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DEPARTMENT OF REAL ESTATE
BY: [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) DRE Case No. H-35757 LA
ANDREW JOHN KISH,) OAH Case No. L-2009050108
Respondent.)

DECISION AFTER REJECTION

Mark E. Harman, Administrative Law Judge ("ALJ") Office of Administrative Hearings, State of California, heard this matter on August 4, 2009 in Los Angeles, California.

James A. Demus, Counsel for the Department of Real Estate ("Department"), represented Maria Suarez, Deputy Real Estate Commissioner ("Complainant").

Bentley Stansbury III, Attorney at Law, represented ANDREW JOHN KISH ("Respondent"), who was present and testified at hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 4, 2009. On September 8, 2009, the ALJ issued a Proposed Decision which I declined to adopt as my Decision herein.

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1 Pursuant to Section 11517(c) of the Government Code of the State of California,
2 Respondent was served with notice of my determination not to adopt the Proposed Decision of
3 the ALJ along with a copy of said Proposed Decision. Respondent was notified that I would
4 decide the case upon the record, the transcript of proceedings held on August 4, 2009, and upon
5 written argument offered by Respondent and Complainant. Respondent submitted argument on
6 February 1, 2010. Complainant submitted argument on December 17, 2009.

7 I have given careful consideration to the record in this case, including the
8 transcript of proceedings of August 4, 2009. I have also considered the arguments submitted by
9 Respondent and by Complainant. The following shall constitute the Decision of the Real Estate
10 Commissioner ("Commissioner") in this proceeding:

11 FINDINGS OF FACT

12 1. Complainant filed the Accusation in her official capacity on March 9, 2009.
13 Respondent timely submitted a Notice of Defense, which contained a request for a hearing.

14 2. Respondent is licensed by the Department as a real estate broker. He has no
15 other record of discipline.

16 3. On August 29, 2006, in the Superior Court of the State of California, County
17 of Los Angeles, in case number 6SY06638, Respondent was convicted of violating Penal Code
18 Section 537, subdivision (a) (obtaining services without paying with intent to defraud), a
19 misdemeanor. The crime involves a dishonest act, and under California Code of Regulations,
20 title 10, Section 2910, subdivision (a) (8), is substantially related to the qualifications, functions
21 and duties of a real estate licensee. Respondent was placed on three years summary probation,
22 subject to terms and conditions which included payment of fines, fees, restitution and
23 assessments in the sum of \$472.00. Respondent has paid these amounts. He attempted to obtain
24 an order of early termination, but was turned away because, "the court was crowded."
25 Nonetheless, his probation was scheduled to be completed in 2009.

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1 4. Respondent testified at hearing about the facts and circumstances leading to his
2 conviction. On July 15, 2006, Respondent and a friend, Tony Mc Devitt ("Mc Devitt") had
3 dinner together in Manhattan Beach. They took a taxicab to dinner from Respondent's home.
4 On the return trip, Respondent's friend agreed to pay the cab fare. For some reason, Respondent
5 got out of the cab about one-half block from his residence, and his friend continued on. When
6 Mc Devitt reached Respondent's residence, he got out of the cab and left without paying the fare.
7 Later that night, police officers located and arrested Mc Devitt, and Respondent subsequently
8 was also cited.

9 5. Respondent was not arrested, but he received a citation to appear in court.
10 Respondent maintains that he was not present for, and did not observe, Mc Devitt's actions that
11 led to their convictions. He proffered a letter from Mc Devitt, which was received in evidence at
12 hearing as administrative hearsay, which corroborates Respondent's contention. Respondent did
13 not explain why he pled to the charge. However, the ALJ also found that it did not appear that
14 Respondent and his friend conspired to defraud the taxicab driver. The ALJ did find that at the
15 very least, Respondent exercised poor judgment without being sure his friend would pay the fare.
16 Respondent implied that alcohol may have contributed to his conduct, though he does not believe
17 he has an alcohol problem.

