alcohol and causing bodily injury to another person. Respondent did not report the felony charges to the bureau within 30 days as required. At hearing, respondent offered no explanation as to why he did not report the felony charges to the bureau.

Criminal Conviction

5. On September 18, 2012, in Santa Clara County Superior Court, respondent was convicted on his plea of nolo contendere of a violation of Vehicle Code section 23153, subdivision (b) (driving with blood alcohol level of 0.08 percent or more by weight and causing bodily injury to another), a felony, with an enhancement pursuant to Vehicle Code section 23578 (blood alcohol level of 0.15 percent or more by weight).³

Imposition of sentence was suspended and respondent was placed on formal probation for three years on the conditions that he serve 10 months in jail, pay fines, fees and restitution, complete a three-month first offender drinking driver course, complete a substance abuse program, and have his driving privileges suspended. Respondent completed the three-month first offender program on November 20, 2012. Respondent states that he has paid all of his fines, fees, and restitution. Respondent remains on probation and pays \$120 per month in probation fees. Respondent also states that he has requested that his formal probation be changed to informal so that he will no longer be required to pay \$120 per month in probation fees.

The facts and circumstances leading to this conviction are that on February 24, 2012, after leaving a restaurant where he drank beer with friends, respondent fell asleep and hit the dividing wall on the highway. As he attempted to drive his vehicle back onto the highway, respondent veered across three lanes, drove in front of a motorcyclist, and hit the wall near the right shoulder. Respondent's actions caused the motorcyclist to brake suddenly, lose

² A complaint, indictment, or information is the first pleading in a felony case. (Pen. Code, § 949.)

³ The accusation alleges that the enhancement under Vehicle Code section 23578, was for respondent's refusal to submit to testing of his blood alcohol level. The court documents establish that the enhancement was because respondent's blood alcohol level was 0.15 percent or more by weight.

control of his motorcycle, and overturn onto the highway. The driver of the motorcycle sustained a right thumb fracture and abrasions to his body. The responding officer observed that respondent had objective symptoms of intoxication, conducted two field sobriety tests which respondent failed, and arrested respondent. Respondent had sustained injuries and was transported to the local hospital. Respondent's blood was drawn, and his blood alcohol level was 0.20 percent.

Respondent's evidence

6. Regarding the underlying circumstances of his conviction, respondent testified that he did not recall many of the details of the incident or what happened after because of his intoxication and injuries. Respondent testified at hearing that he had approximately two beers, and that his Type 2 diabetes may have contributed to his high blood alcohol level. However, he admitted to his misconduct, and did not attempt to use these factors to justify his drinking and driving or collaterally attack his conviction.

7. Respondent acknowledges and regrets his conduct and is remorseful that the motorcyclist was injured. Prior to the incident, respondent considered himself to be a social drinker. Since the incident, he recognizes how dangerous it is to drink and drive. He testified that he has not consumed any alcohol since the incident on February 24, 2012. Respondent also testified that since his conviction, he has spoken with his family and friends about the consequences of drinking and driving, and encourages them not to drink and drive.

8. Respondent's testimony was credible. Respondent was candid and forthright. He demonstrated a professionalism that is aligned with his successful career in real estate for over 19 years. Respondent testified in a straightforward manner and did not deny the circumstances underlying his conviction.

9. Respondent has taken affirmative steps toward rehabilitating himself. Immediately after the accident, on March 6, 2012, respondent began alcohol treatment counseling at the East-West Counseling Center. During his incarceration, respondent participated in the Re-Entry Correction Program, which is an intense comprehensive recovery program for inmates. Respondent also completed 16 sessions of the Willing Individual for Substance Education (WISE) substance abuse program. In addition, respondent completed 40 hours of computer literacy courses.

