

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:

ERIC GREGORY DONELSON,

Respondent.

) DRE No. H-12653 SF

) OAH No. 2023020761

FILED

SEP 26 2023

DEPARTMENT OF REAL ESTATE

By B. Nicholas

DECISION

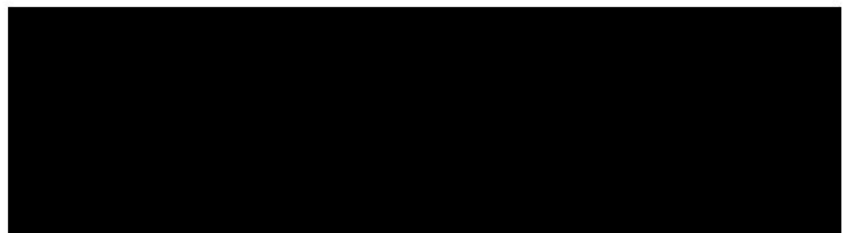
The Proposed Decision dated July 31, 2023, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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 OCT 17 2023.

IT IS SO ORDERED 9/25/23.

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER



FILED

AUG 29 2023

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

DEPARTMENT OF REAL ESTATE
By B. McWaters

In the Matter of the Accusation of:

ERIC GREGORY DONELSON, Respondent.

Agency Case No. H-12653 SF

OAH No. 2023020761

PROPOSED DECISION

Administrative Law Judge Sarah Sandford-Smith, State of California, Office of Administrative Hearings, heard this matter on July 3, 2023, by videoconference.

Real Estate Counsel Kyle T. Jones represented complainant Stephanie Yee, Supervising Special Investigator for the Department of Real Estate.

Respondent Eric Gregory Donelson represented himself and was present throughout the administrative hearing.

The record closed and the matter was submitted for decision on July 3, 2023.

FACTUAL FINDINGS

1. Respondent Eric Gregory Donelson is presently licensed under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate

salesperson. Respondent was first licensed as a salesperson on June 1, 2017. At the time of the hearing, respondent's license was active and was scheduled to expire on May 31, 2025.

2. On January 25, 2023, acting in her official capacity as Supervising Special Investigator for the Department of Real Estate (Department), complainant Stephanie Yee signed an accusation against respondent. The accusation alleges that respondent is subject to discipline for conviction of a substantially related crime and fraud or dishonest dealing, based on respondent's conviction for taking a vehicle without the consent of the owner. Respondent filed a timely notice of defense, and this hearing followed.

Criminal Conviction

3. On March 6, 2020, in the Superior Court of the State of California, County of Los Angeles, respondent was convicted, on his plea of no contest, of violating Vehicle Code section 10851, subdivision (a) (taking a vehicle without consent), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on probation for a period of 36 months, on terms and conditions that included performing 15 days of community labor, with credit for one day; staying away from the owner of the vehicle and another individual; enrolling in and completing a 52-week domestic violence treatment program; and paying restitution, fines and fees.

The incident underlying respondent's conviction occurred on October 15, 2019. Respondent had been in a dating relationship with a woman for over eight years. She ended the relationship and moved to Los Angeles from the home she had shared with respondent in Northern California. Respondent had the ability to track, and keyless access to, a Tesla that he had purchased with his ex-girlfriend. Respondent tracked the

Tesla to Los Angeles, then entered the vehicle to obtain some of his personal items that were left in the glove box. Respondent's ex-girlfriend observed respondent going through the car, and they began yelling at each other. Her boyfriend arrived, and respondent began yelling at him. Respondent subsequently left in his own vehicle and returned to Northern California. Respondent's ex-girlfriend called the police after respondent left.

Additional Evidence

4. Respondent testified in a sincere and credible manner regarding the incident of October 15, 2019. He stated he and his ex-girlfriend were involved in a "bad break up" and he wanted to retrieve sentimental items (gifts from his brother who had passed away) from the Tesla that they had previously shared.

5. Respondent still had the Tesla app on his phone, which he was able to use to track down and enter the vehicle.

6. While respondent was looking through the vehicle's glove box, his ex-girlfriend and her new boyfriend started yelling at him. Respondent stated that he "yelled, cussed, and was verbally aggressive" to both individuals, and then he left to return home.

7. When respondent returned home, he was upset and posted screenshots on Instagram that he should not have posted (the evidence did not establish the nature of the screenshots), and that is when his ex-girlfriend called the police.

8. Respondent completed his probation requirements, including completing the domestic violence treatment program, paying restitution, fines, and fees, and completing community service by working with at-risk youth after school. The

protective order was lifted in March or April 2023, and the conviction has been expunged.

9. Since the time of the incident underlying respondent's conviction, he has graduated college with a bachelor's degree in sociology and has worked in several positions in the non-profit sector, including as a housing locator for Hamilton Families, where he assisted individuals with Section 8 vouchers; and in the home preservation department for Habitat for Humanity, where he assisted senior citizens with their applications for home repair work. Respondent currently works for St. Vincent De Paul, finding housing for families experiencing homelessness.