18 6. Respondent testified that he works as a financial counselor for a non-profit
19 agency assisting consumers build their credit, develop budgets and avoid the foreclosure of their
20 homes. As a result of his hard work with consumers, he testified that he has become a trusted
21 resource within a HUD-approved housing counseling agency. He submitted a character
22 reference from Shirin Sarkawi, owner of Fair Community Lending Service and Save the
23 American Dream, a non-profit credit counseling company. She has worked with Respondent for
24 over three years and states that she has seen the general concern he has for the financial well
25 being and stability of the members of her organizations. Respondent testified that in 2009, he
26 was certified by the National Foundation for Credit Counseling as a consumer credit counselor;
27 that he also has been recognized as a "Certified consumer interviewer on the Fair Credit

1 Reporting Act," by the Consumer Data Industry Association. Respondent testified that after the
2 incident, he was hired to be part of the on-site property management team at his residence.

3 7. Respondent testified that, in the past few years, he has become an uncle four
4 times; that he has focused his free time on building his relationships with these children; and that
5 he has also been in a committed relationship with his girlfriend for the past three years. She
6 wrote a letter attesting to his good character and strong work ethic.

7 8. In his proposed decision, the ALJ found that that at hearing Respondent did
8 not seem to express remorse. Subsequent to hearing, in his Argument after Rejection,
9 Respondent submitted a letter in which he emphasized his remorse for his misconduct, which he
10 describes as a one-time lapse in judgment. Specifically, Respondent acknowledged that in
11 violating Penal Code Section 537(a), he, "not only wronged another professional [the taxicab
12 driver] simply trying to do her job, but also failed to meet the required fiduciary responsibility a
13 licensed broker must hold with all members of the public." He states that he also recognizes that,
14 "this type of behavior does not reflect the community standards of justice, honesty or good
15 morals." In terms of other indicia of rehabilitation, Respondent states that he does not, "lead a
16 life which promotes this behavior." Respondent states that he no longer spends time in drinking
17 environments which encourage the abuse of alcohol, and does not spend time with individuals
18 who do not conduct themselves in the utmost professional manner at all times.

19 9. The criteria to be taken into consideration in weighing an applicant's
20 rehabilitation are set forth in Title 10, Chapter 6 of the California Code of Regulations,
21 Regulation 2912. Applied to the facts of this case, those factors reveal the following:

22 (a) More than three years have passed since Respondent's conviction. This is
23 Respondent's only conviction.

24 (b) Respondent completed payment of restitution, fees and fines.

25 (c) Respondent's conviction has not been expunged.

26 (d) Regulation 2912 (d) does not apply.

27 (e) Respondent completed probation more than six months ago.

1 (f) Respondent states that he curtails his alcohol use, and avoids establishments
2 that promote alcohol abuse.

3 (g) Respondent states that he has paid all fines imposed by the court relating to
4 his conviction.

5 (h) In terms of correction of business practices leading to his conviction,
6 Respondent's conduct leading to his conviction was not directly related to his business practices.
7 However, he states that he recognizes the import of maintaining honesty and integrity in his
8 dealings with the public and honors the fiduciary relationship he holds with his clients. He states
9 that he recognizes that he wronged another professional "simply trying to do her job."

10 (i) Respondent states that, since the conviction, he has taken courses to further his
11 knowledge and credentials as a financial educator.

12 (j) Respondent states that, since the conviction, he has entered into and
13 maintained a long term relationship with his girlfriend; he has become an uncle to four children;
14 and strives to be an active participant in their lives and a role model for them.

15 (k) Respondent states that he has become a Certified Financial Counselor through
16 the National Foundation for Consumer Credit, and a Certified Consumer Credit Report
17 Interviewer. He states that he is an on-site property manager at a 20 unit apartment complex.

18 (l) Respondent's states that he works as a financial educator includes providing
19 consumer education in finance, debt management and foreclosure avoidance. He states that he
20 participates in his church.

21 (m) In his recent letter to the Department urging adoption of the ALJ's Proposed
22 Decision, Respondent disclosed that he has been battling cancer for the past three years, which,
23 he states, has led him to adhere to a strict physical and dietary program to rehabilitate his body.
24 Respondent says that he has also shifted his priorities to offer the best he has spiritually,
25 professionally and emotionally to his loved ones and members of his community.

