

FILED

OCT 23 2024

DEPT. OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of:	)	DRE No. H-12705 SF
	)	
KATHLEEN ANN VIERRA,	)	OAH No. 2024030742
	)	
Respondent.	)	

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DECISION

The Proposed Decision dated July 26, 2024, 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 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 (the Department) 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.

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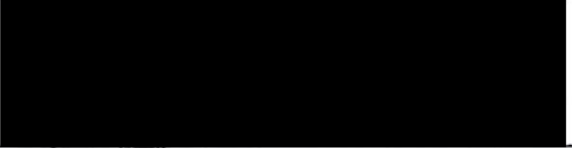
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The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached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

This Decision shall become effective at 12 o'clock noon on November 12, 2024.

IT IS SO ORDERED

10/17/2027  
Chika Sunquist  
REAL ESTATE COMMISSIONER

By:   
Marcus L. McCarther  
Chief Deputy Real Estate Commissioner

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

**In the Matter of the Accusation Against:**

**KATHLEEN ANN VIERRA, Respondent.**

**Agency Case No. H-12705 SF**

**OAH No. 2024030742**

**PROPOSED DECISION**

Administrative Law Judge Frances M. Valdez, State of California, Office of Administrative Hearings, heard this matter on July 2 and 9, 2024, by videoconference.

Counsel Diane Lee represented complainant Stephanie Yee, Supervising Special Investigator, Department of Real Estate, State of California.

Attorney Frank M. Buda represented respondent Kathleen Ann Vierra, who was present.

The record closed and the matter was submitted for decision on July 9, 2024.

**FACTUAL FINDINGS**

1. Respondent Kathleen Ann Vierra was issued Real Estate Salesperson License Number 02063320 on May 22, 2018. Respondent's license expired on May 21,

2022, and was renewed on December 20, 2023. The license is scheduled to expire on December 19, 2027. Respondent has no prior history of license discipline.

2. On January 29, 2024, complainant Stephanie Yee signed the accusation in her official capacity as Supervising Special Investigator, Department of Real Estate (Department), State of California. The accusation alleges that respondent is subject to discipline based on convictions for vandalism and unlawful fighting, and failure to notify the Department. Respondent filed a notice of defense and this hearing followed.

### **Criminal Convictions and Underlying Conduct**

3. On May 28, 2021, a felony complaint was filed in the Superior Court of California, County of Santa Clara, charging respondent with one felony count of robbery in the second degree and a misdemeanor count of vandalism. On November 3, 2022, respondent was convicted, on a plea of no contest, of violating Penal Code section 594, subdivision (b)(2)(a), vandalism, a misdemeanor. Imposition of sentence was suspended and respondent was placed on informal probation for one year on terms including serving nine days in jail and a stay away order.

The underlying offense took place on May 25, 2021. Respondent and her boyfriend went to a liquor store and attempted to pay for items with respondent's credit card. The transaction was not completed and they left the store without paying for the items. The store clerk confronted respondent and her boyfriend resulting in a physical altercation. They returned inside the store, threw display shelves of merchandise onto the ground, and then left the scene.

At hearing, respondent testified that she cannot remember the underlying offense because she was heavily intoxicated when the crime occurred. During the course of her criminal case, she watched the store surveillance footage. The police

report states that the surveillance footage shows respondent punching the store clerk in the face. Respondent admitted to pushing the store clerk. Respondent disputed that she punched the store clerk and pointed to the store clerk's statement to police in which he claimed respondent attempted to punch him in the face, but he blocked her with his arms. The surveillance video was not offered into evidence at hearing. Regardless, respondent engaged in a physical altercation with the store clerk.

4. On November 3, 2022, in the Superior Court of California, County of Santa Clara, respondent also was convicted, on a plea of no contest, of violating Penal Code section 415, subdivision (1), unlawful fighting in a public place, a misdemeanor. Imposition of sentence was suspended and respondent was placed on formal probation for three years on terms including performing 20 hours of volunteer work and attending a 52-week domestic violence class. As of the time of hearing, respondent had completed her volunteer work and 37 domestic violence classes. Respondent's formal probation is scheduled to expire on November 3, 2025.

The underlying offense occurred on October 31, 2021, when Santa Clara Police Department officers responded to a noise complaint at a residence respondent shared with her boyfriend. Upon arrival, police officers observed both respondent and her boyfriend to be under the influence of alcohol. The entire house was in disarray as though items had been thrown. A police officer observed bruises and lacerations on the side of respondent's face that appeared to be from an earlier incident. When police officers were speaking with respondent, her boyfriend walked toward her with his hands out and asked her to comply with officer questioning. Respondent then punched her boyfriend in the face with a closed fist, which did not cause any injury.

