

1 BUREAU OF REAL ESTATE  
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**FILED**

JUL 15 2016

BUREAU OF REAL ESTATE

By B. Nicholas

8 BEFORE THE BUREAU OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) NO. H-11842 SF  
12 )  
13 KYLE P. ALGEO, ) STIPULATION AND AGREEMENT  
14 ) IN SETTLEMENT  
15 Respondent. ) AND DECISION AFTER REJECTION

16 It is hereby stipulated by and between Respondent KYLE P. ALGEO  
17 ("Respondent"), acting by and through his attorney of record, Josh S. Brownstein, and the  
18 Complainant, acting by and through Stephanie K. Sese, Legal Counsel for the Bureau of Real  
19 Estate ("Bureau"), as follows for the purpose of settling and disposing of the Accusation filed  
20 on April 27, 2015 in this matter:

- 21 1. On February 23, 2016, a formal hearing was held on the Accusation in  
22 accordance with the provisions of the Administrative Procedure Act ("APA") before  
23 Administrative Law Judge Michael C. Cohn ("ALJ Cohn") where, after evidence and  
24 testimony were received, the record was closed and the matter was submitted for decision.
- 25 2. On March 15, 2016, ALJ Cohn issued a Proposed Decision.
- 26 3. On April 14, 2016, the Commissioner rejected the Proposed Decision.
- 27 4. The parties wish to settle this matter without further proceedings.

1 5. Respondent, pursuant to the limitations set forth below, hereby admits that  
2 the factual allegations in the Accusation filed in this proceeding are true and correct and the  
3 Commissioner shall not be required to provide further evidence to prove such allegations.

4 6. It is understood by the parties that the Commissioner may adopt the  
5 Stipulation and Agreement and Decision After Rejection ("Stipulation and Agreement") as  
6 his decision in this matter thereby imposing the penalty and sanctions on Respondent's real  
7 estate license and license rights as set forth in the below Order. In the event the  
8 Commissioner, in his discretion, does not adopt the Stipulation and Agreement, the  
9 Stipulation and Agreement shall be void and of no effect. If that occurs, the Commissioner  
10 will proceed pursuant to Section 11517(c)(2)(E) of the California Government Code.

11 7. The Order or any subsequent Order of the Commissioner made pursuant to  
12 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further  
13 administrative or civil proceedings by the Bureau with respect to any matters which were not  
14 specifically alleged to be causes for the Accusation in this proceeding as admitted or  
15 withdrawn.

16 8. Respondent further understands that by agreeing to this Stipulation and  
17 Agreement, Respondent agrees to pay, pursuant to Section 10106 of the California Business  
18 and Professions Code ("Code"), investigative and enforcement costs which led to this  
19 disciplinary action. The amount of said costs, as ordered by ALJ Cohn, is \$1,874.20.

20 DETERMINATION OF ISSUES

21 By reason of the foregoing stipulations, admissions, and waivers, and solely  
22 for the purpose of settlement of the pending Accusation without further proceedings, it is  
23 stipulated and agreed that the following Determination of Issues shall be made:

24 The acts and/or omissions of Respondent KYLE P. ALGEO, as described in  
25 the Accusation, violated Sections 490 and 10177(b) (conviction of a crime) of the Code.

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ORDER

1. All licenses and licensing rights of Respondent KYLE P. ALGEO under the Real Estate Law (Part 1 of Division 4 of the Code) are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Code if Respondent makes application therefor 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 Code and to the following limitations, conditions, and restrictions imposed under 10156.6 of the Code:

2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Commissioner in the event of:

(a) Respondent's conviction (including by plea or nolo contendere) to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; and,

(b) The restricted license issued to Respondent shall be suspended prior to hearing by Order of the 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 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 137000, Sacramento, CA 95813-7000. 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.

1                   4. Respondent shall not be eligible to apply for the issuance of an  
2 unrestricted real estate license nor for removal of any of the conditions, limitations or  
3 restrictions of a restricted license until two (2) years have elapsed from the effective date of  
4 this Decision.

5                   5. Respondent shall, within nine (9) months from the effective date of this  
6 Decision, present evidence satisfactory to the Commissioner that Respondent has, since the  
7 most recent issuance of an original or renewal real estate license, taken and successfully  
8 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real  
9 Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition,  
10 Respondent's real estate license shall automatically be suspended until Respondent presents  
11 such evidence. The Commissioner shall afford Respondent the opportunity for hearing  
12 pursuant to the APA to present such evidence.

