

FILED

OCT - 8 2009

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY: James A. [Signature]

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In the Matter of the Accusation of)	No. H-35671 LA
STEPHEN C BUSH,	L-2009050107
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Respondent.)
_____))

DECISION

The Proposed Decision dated September 8, 2009, 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 license is granted to Respondent.

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 OCT 28 2009.

IT IS SO ORDERED 10-5-09

JEFF DAVI
Real Estate Commissioner

[Signature]

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

In the Matter of the Accusation of

STEPHEN C. BUSH;

Respondent.

Case No. H-35671 LA

OAH No. 2009050107

PROPOSED DECISION

Nancy Beezy Micon, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on July 29, 2009, in Los Angeles, California.

James Demus, Staff Counsel, represented Deputy Real Estate Commissioner Robin Trujillo (complainant).

Respondent represented himself.

Oral and documentary evidence was received at the hearing. The record was held open until August 3, 2009, for the submission of additional evidence by respondent, and until August 10, 2009, for complainant to raise objections to the receipt of the evidence. Respondent timely submitted a facsimile cover sheet, dated July 29, 2009, with attached investigative report, account of events, and reference letters, which documents are collectively identified and marked as Exhibit A. Complainant objected to the documents in Exhibit A on hearsay grounds. Complainant's objections are identified and marked as Exhibit 6. Exhibit A is admitted into evidence as administrative hearsay.

The record was closed and the matter was submitted for decision on August 10, 2009.

FACTUAL FINDINGS

Jurisdiction and Licensure

1. On February 9, 2009, complainant, in her official capacity, filed the Accusation against respondent. On March 23, 2009, respondent filed the Notice of Defense on Accusation. This action then ensued.

2. Respondent has held a real estate broker license since June 6, 2006 without any disciplinary action taken against him by the Department of Real Estate, until this action.

Respondent's real estate broker license was in effect at all times relevant to this matter. It expires on June 5, 2010, unless reissued.

3. Complainant's Accusation sets forth respondent's criminal conviction as grounds to revoke or suspend his real estate broker license and license rights pursuant to Business and Professions Code sections 490 and 10177, subdivision (b).

Single Conviction Alleged as Basis for Discipline

4. a. On May 27, 2008, following a guilty plea, the Orange County Superior Court convicted respondent, in case number 07HF1667, of violating Vehicle Code sections 23153, subdivision (a) (driving under the influence causing bodily injury), and 23153, subdivision (b) (driving with a blood alcohol level in excess of .08 causing bodily injury), both felonies.

b. The Court suspended imposition of sentence and placed respondent on formal probation for three years on terms and conditions that included payment of \$630 in fines and fees, payment of restitution, as determined by respondent's probation officer, service of 120 days in a work furlough program, suspension of his driver's license for one year, completion of a first offender's driving under the influence counseling program, and submission to random chemical testing.

c. The facts underlying the conviction are that on July 27, 2007, respondent drove his truck while intoxicated and it hit another car. Instead of waiting at the accident scene or leaving contact information, respondent drove away. The driver of the other car had already gotten out of his car to inspect damage when respondent drove away. He chased respondent's vehicle. When the man caught up to respondent's truck and leaned inside to take hold of respondent's steering wheel, respondent punched the man's hands. The man suffered a broken wrist. In explaining the crime to the Department, respondent wrote: "When the guy started chasing me, I thought it was best to just get out of there. I knew that I would need to look for a job soon. I did not want a DUI as I had been drinking. I was marginal (.09), but Newport is notorious for strict enforcement. I pride myself on being a stand-up guy, but in this incident, regretfully, I was not, only exacerbating the situation. . . . I took the deal that I didn't 100% feel was just. I was certainly wrong in this case, but the bodily injury was a defensive act."

d. Respondent's conviction is substantially related to the qualifications, functions, and duties of a real estate salesperson by reason of California Code of Regulations, title 10, section 2910, subdivisions (a)(4) and (a)(8). The crime for which respondent was convicted involved the doing of an unlawful act with the intent or threat of doing substantial injury to the person or property of another. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) As an adult, respondent is presumed to understand that driving under the influence of alcohol created, at the very least, the threat of substantial injury to others. Moreover, respondent's actions did result in injury to another person. Respondent's decision to flee the scene of the crime indicates deceit and a lack of integrity, qualities deemed by the Legislature to bear on

one's fitness and qualification to be a real estate licensee. (Cal. Code Regs., tit. 10, § 2910, subds. (a)(8); *Golde v. Fox* (1979) 98 Cal.App.3d 167; *Harrington v. Dept. of Real Estate* (1989) 214 Cal.App.3d 394, 402.)