At hearing, respondent testified that she and her boyfriend had been arguing and her boyfriend was destroying items in their home. Respondent admitted to "taking a swing" at her boyfriend because she was intoxicated and impulsive.

### **Failure to Notify Department**

5. Respondent did not notify the Department within 30 days after the filing of felony charges against her, or within 30 days after either of her two misdemeanor convictions.

6. Respondent testified that she was unaware she needed to report her felony charges or her convictions. Additionally, respondent's license had expired by the time of her convictions. Respondent conceded that she should have been more knowledgeable of her obligation as a real estate licensee. Respondent acknowledged it was her responsibility to notify the Department and feels foolish for failing to do so. Respondent wishes she had been more proactive and handled the situation differently.

### **Respondent's Additional Evidence**

7. Respondent began her career in real estate part time, while engaged in other full-time employment. While holding an active license, she has been involved in over 200 sales transactions. She has held open houses, attended inspections, met with appraisers, and shown properties. Respondent estimates she has had approximately five listings and seven completed transactions during her career. She now works full-time as a real estate salesperson.

8. Respondent submitted her license renewal application on October 30, 2023. At hearing she testified that she disclosed both her convictions on her renewal application; however, upon examining the renewal application she realized she

disclosed only the unlawful fighting conviction. Respondent explained that her omission was unintentional and she had sought advice from her probation officer who told her how to complete the form.

9. Since December 20, 2023, respondent has worked for Exit Realty Consultants under real estate broker Kris Klair. She advised Klair of her convictions, her failure to report, and the accusation. Klair agreed to supervise respondent closely in her role with his company. Klair wrote a letter confirming this information and he supports respondent retaining her real estate license.

### **ALCOHOL ABUSE AND RECOVERY**

10. Respondent met her boyfriend in high school when they briefly dated. They reconnected in October 2020 and moved in together shortly thereafter. When living together, respondent discovered he was angry, violent, and irritable. Respondent acknowledged having a problematic relationship with alcohol prior to October 2020, but it became worse during this relationship. They would drink continuously for a week, stop drinking for a period of time, and then go back to drinking. Respondent reported that she was a victim of domestic violence and that he hit her, kicked her, punched holes in walls, broke objects, locked her out of their home, and took her phone away so she could not call for help. In July 2022, criminal charges were brought against respondent's boyfriend for inflicting corporal injury on respondent. Respondent contemplated leaving the relationship; however, she had low self-esteem and could not afford to move out. He died due to alcohol-related causes on July 11, 2023.

11. Respondent considers herself an alcoholic who cannot drink because her life becomes unmanageable. Respondent has addressed her alcoholism by regularly

attending Alcoholics Anonymous (AA) meetings and enrolling in rehabilitation programs.

12. Respondent attended a rehabilitation program called Pathways to Recovery. The program involved speaking with a counselor and group meetings. The program helped respondent realize that she had a problem and needed to make changes.

13. Respondent voluntarily entered a residential rehabilitation program at New Hope Rehabilitation (New Hope) on July 28, 2023. Respondent successfully completed 30 days of treatment in which she gained knowledge about the disease model of addiction and internal and external triggers to drink. Respondent attended 12-step meetings and completed relapse prevention planning. After completing the treatment program, respondent moved away from Santa Clara. Respondent has been sober since late July 2023 and feels she is sober today because of New Hope.

14. Respondent described "how good" it feels to be sober. She created a support network and is dedicated to bettering herself physically and mentally. Respondent now has friendships that do not involve drinking. Instead she exercises, hikes, walks her dog, and spends time outdoors with her friends. Respondent is ashamed of her conduct while she was drinking and knows the only way to prevent it from happening again is to completely abstain from alcohol. Respondent recognized that she was in an unhealthy relationship and has since learned about establishing boundaries. She has learned from her mistakes and will stay steadfast in what she believes is right. Respondent has more confidence now and is a stronger person.

15. In August or September 2023, respondent ran in a fentanyl awareness run.



16. Respondent attends an online weekly Bible study group. Respondent started attending in January 2024 and wants to better educate herself on the Bible and its teachings.

17. On June 5, 2024, respondent's mother suffered a stroke. Respondent lives with her mother and stepfather and has been assisting them. Respondent prepares meals, grocery shops, and assists her mother with rehabilitation. She finds that working in real estate allows her flexibility to care for her family members, while still earning an income.