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1 10. Respondent has met several of the Criteria of Rehabilitation, but his
2 expression of remorse came only after the hearing and rejection of the ALJ's proposed decision.

3 11. Respondent's violation of Section 537(a) involves either "intent to defraud,"
4 the use of "false pretenses," or absconding with the "intent not to pay," all of which are dishonest
5 acts. Honesty and integrity are qualities which bear on the fitness, qualifications, functions and
6 duties of a real estate licensee.

7 CONCLUSIONS OF LAW

8 1. Cause exists to suspend or revoke Respondent's real estate broker license
9 pursuant to Business and Professions Code Sections 490 and 10177 (b), due to Respondent's
10 conviction of a crime of dishonesty which is substantially related to the qualifications, functions
11 and duties of a real estate licensee pursuant to Title 10, Chapter 6 of the California Code of
12 Regulations ("Regulations"), Regulation 2910 (a) (8).

13 2. The Real Estate Law and the disciplinary procedures provided for in the Real
14 Estate Law are designed to protect the public and to achieve the maximum protection for the
15 purchasers of real property and those dealing with real estate licensees. Honesty and truthfulness
16 are among the attributes necessary for applicants to qualify for a real estate license. (*Business*
17 *and Professions Code Section 10152*). The Legislature intended to ensure that real estate
18 licensees will be honest, truthful and worthy of the fiduciary responsibilities which they will
19 bear. (*Ring v. Smith* (1970) 5 Cal.App.3d 197, 205; *Golde v. Fox* (1976) 98 Cal.App.3d 167,
20 177; *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) Real estate
21 licensees act as fiduciaries in their dealings with the public. Clients rely on the licensee's
22 integrity in representing them, disclosing important facts about the properties he or she is privy
23 to, and holding money and other personal property in a fiduciary capacity.

24 3. While the ALJ opined that Respondent's misconduct is unlikely to recur, and
25 is unlikely to transfer to a professional context, it is inconsistent to hold that Respondent's crime
26 is substantially related to the duties of a licensee, yet later conclude that the crime "seems
27 unlikely to transfer to the usual professional situations." The purpose of the Real Estate Law is

1 to protect the public. That being the case, public protection requires at least some continued
2 additional minimal supervision over Respondent's licensed activities.

3 ORDER

4 WHEREFORE, THE FOLLOWING ORDER is hereby made:

5 All licenses and licensing rights of Respondent ANDREW KISH under the Real
6 Estate Law are revoked; provided, however, a restricted real estate broker license shall be
7 issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if
8 Respondent makes application therefore and pays to the Department of Real Estate the
9 appropriate fee for the restricted license within 90 days from the effective date of this Decision.

10 The restricted license issued to Respondent shall be subject to all of the provisions of Section
11 10156.7 of the Business and Professions Code and to the following limitations, conditions and
12 restrictions imposed under authority of Section 10156.6 of that Code:

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

17 2. The restricted license issued to Respondent may be suspended prior to
18 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the
19 Commissioner that Respondent has violated provisions of the California Real Estate Law, the
20 Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching
21 to the restricted license.

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

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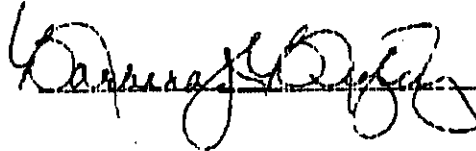
1 4. Respondent shall, within nine (9) months from the effective date of this
2 Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has,
3 since the most recent issuance of an original or renewal real estate license, taken and
4 successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of
5 the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this
6 condition, the Commissioner may order the suspension for the restricted license until the
7 Respondent presents such evidence. The Commissioner shall afford Respondent the
8 opportunity for a hearing pursuant to the Administrative Procedure Act to present such
9 evidence.