Rehabilitation and Mitigation

5. On September 11, 2008, respondent completed the three-month first offender's driving under the influence counseling program ordered by the sentencing court. Respondent is still in the process of paying the court-ordered fines, fees, and restitution. The Department of Motor Vehicles reinstated respondent's driving privileges. Respondent's probation is scheduled to end in May 2011.

6. Respondent no longer drinks alcohol. He credibly testified that his wife suffers from ulcerated colitis, which prevents her from drinking alcohol, and that respondent decided, after the events leading to his conviction, to stop drinking altogether.

7. Respondent regrets his actions greatly. He is embarrassed by what he did. If he were in the same situation today, he would stop his car and exchange information.

8. Respondent is 38 years old. He is married and has a three-year old son. He received a Bachelor of Arts degree from California State University in Long Beach in 1996. In 2004, he received a Masters in Business Administration from Pepperdine University. Respondent's work has focused on sales. From 2002 to 2004, he worked as an outside salesperson for Cingular Wireless. He worked for financial and mortgage companies between 2004 and 2006. In June 2006, respondent was a branch owner for a company called HouseTech. He closed the branch in September 2007. Since June 2008, respondent has been a self-employed sales contractor for a company called MDF Instruments. Respondent is not currently working as a real estate broker. He would like to retain his real estate license to help friends and family with loans and real estate transactions.

9. Respondent submitted 21 letters, written by friends, family, and business associates, in support of his good character and to show the crime was an isolated incident. The letters were written in connection with the criminal conviction. Respondent's real estate colleagues describe him as professional, caring, and hard working.

10. The evidence shows the criminal conduct took place during a period of extreme stress for respondent. Respondent's wife provided the following explanation for her husband's criminal conduct: "We have recently been going through some money problems with me not working and as he is in the mortgage business. We have also had some difficult personal times; on top of my illness, we recently had to deal with a miscarriage. His thoughtlessness [referring to the July 27, 2007 events] couldn't have come at a worse time, but I can't help but think that the stress of the past year had something to do with it. [¶] . . . [¶] It's been almost a month since the incident, and I can honestly say he has been very remorseful, regretful, and repentant. I hope the court shows mercy, because he really is a

good person, good father, and loving husband. We, as a family, have been under much stress, but we need his support financially and emotionally.”

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend respondent’s real estate broker license, pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), for his felony driving under influence conviction for crimes substantially related to his real estate broker license, as set forth in factual finding number 4, and legal conclusion numbers 2 through 10.

2. Business and Professions Code section 490, subdivision (a), states in pertinent part:

[A] board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

3. Business and Professions Code section 10177 states in pertinent part:

The commissioner may suspend or revoke the license of a real estate licensee . . . who . . . has done any of the following:

[¶] . . . [¶]

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

4. California Code of Regulations, title 10, section 2910 states, in pertinent part:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime . . . the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of

the Department within the meaning of Section 480 and 490 of the Code if it involves:

[¶] . . . [¶]

(4) The employment of . . . deceit . . . to achieve an end.

[¶] . . . [¶]

(8) Doing of any unlawful act . . . with the intent or threat of doing substantial injury to the person or property of another.

5. Respondent's entry of the guilty plea in his criminal case is conclusive evidence of guilt upon which the administrative law judge must rely. To hold otherwise would impose upon administrative boards extensive, time-consuming hearings aimed at re-litigating criminal charges which had already culminated in final judgments of conviction. Regardless of respondent's motives for entering the plea, a guilty plea constitutes an admission of each element of the crime charged. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

6. The objective of a disciplinary proceeding is to protect the public, the licensed profession or occupation, maintain integrity, high standards, and preserve public confidence in real estate professionals. (*Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Clerici v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1030-1031.) As cause exists for discipline against respondent's license, respondent bears the burden of establishing his reformation. (*Martin v. Alcoholic Beverage Control Appeals Bd.* (1950) 52 Cal.2d 259, 264-265.)

7. Criteria have been developed by the Department to evaluate the rehabilitation of a licensee who has committed a crime. These criteria, found at California Code of Regulations (CCR), title 10, section 2912, are summarized as follows:

- Subdivision (a), passage of at least 2 years since the substantially related conviction;
- Subdivision (b), restitution to any person who suffered monetary loss;
- Subdivision (c), expungement of the conviction;
- Subdivision (d), expungement of the requirement to register as a sex offender;
- Subdivision (e), completion of, or early discharge from, the criminal probation;
- Subdivision (f), abstinence from drugs or alcohol that contributed to the crime;
- Subdivision (g), payment of any criminal fines or penalties;
- Subdivision (h), correction of business practices causing injury;
- Subdivision (i), new and different social and business relationships;
- Subdivision (j), stability of family life;
- Subdivision (k), enrollment in or completion of educational or training courses;
- Subdivision (l), significant involvement in community, church or private programs for social betterment; and

Subdivision (m), change in attitude from the time of conviction to the present, evidenced by: testimony of the licensee and others, including family members, friends, or others familiar with his previous conduct and subsequent attitudes and behavior patterns, or probation or parole officers or law enforcement officials; psychiatric or therapeutic evidence; and absence of subsequent convictions.