### **CHARACTER WITNESS**

18. Mojisola Sosimi testified at hearing and wrote a letter. Sosimi is a licensed real estate broker. Sosimi has known respondent professionally and personally for over five years. They met while working at a real estate brokerage firm and became friends. Sosimi sent respondent links to online streaming of church services, which respondent would watch and thank Sosimi for sharing with her. Sosimi believes respondent is an honest person who loves real estate. Sosimi attested to respondent's remorse for her crimes, and to her wish they had never happened and will never reoccur. Sosimi has never observed respondent act intoxicated, unprofessionally, or violently. Sosimi recounted an instance where respondent assisted a difficult client who easily would become upset. Respondent was patient with the client and was able to complete the real estate transaction. Sosimi was unaware of respondent's alcohol problem until recently. Sosimi believes that respondent has changed her life since she attended New Hope. She believes respondent is an asset to the real estate industry and is deserving of a second chance. Sosimi supports respondent keeping her real estate license.

## **LETTERS OF SUPPORT**

19. Edgar J. Meneses wrote a letter and is a licensed real estate agent. Meneses has known respondent for six years and attested to her honesty, integrity, work ethic, and commitment to making amends for her mistakes. Meneses is aware of respondent's convictions and failure to report. Meneses noted that respondent has taken full responsibility for her actions and has made a concerted effort to change her life. Meneses supports respondent keeping her real estate license and she has his highest recommendation without reservation.

20. Juan Carlos Bustillos wrote a letter and is a licensed real estate agent. Bustillos has known respondent since 2018 both professionally and personally. Bustillos is aware of the allegations in the accusation and reported that respondent expressed deep regret and remorse for her actions, which he found to be genuine and heartfelt. Bustillos described respondent as honest, ethical, and professional. He has never observed respondent act unprofessionally, dishonestly, violently, or aggressively. Bustillos supports respondent retaining her real estate license.

21. Margaret Demorest is respondent's aunt and wrote a letter. Demorest is aware of respondent's convictions and the accusation. Demorest described respondent as experiencing personal challenges but has since worked tirelessly to turn her life around. Demorest believes respondent is sorry for her past actions and that she will not repeat such behavior. Demorest noted respondent attended a rehabilitation program, engaged in community service, attended counseling, and participated in personal development programs. Demorest believes respondent deserves to keep her real estate license since she has shown she is capable of learning from her past and making positive changes.

22. John Demorest wrote a letter and is respondent's uncle. Demorest was surprised to learn of respondent's convictions because he saw her as a reliable person. Demorest reported that respondent has expressed shame and embarrassment for her actions. Demorest attested to respondent's sobriety and that she has learned from her past. He supports respondent keeping her real estate license.

23. Floyd Bryant wrote a letter and is respondent's stepfather. Bryant was shocked by respondent's convictions because her behavior was completely out of character. Bryant reported that respondent has taken significant steps to address the issues that led to her convictions. Bryant noted respondent's passion for real estate. Bryant described the significant caretaking role respondent has taken with her mother and himself. Bryant described respondent as a person of exceptional character and integrity. Bryant supports respondent retaining her real estate license.

24. Ann Bryant is respondent's mother and wrote a letter. Bryant described respondent as compassionate, responsible, and empathetic. Bryant is aware of respondent's convictions and that she has worked diligently on her recovery and personal development. Bryant described respondent as a talented, ethical, and professional real estate agent. Bryant supports respondent retaining her real estate license.

### **CONTINUING EDUCATION**

25. In 2023, respondent completed 45 hours of required continuing education courses to renew her license, including courses in the fundamentals of commercial real estate, conducting open houses, marketing and advertising, ethics, risk management, trust fund handling, fair housing, implicit bias, business planning,

agency law, real estate finance, sexual harassment, environmental awareness, and title and escrow.

## **Costs**

26. The Department incurred \$492.35 in investigation costs and \$726 in enforcement costs to prosecute this action, for a total costs claim of \$1,218.35. The above costs are supported by certifications that describe the tasks performed, time spent on each task, and method of calculating the cost, in compliance with California Code of Regulations, title 1, section 1042. In the absence of any evidence to the contrary, the above costs are found to be reasonable.

## **LEGAL CONCLUSIONS**

1. The burden of proof is on the Department to show cause for discipline, by clear and convincing evidence. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457; Evid. Code, § 500.) The burden is on respondent to show rehabilitation, by a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

## **Causes for Discipline**

2. The Real Estate Commissioner (Commissioner) may suspend or revoke 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, subd. (a), 10177, subd. (b)(1).) Respondent's convictions for vandalism and unlawful fighting (Factual Findings 3-4) are substantially related because they demonstrate a pattern of repeated and willful disregard of the law. (Cal. Code Regs.,

tit. 10, § 2910, subd. (a)(10).) Accordingly, cause for discipline exists under Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b)(1).

