

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE

JAN 30 2020

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
By B.N. Justice

* * *

In the Matter of the Accusation of:)	DRE No. H-12369 SF
)	
TEMITOPE SARAH SANUSI,)	OAH No. 2019050392.1
)	
Respondent.)	

DECISION

The Proposed Decision dated December 11, 2019, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted salesperson license is granted to Respondent.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

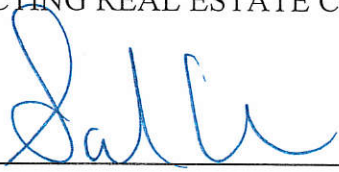
///
///
///
///
///

The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on FEB 20 2020.

IT IS SO ORDERED 1/28/20

SANDRA KNAU
ACTING REAL ESTATE COMMISSIONER



FILED

JAN 21 2020

DEPARTMENT OF REAL ESTATE
By B. Nicholas

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

TEMITOPE SARAH SANUSI, Respondent

Case No. H-12369 SF

OAH No. 2019050392.1

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter on November 13, 2019, in Oakland, California.

Kyle T. Jones, Counsel, represented the Department of Real Estate (Department). Mark Hostetter, Attorney at Law, represented the respondent Temitope Sarah Sanusi (respondent), who was present.

The record closed and the matter was submitted for decision on November 13, 2019.

FACTUAL FINDINGS

Jurisdictional Matters

1. Robin S. Tanner made the accusation in her official capacity as a Supervising Special Investigator of the State of California.
2. Temitope Sarah Sanusi (respondent) is presently licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (Code), as a real estate salesperson.

Convictions

3. On December 18, 2018, in the Superior Court of the State of California, County of Santa Clara, respondent was convicted of violating Vehicle Code section 23103, subdivision (a) (reckless driving), a misdemeanor and a crime that is substantially related to the qualifications, functions and duties of a real estate licensee. This conviction involved the use of alcohol. Respondent was driving a friend home on New Year's morning and was pulled over for having her high beams on. Her blood alcohol was .07 percent. Respondent was placed on court probation for two years, and ordered to pay fines and fees, and complete a first offender course. She has met all the terms and conditions of her probation to date and remains on probation until December 2020.

4. On November 2, 2017, in the Superior Court of the State of California, County of Santa Clara, respondent was convicted of violating Penal Code section 273.5 (corporal injury to a spouse or cohabitant), a misdemeanor and a crime that bears a substantial relationship to the qualifications, functions and duties of a real estate licensee. This conviction involved the use of alcohol. Respondent injured her spouse by

throwing a glass at him. Respondent was placed on three years formal probation. She was required to perform 60 hours of community service, complete a 16- week conflict class and a 52- week batterers program. She has met all the terms and conditions of probation to date and remains on probation until November 2020.

5. On March 13, 2019, a diligent search was made of the records of the Department relating to respondent's real estate salesperson license. No record or written notice was received for respondent notifying the Department of any arrest conviction, indictment or license disciplinary action. Respondent claims that she thought her attorney would inform the Department about her 2018 conviction. She claims she informed the Department of her 2017 conviction, but there is no evidence to support that claim.

COST RECOVERY

6. The Department has requested \$1,671.35 for costs of investigation and \$271.45 for costs of enforcement of this matter. The total requested is \$1,942.80. That amount is reasonable.

Respondent's Evidence

7. Respondent presented proof of completion of the Santa Clara County Domestic Violence Batterer's Program. She understands how to avoid confrontations.

8. Respondent presented a letter from her attorney who represented her in both her criminal cases. It did not appear to him that either of her convictions related to the ability to perform the functions and duties of her license. While these convictions do not involve dishonesty, they are substantially related to respondent's license.

9. Respondent's supervising broker testified at the hearing. He is aware of the convictions and is willing to supervise respondent on a restricted license. It should be noted that respondent did not inform him of her convictions. He became aware of the convictions after notification by the Department. He reviews her files and finds her to be knowledgeable and professional.