10 This Decision shall become effective at 12 o'clock noon on

MAR 23 2010

11 IT IS SO ORDERED

12 JEFF DAVI
13 Real Estate Commissioner

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FILED

OCT 20 2009

DEPARTMENT OF REAL ESTATE
BY: *James B. Olson*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

ANDREW JOHN KISH,

Respondent.

No. H-35757 LA

L-2009050108

NOTICE

TO: ANDREW JOHN KISH, Respondent, and BENTLEY STANSBURY, III, his counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated September 8, 2009, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated September 8, 2009, is attached 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 August 4, 2009, 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 August 4, 2009, at the Los

1 Angeles office of the Department of Real Estate unless an extension of the time is granted for
2 good cause shown.

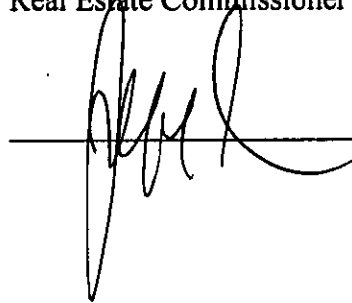
3 Written argument of Complainant to be considered by me must be submitted
4 within 15 days after receipt of the argument of Respondent at the Los Angeles office of the
5 Department of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: _____

10-13-09

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8 JEFF DAVI
Real Estate Commissioner

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

In the Matter of the Accusation Against:

ANDREW JOHN KISH,

Respondent.

Case No. H-35757 LA

OAH No. 2009050108

PROPOSED DECISION

This matter was heard by Mark E. Harman, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on August 4, 2009.

James A. Demus, Counsel for the California Department of Real Estate (Department), represented Maria Suarez (Complainant).

Bentley Stansbury III, Attorney at Law, represented Andrew John Kish (Respondent).

Complainant seeks to discipline Respondent's broker's license based on his 2006 conviction for willfully obtaining the services of a taxicab with the intent to defraud. Respondent has offered evidence of mitigating circumstances and subsequent rehabilitation.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 4, 2009.

FACTUAL FINDINGS

1. Complainant, a Deputy Real Estate Commissioner, filed the Accusation in her official capacity on March 9, 2009. Respondent filed a Notice of Defense on March 23, 2009, and this matter ensued.

2. At all relevant times, Respondent has maintained a real estate broker's license, number 01360771, under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code¹). This license will expire on February 22, 2013, unless renewed.

¹ All further references are to the Business and Professions Code, unless specified otherwise.

3. On August 29, 2006, in the Superior Court of California, County of Los Angeles, in case no. 6SY06638, Respondent was convicted, upon his plea of nolo contendere, of violating Penal Code section 537, subdivision (a),² obtaining services without paying with the intent to defraud, a misdemeanor. This crime involves a dishonest act, and under California Code of Regulations, title 10, section 2910, subdivision (a)(8), is substantially related to the qualifications, functions, and duties of a real estate licensee.

4. Imposition of sentence was suspended and Respondent was placed on summary probation for a period of three years under certain terms and conditions, including payment of fines, fees, restitution, and assessments in the sum of \$472. Respondent has paid these amounts. He recently attempted to obtain a court order for early termination of his probation, but was turned away because "the court was crowded."

5. The facts and circumstances surrounding Respondent's conviction are derived solely from Respondent's testimony, since Complainant's evidence concerning the events was limited to Respondent's plea and conviction. In the evening of July 15, 2006, Respondent and a friend, Tony McDevitt (McDevitt), had dinner together in Manhattan Beach. They took a taxicab from Respondent's residence in Redondo Beach to the restaurant; afterward, on their return trip, Respondent asked McDevitt to pay the cab fare. Approximately one-half block from his residence, Respondent exited the taxicab, ostensibly to call his girlfriend on his cell telephone. McDevitt continued riding in the taxicab. When he reached Respondent's residence, he exited the taxicab without paying the fare and fled down the street. Later that night, Redondo Beach Police Department (RBPd) officers located and arrested McDevitt. He provided the police officers with Respondent's name.