3. The Commissioner may suspend or revoke a real estate license if the licensee has willfully disregarded or violated the Real Estate Law. (Bus. & Prof. Code, § 10177, subd. (d).) Real estate licensees are required to report to the Department within 30 days the bringing of a criminal complaint, information, or indictment charging a felony, or a conviction for any felony or misdemeanor. (Bus. & Prof. Code, §10186.2, subds. (a)(1)(A) & (B), (a)(2). Failure to make such a report constitutes cause for discipline. (Bus. & Prof. Code, § 10186.2, subd. (b).) Respondent failed to report to the Department the filing of a felony charge against her, or her convictions. (Factual Finding 5.) Accordingly, cause exists to suspend or revoke respondent's real estate license under Business and Professions Code sections 10177, subdivision (d), and 10186.2, subdivision (b).

### **Determination of Discipline**

4. The purpose of administrative proceedings regarding professional licenses is not to punish the applicant or licensee, but to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786; *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 768.) The legislature intends that real estate licensees will be honest, truthful, and worthy of the fiduciary obligations they will bear. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.)

5. The Commissioner has established criteria to be used in evaluating the rehabilitation of a licensee with a criminal record. (Cal. Code Regs., tit. 10, § 2912.) The relevant criteria to be considered include: the time elapsed since the commission of the offense and conviction; restitution; expungement; successful completion of

probation; payment of fines and monetary penalties; correction of business practices; new and different social and business relationships from those at the time of the offense; stability of family life and fulfillment of parental responsibilities; significant and 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.

6. Respondent's convictions are serious and occurred less than two years ago. Respondent remains on formal probation for her unlawful fighting conviction. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [rehabilitation efforts while on probation are accorded less weight, because rehabilitation cannot be completely assessed until respondent is no longer under threat of violation].) However, respondent has not had any previous license discipline or other criminal offenses. The commission of the offenses occurred in 2021. It appears that respondent's offenses were a result of a combination of her alcohol abuse and relationship with her boyfriend. Since the time of her convictions, respondent has become sober, is no longer in a relationship, and has moved away from her previous environment. Respondent voluntarily entered a rehabilitation program and she has maintained sobriety for approximately one year. Respondent is remorseful for her conduct and understands the wrongfulness of her actions. Respondent has a stable family life and is caregiving for her mother. Respondent has a support network of friends and family she can rely on to help her stay sober. Respondent is engaged in her community through church, bible study, and participating in a charity run. Respondent has new and different relationships now than at the time of her offenses. Respondent regrets not informing the Department of her felony charges and her convictions. Overall, respondent has demonstrated a change in attitude since the time of her offenses,

which of the many rehabilitation criteria is "arguably the most important in predicting future conduct." (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.)

Respondent has demonstrated sufficient rehabilitation from her convictions and the public will be adequately protected by the order below, which allows respondent to retain her real estate license on a restricted basis for three years.

## **Costs**

7. Business and Professions Code section 10106 authorizes the Department to recover its reasonable costs of investigation and enforcement in disciplinary proceedings if the licensee is found to have violated the Real Estate Law. As set forth in Legal Conclusions 2 and 3, respondent violated the Real Estate Law. As set forth in Factual Finding 26, complainant has reasonably incurred \$1,218.35 in actual costs in connection with the investigation and enforcement of this matter.

8. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth standards for determining whether costs should be assessed in the particular circumstances of each case, to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. None of these considerations support a reduction in the Department's cost recovery in this case.

## **ORDER**

All licenses and licensing rights of respondent Kathleen Ann Vierra under the Real Estate Law are revoked; provided, however, that 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 restricted license within 90 days from the effective date of this Decision.

The restricted license issued to respondent shall be subject to all the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions, and restrictions imposed under authority of section 10156.6. of that Code:

1. 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. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the Commission that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulation of the Real Estate Commissioner, or conditions attaching to the restricted license.
3. 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 three years have elapsed from the effective date of this Decision.



4. 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. 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 the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

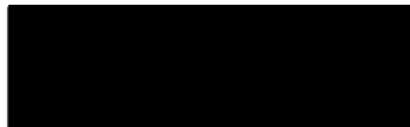
6. Respondent shall notify the Real Estate Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime 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.

7. 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 appropriate to protect the public interest. Such reports may include, but are not limited to, periodic summaries of relevant information concerning each real estate transaction in which respondent engaged during the period covered by the report.

8. Respondent must pay the Department of Real Estate's costs for the investigation and enforcement of this action under Business and Professions Code section 10106, in the amount of \$1,218.35. Respondent shall be permitted to pay these costs in a payment plan approved by the Department, with payments to be completed no later than three months prior to the end of the restriction on her license.

DATE: 07/26/2024



FRANCES M. VALDEZ

Administrative Law Judge

Office of Administrative Hearings