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

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

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

24                   7. Respondent shall pay the sum of \$1,874.20 for the Commissioner's cost,  
25 pursuant to Section 10106(a) of the Code, of the investigation and enforcement which led to  
26 this disciplinary action. Said payment shall be in the form of a cashier's check or certified  
27 check made payable to the Bureau of Real Estate. Said check must be received by the

1 Bureau prior to the effective date of the Order in this matter. All licenses and licensing rights  
2 of Respondent shall be indefinitely suspended unless or until payment is made in full.

3 6/15/16  
4 DATED

5 SKS  
STEPHANIE K. SESE, Legal Counsel

6 \*\*\*

7 I have read the Stipulation and Agreement in Settlement and Decision after  
8 Rejection. I understand that I am waiving rights given to me by the APA, (including but  
9 not limited to Sections 11521 and 11523 of the Government Code), and I willingly,  
10 intelligently, and voluntarily waive those rights, including the right to seek reconsideration  
11 and the right to seek judicial review of the Commissioner's Decision and Order by way of a  
12 writ of mandate.

13 6/10/16  
DATED

14 Kyle Algeo  
KYLE P. ALGEO, Respondent

15 \*\*\*

16 I have reviewed the Stipulation and Agreement in Settlement and Decision after  
17 Rejection as to form and content and have advised my client accordingly.

18 6/14/16  
DATED

19 Joshua S. Brownstein  
JOSHUA S. BROWNSTEIN,  
Attorney for Respondent

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21 The foregoing Stipulation and Agreement is hereby adopted as my Decision in  
22 this matter and shall become effective at 12 o'clock noon on.

23 AUG 05 2016

24 IT IS SO ORDERED

25 7/8/2016

26 REAL ESTATE COMMISSIONER

27 [Signature]

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FILED

APR 14 2016

BUREAU OF REAL ESTATE

By L. Frost

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	CalBRE No. H-11842 SF
	)	
KYLE P. ALGEO,	)	OAH No. 2015060136
	)	
Respondent.	)	

NOTICE

TO: KYLE P. ALGEO, Respondent, and JOSHUA S. BROWNSTEIN, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated March 15, 2016, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated March 15, 2016, 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 February 23, 2016, 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 February 23, 2016, at the Sacramento office of the Bureau of Real Estate unless an extension of the time is granted for good cause shown.

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

4                   DATED: 4/11/2016

5                   REAL ESTATE COMMISSIONER

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9                   WAYNE S. BELL

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BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of

KYLE P. ALGEO

Respondent.

Case No. H-11842 SF

OAH No. 2015060136

**PROPOSED DECISION**

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, on February 23, 2016, in Oakland, California.

Complainant Robin S. Tanner, Deputy Real Estate Commissioner of the State of California, was represented by Stephanie K. Sese, Counsel.

Respondent Kyle P. Algeo was present and was represented by Josh S. Brownstein, Attorney at Law.

The matter was submitted for decision on February 23, 2016.

**FACTUAL FINDINGS**

1. Respondent Kyle P. Algeo is licensed and has license rights under the Real Estate Law (Bus. & Prof. Code, § 10000 et seq.) as a real estate salesperson.
2. On January 30, 2013, respondent was convicted, on his plea of guilty, of a felony violation of Penal Code section 243, subdivision (d) (battery causing serious bodily injury). Imposition of sentence was suspended and respondent was placed on supervised probation for three years on conditions that included 216 days in county jail (with credit for 108 days already served and 108 days good behavior), completion of 60 hours of community service, abstinence from alcohol, submission to chemical testing for alcohol, successful completion of a residential treatment program, participation in other treatment, therapy or counseling programs as determined by the probation officer, and payment of fines and fees. Although the probationary conditions also included payment of restitution to the victim of respondent's battery as determined by the probation officer, no such restitution was ever ordered.



3. The incident that resulted in respondent's conviction occurred around 2:00 a.m. on July 2, 2012, when respondent and another man fought outside a bar in Sausalito. Respondent acknowledged that he was drunk. Both respondent and the other man suffered serious facial injuries.

4. The crime of which respondent was convicted is substantially related to the qualifications, functions and duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(8) (doing an unlawful act with the intent or threat of doing substantial injury to another person).