6. Respondent was not arrested that night. He only received a citation to appear in court. Respondent maintained that he had not been present for, nor had he observed,

² Penal Code section 537, subdivision (a), provides in relevant part as follows:

"Any person who obtains any food, fuel, services, or accommodations at a hotel, inn, restaurant, boardinghouse, lodginghouse, apartment house, bungalow court, motel, marina, marine facility, autocamp, ski area, or public or private campground, without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at an hotel, inn, restaurant, boardinghouse, lodginghouse, apartment house, bungalow court, motel, marina, marine facility, autocamp, or public or private campground by the use of any false pretense, or who, after obtaining credit, food, fuel, services, or accommodations, at an hotel, inn, restaurant, boardinghouse, lodginghouse, apartment house, bungalow court, motel, marina, marine facility, autocamp, or public or private campground, absconds, or surreptitiously, or by force, menace, or threats, removes any part of his or her baggage therefrom with the intent not to pay for his or her food or accommodations is guilty of a public offense punishable as follows: [¶] (1) If the value of the credit, food, fuel, services, or accommodations is four hundred dollars (\$400) or less, by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the county jail for a term not exceeding six months, or both."

McDevitt's actions that led to their convictions. He proffered a letter purportedly signed by McDevitt, which was received in evidence as administrative hearsay, and which corroborates Respondent's contention. Respondent did not explain why he pled to the charge, nor did he express remorse; however, under the totality of circumstances, it does not appear that Respondent and McDevitt conspired to defraud the taxicab driver.

7. At the very least, Respondent exercised poor judgment when he exited the taxicab without substantial assurance that his friend would pay the fare. Respondent implied that alcohol could have been a factor leading to the incident.³ He stated that he has "curtailed" his alcohol consumption, although he does not believe he has an alcohol problem.

8. In the past few years, Respondent has become an uncle four times. He has focused his free time on building his relationships with these children. Respondent has been in a committed relationship with his girlfriend for the past three years. She wrote a letter attesting to his good character and strong work ethic.

9. Respondent works as a financial educator, offering mortgage and credit counseling to consumers on behalf of non-profit organizations. His work includes presenting at public workshops such topics as: information for first time home buyers; mysteries of credit reporting; how to budget; and how to avoid identity theft. Shirin Sharkawi, owner of Fair Community Lending Service and Save the America Dream, has worked with Respondent for over three years. Through Respondent's involvement with her companies, she has seen the general concern he has for the financial well being and stability of the members of her organizations.

10. Recently, Respondent was certified by the National Foundation for Credit Counseling as a consumer credit counselor. He also has been recognized as a "certified consumer interviewer on the Fair Credit Reporting Act" by the Consumer Data Industry Association. After the incident, Respondent was hired to be part of the on-site property management team at his residence, along with his girlfriend.

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend Respondent's real estate broker's license under section 10177, subdivision (b), in conjunction with section 490, for conviction of a crime, as set forth in factual finding number 3. Respondent's crime is substantially related to the qualifications, functions, and duties of a real estate licensee.⁴

³ Less than 24 hours before the incident, Respondent had been arrested by RBPB officers on a sidewalk near his residence for being drunk in public. (Exhibit 3.)

⁴ (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

2. The Department has developed criteria pursuant to Business and Professions Code section 482, subdivision (b), for the purpose of evaluating the rehabilitation of a licensee against whom discipline is sought on account of a crime committed by the licensee. These criteria, found at California Code of Regulations, title 10, section 2912, are in pertinent part as follows:

Subdivision (a) -- Passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.);

Subdivision (b) -- Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee;

Subdivision (c) -- Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action;

Subdivision (d) -- Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code;

Subdivision (e) -- Successful completion or early discharge from probation or parole;

Subdivision (f) -- Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol;

Subdivision (g) -- Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license;

Subdivision (h) -- Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted;

Subdivision (i) -- New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question;

Subdivision (j) -- Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction;

Subdivision (k) -- Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement;

Subdivision (l) -- Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; and

Subdivision (m) -- Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

(1) Testimony of the applicant;

(2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns;

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to [the licensee's] social adjustments;

(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances; and

(5) Absence of subsequent felony or misdemeanor convictions that reflect an inability to conform to societal rules when considered in light of the conduct in question.