10. Respondent submitted a letter from Samuel D. Hong, senior pastor of the Korean United Methodist Church of Santa Clara Valley. Hong writes that he has known respondent for three years, and that respondent serves in a leadership position in the church. Respondent also submitted a letter from Sung-Hwan Hwang, president of the San Jose Pioneer Lions Club. Hwang writes that he has been a friend of respondent for over 30 years. Hwang attests that respondent is a leader in the Korean-American community in Silicon Valley, and that respondent is "extremely remorseful for his irresponsible conduct and determined to rehabilitate himself."

11. Respondent is 56 years old. He is married, and the sole income earner.
12. Respondent is not only a licensed real estate broker and mortgage loan originator. Since July 27, 2011, respondent has also had a life insurance license with the State of California, and works part-time in the insurance industry.
13. Respondent regularly attends and is active in his church. He is actively involved in his community and volunteers at the Mexico Mission, packing Christmas dinners for the needy, the food bank, and a soup kitchen. For over 10 years, respondent has also actively participated in Lions Club, International, which is a service club that seeks the betterment of local communities.
14. Respondent started his own real estate business, Tri-Bay Mortgage Group, and has been self-employed since 1993. Respondent's real estate broker license and mortgage loan originator license endorsement were suspended because of respondent's incarceration. During the period of suspension, Tri-Bay Mortgage Group was not operational, and respondent's 20 employees were laid off. On July 31, 2013, the suspensions were lifted, and respondent reopened his business. Currently, respondent has only one employee.
15. There is no history of prior discipline of respondent's license or endorsement.
16. There was no evidence presented of investigation or enforcement costs in connection with this matter.

LEGAL CONCLUSIONS

Disciplinary Action Against Real Estate Broker License

1. Business and Professions Code section 490, subdivision (a),⁴ provides that a license may be suspended or revoked if the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of the business or profession for which the license was issued. Section 10177, subdivision (b), provides that a real estate broker license may be suspended or revoked if the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of a real estate broker. Section 2910 of title 10 of the California Code of Regulations sets forth criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate broker. Respondent's felony conviction for driving under the influence of alcohol and causing bodily injury to another, and the enhancement, set forth in Finding 5, is substantially related to the qualifications, functions or duties of a real estate licensee because the crime involved the doing of an unlawful act with the threat (i.e. risk) of doing substantial

⁴ All statutory references are to the Business and Professions Code, unless otherwise noted.

injury to the person or property of another. (Cal. Code Regs., tit. 10, § 2910, subds. (a)(8).) A mortgage loan originator license endorsement holder is also a real estate licensee. (§ 10166.02.)

Cause exists to suspend or revoke respondent's real estate broker license and mortgage loan originator license endorsement pursuant to sections 490, subdivision (a), and 10177, subdivision (b), in that respondent has been convicted of a crime that is substantially related to the qualifications, functions or duties of a real estate broker and the holder of a mortgage loan originator license endorsement.

Disciplinary Action Against Mortgage Loan Originator License Endorsement

2. Section 10166.05, states in relevant part, that:

Notwithstanding any other provision of law, the commissioner shall not issue a license endorsement to act as a mortgage loan originator to an applicant unless the commissioner makes all of the following findings: . . .

(b)(1) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing, or at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. . . .

Section 10166.051, subdivision (b), provides that a mortgage loan originator license endorsement may be suspended or revoked if the endorsement holder fails at any time to meet the requirements of section 10166.05. Collectively, these sections provide that a license endorsement may be disciplined if the holder of the endorsement is convicted of a felony. Respondent has suffered a recent felony conviction and, therefore, he does not meet the requirements for issuance of a license endorsement.

Cause exists to suspend or revoke respondent's mortgage loan originator license endorsement pursuant to section 10166.051, subdivision (b), as that section interrelates with section 10166.05, by reason of the matters set forth in Findings 2 and 5.

Failure to Report Felony Charges

3. Section 10186.2, subdivisions (a)(1)(A) and (a)(2), provides that a licensee shall report to the bureau, within 30 days, the bringing of an indictment or information charging him with a felony. Under section 10186.2, subdivision (b), failure to report the felony charges to the bureau constitutes cause for discipline.