5. Respondent is 28 years old. He was first licensed as a real estate salesperson in 2007, when he was 20. Unsure he wanted to continue in the profession, respondent allowed his license to expire at the end of its four-year term, in October 2011. Respondent's license was in expired status at the time of his crime in July 2012 and his conviction in January 2013. Respondent did not engage in any real estate activities while his license was expired.

6. Respondent remained in jail from his arrest on July 2, 2012, until mid-August 2012, when he was freed on bond. He then participated in a 30-day alcoholism treatment program at Duffy's Drug and Alcohol Rehabilitation Center. As part of the program, respondent began attending AA meetings. During this time respondent also participated in five psychotherapy sessions for alcohol abuse related issues with a marriage and family therapist. He was returned to custody in October 2012 and remained in jail until December 12, 2012, when he was released to attend a residential alcohol treatment program.

Respondent entered the Salvation Army Lytton Adult Rehabilitation Center on December 17, 2012, and successfully completed Phase I of that program on June 30, 2013. According to a letter from Patrick Thompson, Lytton's intake coordinator, Phase I includes one-on-one counseling, alcohol and other drug abuse education, group therapy, spiritual counseling, Bible study, mandatory 12-step groups, eight weeks of anger management training, eight weeks of denial management, eight weeks of relapse prevention, re-entry groups and "work-therapy." Residents are breath-tested each time they return to the property and are randomly urine tested. Thompson certified that respondent "maintained an exemplary standard of hope, purpose and growth while attending Lytton, and . . . performed in excess of 960 hours of charitable service."

7. Respondent's sobriety date is July 3, 2012, the day following his arrest. Respondent recognizes he has a substance abuse problem and he continues to attend AA meetings. He currently attends meetings irregularly, "a couple of times a month."

8. After completing the Salvation Army residential program, respondent decided he wanted to return to real estate. He completed required continuing education courses in August and September 2013, and on October 2, 2013, submitted his application for renewal of his salesperson license. On that application respondent fully disclosed his January 30, 2013 conviction. Despite that disclosure, the bureau granted respondent's renewal application on October 10, 2013.

9. Business and Professions Code section 10186.2 requires a licensee to report to the bureau in writing within 30 days of being charged with a felony and/or with being convicted of a crime. Respondent concedes he did not do this – the first time he reported his conviction to the bureau was on his October 2013 renewal application. He testified, first, that while he knew he had the right to renew his license within two years of its expiration he did not think he had any obligation to report his conviction to the bureau since his license was expired; and second, because he was either in jail or a residential treatment program for most of the time between July 2, 2012, and June 30, 2013, the real estate profession was “off [his] radar.”

10. Respondent was on criminal probation from January 30, 2013, through January 30, 2016. Respondent performed well on probation. He never had a positive drug or alcohol test. He completed the required residential treatment program, anger management program, and community service. Because of his compliance he was transferred from a medium risk caseload to a low risk caseload on June 17, 2014. And on July 1, 2014, his conviction was reduced from a felony to a misdemeanor under Penal Code section 17, subdivision (b). In granting the motion for reduction over the objection of the district attorney, the court found that respondent “has taken significant strides to avoid similar behavior in the future.”

11. After his successful completion of probation, on February 18, 2016, respondent petitioned for dismissal of his conviction under Penal Code section 1203.4. At the time of hearing, that petition was pending.

12. Since late 2014 respondent has been employed full-time as a leasing manager at Climb Real Estate in San Francisco. Although his job primarily involves working with owners to secure tenants for their properties, he is beginning to transition into sales as well. Eugene Pak, the sales manager and director of business development at Climb, testified on respondent’s behalf and wrote a declaration in his support. Pak finds that respondent exhibits a high level of professionalism and knowledge, that he is highly regarded by other salespersons and staff members, and that he is friendly, pleasant and easy to get along with. Although aware of respondent’s crime, considering his positive working relationship with respondent Pak has no problem with respondent’s continued employment at Climb.

13. Concerning the incident that resulted in his conviction, respondent testified that it is something he will never forget. He said that he is “forever sorry for what happened,” thinks about it every day, and knows he will never do it again. He believes he is a changed man and he is “not that person anymore.”

#### *Costs*

14. The Bureau of Real Estate has incurred costs of \$1,874.20 in the investigation and enforcement of this matter. This amount consists of \$788.40 in investigative costs (12.7 hours) and \$1,085.80 in enforcement costs (12.2 hours). These costs are found to be reasonable.