10. Respondent has made efforts toward rehabilitation. She is creating a stable environment for her son. She has 50/50 custody. She volunteers for her son's baseball team at school. She is involved in a prayer circle at her church. She took classes for her real estate license. While respondent still has not taken full responsibility for her actions, she has met all the requirements of her probation to date. She denies having a problem with alcohol and continues to drink socially. However, she does not drink and drive. Respondent has not requested a restricted license. However, it would not be against the public interest to grant respondent a restricted license.

LEGAL CONCLUSIONS

1. The Real Estate Commissioner (Commissioner) may take disciplinary action against a real estate license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 490, and 10177, subd. (b).) The criteria of substantial relationship are set forth in California Code of Regulations, title 10, section 2910. Respondent was convicted of two crimes in two years (reckless driving and injury to a spouse), and was on probation when she committed the second offense. (Findings 3, and 4.) These convictions are substantially related, because they involve conduct demonstrating a pattern of repeated and willful disregard of law and include multiple convictions for

crimes involving the consumption of alcohol. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10) & (11).) Cause exists under Business and Professions Code sections 490, subdivision (a)(1), and 10177, subdivision (b), to suspend or revoke respondent's license.

2. The Real Estate Commissioner may take disciplinary action against a real estate license if the licensee fails to notify the Department, in writing, of any arrest, conviction, indictment or license disciplinary action. Respondent failed to notify the Department of her convictions. (Finding 5). Cause for disciplinary action exists pursuant to Business and Profession Code section 10186.2 (failure to report, in writing, conviction within 30 days) and 10177, subdivision (d) (willful disregard of the Real Estate Law).

3. The Commissioner has requested payment of reasonable costs in the amount of \$1,942.80. (Finding 6). Business and Professions Code section 10106 authorizes the Real Estate Commissioner to recover in disciplinary proceedings its reasonable costs of investigation and enforcement. 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 costs sought pursuant to statutory provisions such as Business and Professions Code section 10106. These factors include: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate in light of the alleged misconduct.

Taking these factors into consideration, no cause to reduce costs has been established. Respondent will be ordered to pay the Department's investigation, and

enforcement costs, totaling \$1,942.80, pursuant to Business and Professions Code section 10106.

4. California Code of Regulations, title 10, section 2912, sets forth criteria for evaluating whether an applicant has been sufficiently rehabilitated to warrant licensure. Respondent has satisfied many of the criteria. One of respondent's convictions is two years old (passage of two years identified in section 2912, subdivision (a)(1)). Respondent has successfully met the terms and conditions of probation to date (§ 2912, subd. (e)). Respondent has a stable family life. (§ 2912, subd. (j)). Respondent pursued vocational education to obtain her real estate license. (§ 2912, subd. (k)). Respondent has established new and different friends through his involvement in her education and work. (§ 2912, subd. (i).) Respondent established through her testimony and the testimony of her broker, that she has made significant changes to her attitude and behavior since the time of her misconduct.

Complainant argued that respondent's application should be denied because of her questionable honesty. This argument is rejected. Respondent was candid and forthcoming about her past. She did not try to conceal during her testimony the most serious of her convictions, even though she has not taken full responsibility for injuring her spouse.

Respondent has established through her testimony and the testimony of her broker that she is a changed individual. Respondent has presented sufficient evidence of rehabilitation to justify the issuance of a restricted salesperson license.

ORDER

All licenses and licensing rights of respondent Temitope Sarah Sanusi 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 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:

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 which 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. Notification to Employing Broker

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 Department 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 Department 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.

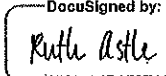
7. Reporting Condition

Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

8. Cost Recovery

Respondent Temitope Sarah Sanusi shall pay the Department costs associated with the investigation, and enforcement of this matter pursuant to Business and Professions Code section 10106, in the amount of \$1,942.80.

DATE: December 11, 2019

DocuSigned by:

2509251B8F3E40A...
RUTH S. ASTLE

Administrative Law Judge
Office of Administrative Hearings