Respondent did not report the felony charges brought against him to the bureau within 30 days, as set forth in Finding 4. Cause exists to discipline respondent's real estate broker license and his mortgage loan originator license endorsement pursuant to section 10186.2, subdivision (b).

Rehabilitative Considerations

4. Respondent has the burden of demonstrating that he is sufficiently rehabilitated from his conviction so that it would not be contrary to the public interest to allow him to continue to perform the duties of a real estate broker. California Code of Regulations, title 10, section 2912, sets forth criteria to be used in evaluating the rehabilitation of a licensee. Some of the relevant criteria are: (1) the passage of not less than two years from the most recent conviction that is substantially related to the qualifications, functions or duties of a licensee of the bureau; (2) successful completion or early discharge from probation; (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; (4) payment of any fine imposed in connection with the conviction; (5) significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; and (6) a change in attitude from that which existed at the time of the commission of the criminal acts in question. (Cal. Code of Regs., tit. 10, § 2912, subs. (a), (e), (f), (g), (l), and (m).)

Respondent has met his burden of demonstrating sufficient rehabilitation to support his continued licensure as a real estate broker. Respondent has paid all of his fines, completed the first offender drinking driver course, and completed a substance abuse program. He is actively involved in his local community and his church. In particular, respondent has met one of the most important criteria of rehabilitation because respondent's attitude has changed since the incident. He has abstained from consuming alcohol since February 24, 2012. He recognizes the dangers of drinking while intoxicated, and he has told others about the possible consequences of drinking and driving.

It is noted that respondent is still on probation and it has not yet been two years since his conviction or his last consumption of alcoholic beverage. However, it is apparent that respondent has accepted personal responsibility for his conduct without regard to the terms of his probation. Even before his conviction, on March 6, 2012, he started alcohol treatment counseling. During his incarceration, he completed programs to foster his rehabilitation. Overall, respondent's rehabilitation has a solid foundation and it is promising. Also, in mitigation, he does not have a history of alcohol-related offenses, and he has had an unblemished disciplinary record for over 19 years as a real estate broker with a successful business. Respondent admitted to his offense and submitted persuasive evidence of his rehabilitation, including that he is an honest and trustworthy member of society. After considering all of the evidence, it is determined that it would not be against the public interest to allow respondent to hold a restricted real estate broker license subject to conditions, one of which is that he must continue to abstain from the use of alcohol.

Regarding respondent's mortgage loan originator license endorsement, his conviction is recent, and revocation of his license endorsement is the appropriate action to take at this time.

Cost Recovery

5. Pursuant to Business and Professions Code section 10106, the bureau may recover reasonable costs of the investigation and enforcement of a case. In the accusation, complainant requested costs. The bureau provided no evidence of such costs, and thus respondent shall not be ordered to pay costs.

ORDER

1. Individual Mortgage Loan Originator License Endorsement number 314496 issued to Edward Docksung Kang is revoked.

2. All licenses and licensing rights of respondent Edward Docksung Kang under the Real Estate Law, are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefore and pays to the bureau 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.

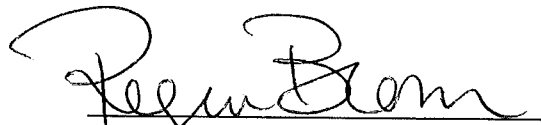
c. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate broker license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three years have elapsed from the effective date of this Decision.

d. Respondent shall notify the Commissioner in writing within 72
hours of any arrest by sending a certified letter to the
Commissioner at the Bureau 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.

e. Respondent shall abstain completely from the consumption of
alcohol.

f. Respondent shall comply with all terms of his criminal
probation.

DATED: October 3, 2013


REGINA J. BROWN
Administrative Law Judge
Office of Administrative Hearings