## LEGAL CONCLUSIONS

1. Business and Professions Code sections 490 and 10177, subdivision (b), together provide that a real estate license may be suspended or revoked if the licensee has been convicted of a crime that is substantially related to the qualifications, functions and duties of a real estate licensee. By reason of the matters set forth in Factual Findings 2 and 4, cause for disciplinary action against respondent exists pursuant to those sections.

2. Business and Professions Code section 10177, subdivision (d), provides that a real estate license may be suspended or revoked for willfully disregarding or violating provisions of the Real Estate Law. As set forth in Factual Finding 9, Business and Professions Code section 10186.2 requires a licensee to report to the bureau in writing within 30 days of being charged with a felony and/or being convicted of a crime. Complainant contends that although respondent's license had expired, he still had "license rights" because he was within the two-year late renewal period of Business and Professions Code section 10201,<sup>1</sup> and that his failure to comply with section 10186.2 therefore establishes cause for discipline under section 10177, subdivision (b).

Respondent contends that the reporting requirements of section 10186.2 did not apply to him because he was no longer a licensee after his license expired, and that even if they did, he did not willfully violate that section because it was reasonable for him to believe that because his license had expired and he was not engaging in real estate activities, he had no obligation to report to the bureau.

3. The "holder" of an expired license within the meaning of Business and Professions Code section 10120 has the right to renew that license merely by filing a renewal application and paying late renewal fees, without having to qualify for licensure as a new applicant would. But it is not clear whether that person remains a "licensee" of the bureau and therefore subject to all the provisions of the Real Estate Law. Nor is it clear whether an individual with section 10120 "license rights" must meet the same requirements as a "licensee." But even presuming respondent remained subject to the reporting requirements of section 10186.2, it is determined that under the circumstances of this case no cause for discipline exists for his failure to comply with that section. Respondent's license had expired more than eight months before he was charged with a felony and about 14 months before he was convicted. During this time respondent had no plans to return to the field of real estate. It was entirely reasonable for him to believe, if he considered it at all, that he had no obligation to report his crime to the bureau. Further, when respondent did decide to return to real estate after completing his jail sentence and rehabilitation program, he fully reported his conviction on his renewal application. Respondent had no intent to deceive the bureau in any

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<sup>1</sup> "The holder of a license who fails to renew it prior to the expiration of the period for which it was issued . . . may renew it within two years from such expiration upon proper application and the payment of a late renewal fee . . ." (Bus. & Prof. Code, § 10201.)

way and his failure to comply with the provisions of section 10186.2 may not be considered a willful disregard of that section. No cause for disciplinary action was thereby established under Business and Professions Code section 10177, subdivision (b).

4. California Code of Regulations, title 10, section 2912, set forth criteria to be considered in evaluating the rehabilitation of a licensee who has been convicted of a crime. Respondent has demonstrated he has met many of those criteria: More than two years have passed since his conviction; he successfully completed probation; he has abstained from alcohol use for more than three years; he has paid the fines imposed upon conviction. Most importantly, respondent has demonstrated a change in attitude from that which existed at the time of his crime. His actions have had a major impact upon his life and he has changed because of them. He has completed alcohol and anger management programs, has continued his participation in AA, and is simply a different person from the one who committed a very serious crime. Considering all this, it is determined that it would not be against the public interest to permit respondent to remain licensed upon appropriate restrictions.

#### *Costs*

5. Business and Professions Code section 10106 provides that a licensee found to be in violation of the Real Estate Law may be ordered to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case. Cause exists under that section to require respondent to pay \$1,874.20, the reasonable costs of investigation and enforcement.

### ORDER

All licenses and licensing rights of respondent Kyle P. Algeo under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Bureau 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:

1. Conviction or Plea to a Crime

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 that is substantially related to respondent's fitness or capacity as a real estate licensee.

2. Violation of Law

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. Application for Unrestricted License

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 two years have elapsed from the effective date of this decision.

4. Notice to Employer

Respondent 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. Continuing Education Requirement

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.


6. Professional Responsibility Condition

Respondent shall, within six months from the effective date of this decision, take and pass the Professional Responsibility Examination administered by the bureau including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

7. Costs

Respondent shall, prior to the issuance of the restricted license and as a condition of the issuance of said restricted license, pay to the bureau \$1,874.20, representing the reasonable costs of investigation and enforcement. Alternatively, the Real Estate Commissioner or his designee may permit payment of these costs through a payment plan.

DATED: March 15, 2016

DocuSigned by:  
  
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MICHAEL C. COHN  
Administrative Law Judge  
Office of Administrative Hearings