8. A review of those criteria applicable to the facts of this case reveals that, although more than two years have passed since the events that led to the conviction, less than two years have passed since the conviction itself. (Cal. Code Regs., tit. 10, § 2912, subd. (a).) Respondent is still in the process of paying the court-ordered fines and restitution payments. The conviction has not been expunged. (Cal. Code Regs., tit. 10, § 2912, subds. (b), (c) and (g).) Respondent completed the first-offender's driving under the influence counseling program. He has abstained from consuming alcohol since the time of the underlying incident. (Cal. Code Regs., tit. 10, § 2912, subd. (f).) Respondent also has a stable family life. (Cal. Code Regs., tit. 10, § 2912, subd. (j).) There was no evidence that respondent has ever been involved in other criminal activity before this one isolated incident. It is also noted that he has not violated the law again. (Cal. Code Regs., tit. 10, § 2911, subd. (m)(5).) Lastly, respondent established that he had a significant change in attitude from that which existed at the time of the conduct that led to his conviction. (Cal. Code Regs., tit. 10, § 2912, subd. (m).) He admits his poor judgment. The evidence shows respondent was experiencing extreme stress when the events occurred and that his actions were uncharacteristic for him.

9. Rehabilitation is a qualitative determination, not quantitative. A case outcome does not depend upon a mathematical computation of the number of criteria that have been met by a respondent. The factors set forth in California Code of Regulations, title 10, section 2912 are indicators that a person has changed his or her way and is, therefore, unlikely to re-offend. No one factor alone – in fact, not all of them together – is determinative. An assessment must be made based on the totality of the circumstances of each case.

10. Here, respondent has learned from this experience, he has no other convictions apart from this one isolated incident, and no prior record of discipline against his license. Following this single episode, respondent has abstained from drinking alcohol. There was no evidence of a pattern of drunk driving or criminal activity. Respondent's colleagues find him to be honest and trustworthy. Complete revocation would thus be unduly harsh. Respondent demonstrated mitigation and rehabilitation sufficient to conclude that it would not be against the public interest to allow him to hold a probationary real estate broker license.

ORDER

All licenses and licensing rights of respondent Stephen C. Bush 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 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:

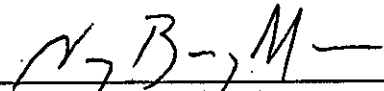
1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

2. 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. 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 issuance of this Decision.

4. 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.

DATED: September 8, 2009



Nancy Beezy Micon
Administrative Law Judge
Office of Administrative Hearings

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DEPARTMENT OF REAL ESTATE

By *Jana B. Olm*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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In the Matter of the Accusation of)	No. H-35671 LA
STEPHEN C. BUSH,)	<u>A C C U S A T I O N</u>
Respondent.)	

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against STEPHEN C. BUSH a.k.a. Stephen Christopher Bush, Steve Christopher Bush, Steven Christopher Bush, Stephen Christophe Bush, ("Respondent") alleges as follows:

1.

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

2.

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the

1 California Business and Professions Code ("Code"), as a real
2 estate broker.

3 3.

4 On or about May 27, 2008, in the Superior Court of
5 California, County of Orange, in case no. 07HF1667, Respondent
6 was convicted of violating California Vehicle Code Sections
7 23153(a) (driving under the influence causing bodily injury) and
8 23153(b) (driving with blood alcohol .08 or more causing bodily
9 injury). Both of these crimes were felonies. Said crimes bear
10 a substantial relationship under Section 2910, Title 10, Chapter
11 6, California Code of Regulations to the qualifications,
12 functions or duties of a real estate licensee.

13 4.

14 The crimes of which Respondent was convicted, as
15 described in Paragraph 3 above, constitute cause under Sections
16 490 and 10177(b) of the Code for the suspension or revocation of
17 the license and license rights of Respondent under the Real
18 Estate Law.

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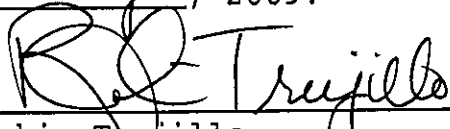
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all the licenses and license rights of
5 Respondent, STEPHEN C. BUSH, under the Real Estate Law (Part 1
6 of Division 4 of the Business and Professions Code) and for such
7 other and further relief as may be proper under other applicable
8 provisions of law.

9 Dated at Los Angeles, California
10 this 28 day of January, 2009.

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12 _____
13 Robin Trujillo
14 Deputy Real Estate Commissioner

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25 cc: STEPHEN C. BUSH
26 Robin Trujillo
27 Sacto.