10. Respondent expressed remorse for his conduct and stated that he has since learned to take responsibility for his conduct and to better control his emotions. Respondent stated that in retrospect, he should not have gone to Los Angeles to retrieve his belongings.

11. Respondent has no previous license discipline. Respondent has no other criminal convictions or arrests.

Costs

12. In connection with the investigation and prosecution of this accusation, the Department has incurred expenses of \$1,724.30. These expenses reflect \$1,430.30 in investigation costs and \$294 for prosecution costs. The costs are supported by certifications that detail the task performed, the time spent on each task, and the method of calculating the task, in compliance with the requirements of California Code of Regulations, title 1, section 1042. These costs are found to be reasonable pursuant to Business and Professions Code section 10106.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In an action seeking to impose discipline against the holder of a real estate license, the burden of proof is on complainant to establish the charging allegations by clear and convincing evidence. (*Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.)

Relevant Statutory and Regulatory Authority

2. Business and Professions Code sections 490 and 10177, subdivision (b), provide that the Real Estate Commissioner (Commissioner) may suspend or revoke a real estate license if the licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of a real estate licensee.

In California Code of Regulations, title 10, section 2910, the Commissioner has stated criteria for determining whether a crime or act is substantially related to the qualifications, functions, or duties of a real estate licensee. California Code of Regulations, title 10, section 2910, subdivision (a)(1), deems any act wherein the licensee fraudulently takes, obtains, appropriates or retains funds or property belonging to another person to be substantially related to the qualifications, functions, and duties of a real estate licensee. Respondent's misdemeanor conviction for taking a vehicle without consent, set forth in Factual Finding 3, is substantially related to the qualifications, functions, and duties of a real estate licensee under this section.

Cause exists for the Commissioner to suspend or revoke respondent's real estate salesperson license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b).

3. Business and Professions Code section 10177, subdivision (j), provides that the Commissioner may suspend or revoke a real estate license if the licensee has engaged in conduct that constitutes fraud or dishonest dealing. Respondent's misdemeanor conviction for taking a vehicle without consent constitutes cause for discipline under this section.

Disposition

4. An administrative proceeding such as this is not meant to punish a licensee, but rather to protect the public. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.)

5. California Code of Regulations, title 10, section 2912, sets forth the criteria for evaluating a licensee's rehabilitation. The relevant criteria to be considered include: the passage of more than two years since commission of the act or offense; restitution; successful completion of probation; payment of fines and monetary penalties; new and different social and business relationships from those at the time of the offense; stability of family life; significant or conscientious involvement in community or church programs designed to provide social benefits or ameliorate social problems; and a change in attitude from that which existed at the time of the offense.

It has been over three and a half years since the conduct underlying respondent's criminal conviction. He has successfully completed probation, paid restitution, fines, and fees, the protective orders issued as a result of his conduct have been lifted, and his conviction has been expunged. Since the incident, respondent graduated from college and embarked on a career in the non-profit sector, in

positions that serve his community. Respondent demonstrated sincere remorse, and credibly testified regarding the lessons he has learned from the incident.

6. Given the facts of this case, imposing revocation or license restrictions would constitute punishment. Taking into account respondent's lack of prior discipline, the nature of the circumstances surrounding his conviction, respondent's credible explanation and rehabilitation, the public will be adequately protected by issuing a public reproof to respondent.

Costs

7. Business and Professions Code section 10106 authorizes the Department to recover its reasonable costs of investigation and enforcement in disciplinary proceedings. As set forth in Factual Finding 12, the Department established by competent evidence that it has incurred \$1,724.30 in reasonable costs in connection with the investigation and enforcement of this matter.

8. In *Zuckerman v. State Bd. Of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth the standards by which a licensing agency must exercise its discretion to reduce or eliminate cost awards to ensure that it does not deter licensees with potentially meritorious claims from exercising their right to an administrative hearing. The court held that a licensing agency may not assess the full costs of investigation and prosecution when a licensee, who has committed some misconduct, has used the hearing process to obtain a dismissal of other charges or a reduction in the severity of the discipline imposed. (*Id.*, at p. 45.) The licensing agency must consider the licensee's "subjective good faith belief" in the merits of his or her position and whether the licensee has raised a "colorable challenge" to the proposed discipline. The agency must also consider whether the licensee will be "financially able

to make later payments." Finally, the agency may not assess the full costs of investigation and enforcement when it has conducted a disproportionately large investigation to prove that the licensee engaged in "relatively innocuous misconduct." (*Ibid.*)

Consideration has been given to all the *Zuckerman* factors. Respondent is employed and presented no evidence that he is unable to pay the costs. Accordingly, Respondent should pay full cost recovery pursuant to Business and Professions Code sections 10106.

ORDER

This Decision constitutes the public reproof by the Commissioner of respondent Eric Gregory Donelson. Respondent Eric Gregory Donelson shall pay the costs of investigation and enforcement in the amount of \$1,724.30 within 90 days from the effective date of this Decision, unless a payment plan is approved by the Department.

DATE: 07/31/2023



SARAH SANDFORD-SMITH

Administrative Law Judge

Office of Administrative Hearings