3. Respondent has established some of the Department's criteria for demonstrating his rehabilitation. More than two years have lapsed since Respondent's conviction, yet his probation expired only very recently. He has paid his criminal fines, fees, and restitution. He has the support of his girlfriend and an employer, and has modified his lifestyle to some degree. He has pursued additional training to become certified to provide mortgage and credit counseling to consumers. The evidence did not show that Respondent has suffered any other convictions subsequent to the incident in question. Respondent denies committing most of the elements of his crime, although this should not be held against him in this matter, since artificial expressions of contrition are not required to establish rehabilitation. (See *Calaway v. State Bar* (1986) 41 Cal.3d 743, 747-748; *Hall v. Committee of Bar Examiners* (1979) 25 Cal.3d 730, 744-745.)

4. Respondent's greatest contention is that he is innocent of the charge upon which he pled nolo contendere;⁵ regardless, his conviction stands as conclusive evidence of his guilt of the offense charged. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.) The grounds for discipline are present because he suffered a conviction, which cannot be undone. The evidence at least demonstrates that Respondent bears less culpability than his cohort in crime; while this is not an excuse, a reasonable interpretation of the evidence, under the totality of the circumstances, suggests that Respondent's misconduct arose from poor judgment in the context of abusing alcohol on a social occasion.

5. The Department's primary concern is that the public not be exposed to a substantial risk of harm from a licensee who has engaged in dishonest conduct. Even under the worst case scenario, Respondent's bad behavior seems unlikely to transfer to the usual professional situations or to arise in the conduct of any licensed activities. Because of the unlikelihood of a recurrence of this misconduct, it is not necessary to impose restrictions on Respondent's license in order to assure protection of the public safety and interest.

ORDER

The accusation is dismissed.

DATED: September 8, 2009



Mark Harman
Administrative Law Judge
Office of Administrative Hearings

⁵ In fact, it is peculiar that he was found guilty of a charge that does not involve in any way the misappropriation of services from a taxicab driver or owner.

Sacto
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Los Angeles, California 90013-1105

Telephone: (213) 576-6982
(Direct) (213) 576-6910

FILED
MAR - 9 2009
DEPARTMENT OF REAL ESTATE

James B. Demus

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-35757 LA
ANDREW JOHN KISH,)	<u>A C C U S A T I O N</u>
Respondent.)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against ANDREW JOHN KISH, ("Respondent") alleges as follows:

1.

The Complainant, Maria Suarez, 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 California Business and Professions Code ("Code"), as a real estate broker.

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3.

On or about August 29, 2006, in the Superior Court of California, County of Los Angeles, in case no. 6SY06638, Respondent was convicted of violating California Penal Code Section 537(a) (willfully obtaining accommodations with intent to defraud), a misdemeanor. Said crime involves moral turpitude and bears a substantial relationship under Section 2910, Title 10, Chapter 6, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

4.

The crime of which Respondent was convicted, as described in Paragraph 3 above, constitutes cause under Sections 490 and 10177(b) of the Code for the suspension or revocation of the license and license rights of Respondent under the Real Estate Law.

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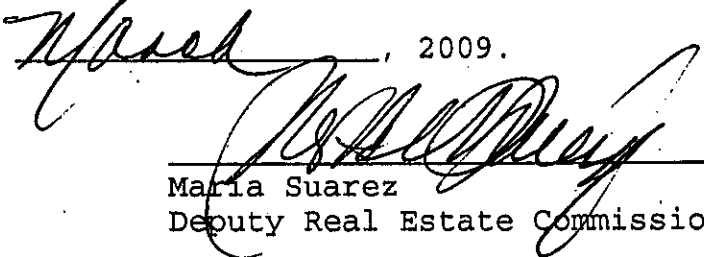
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all the licenses and license rights of
5 Respondent, ANDREW JOHN KISH, 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 5th day of March, 2009.

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13 Maria Suarez
14 Deputy Real Estate Commissioner
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25 cc: ANDREW JOHN KISH
26 Maria Suarez
27 Sacto.