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FILED

AUG 08 2014

BUREAU OF REAL ESTATE

By Norma Sims

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of) CalBRE No. H-39179 LA
RHONDA JOHAN GRAHAM,) OAH No. 2013120532
Respondent.)
_____)

DECISION

The Proposed Decision dated June 23, 2014, 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 AUG 28 2014.

IT IS SO ORDERED 7/31/2014

REAL ESTATE COMMISSIONER



Wayne S. Bell

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RHONDA JOHAN GRAHAM,

Respondent.

DRE No. H-39179 LA

OAH No. 2013120532

PROPOSED DECISION

Administrative Law Judge Gloria A. Barrios, heard this matter on May 20, 2014, in Los Angeles, California.

James R. Peel, Counsel for the Bureau of Real Estate (Bureau) represented Maria Suarez (Complainant), Deputy Real Estate Commissioner.

Rhonda Johan Graham (Respondent) was present and represented herself.

The record remained open for submission of character reference letters from Respondent and for any response thereto from Complainant. Respondent submitted five letters which were marked collectively as Respondent's Exhibit B and admitted as administrative hearsay. There was no objection from Complainant. The record was closed and the matter was submitted for decision on June 17, 2014.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity.
2. Respondent has been licensed as a real estate salesperson since August 1, 2005. Respondent's license expired on April 4, 2014.
3. On June 18, 2007, Respondent was convicted, after her plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (a), driving under the influence (DUI), a misdemeanor (*People v. Rhonda Johan Graham*, Superior Court of the State of California, County of San Bernardino, case number TV1056640.) Imposition of sentencing was suspended, and Respondent was placed on summary probation for three years on terms and conditions, including that she pay fines, fees and restitution totaling \$1,630. The court also ordered Respondent to complete a four-month DUI first offender program and serve two days in jail with credit for two days served. Respondent completed the first offender DUI program and paid all fines, fees and restitution. The probation is over.

4. On March 24, 2009, Respondent was convicted, after her plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (a), DUI, a misdemeanor. (*People v. Rhonda Johan Graham*, Superior Court of the State of California, County of San Bernardino, case number TV1801509.) Imposition of sentencing was suspended, and Respondent was placed on summary probation for three years on terms and conditions, including that she pay fines, fees and restitution totaling \$1,738. The court also ordered Respondent to complete a multiple offender DUI program and serve thirty days in jail with credit for two days served. Respondent completed the multiple offender DUI program and paid all fines, fees and restitution. The probation is over.

5. On May 11, 2011, Respondent was convicted, after her plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b), excessive alcohol in blood, a misdemeanor. (*People v. Rhonda Johan Graham*, Superior Court of the State of California, County of San Luis Obispo, case number M000453384.) Imposition of sentencing was suspended, and Respondent was placed on summary probation for three years on terms and conditions, including that she pay fines, fees and restitution totaling \$2,550. The court also ordered Respondent to complete a second offender DUI program and serve 180 days in jail with credit for one day served. Respondent completed the second offender DUI program and paid all fines, fees and restitution. The probation was recently completed.

6. On November 28, 2011, Respondent was convicted, after her plea of guilty, of violating Vehicle Code section 23152, subdivision (b), excessive alcohol in blood, a felony. (*People v. Rhonda Johan Graham*, Superior Court of the State of California, County of San Bernardino, case number FVA1101727.) Imposition of sentencing was suspended, and Respondent was placed on summary probation for three years on terms and conditions, including that she pay fines, fees and restitution totaling \$1,713. The court also ordered Respondent to complete an alcohol rehabilitation program and serve 180 days in jail with credit for 49 days served. Respondent is expected to complete probation on November 28, 2014. She has completed the alcohol rehabilitation program and paid all fines, fees and restitution.

7. The facts and circumstances underlying Respondent's criminal convictions are that, in 2007, 2009 and 2011, Respondent was arrested for driving under the influence of alcohol. In the 2011 conviction, Respondent had just driven across the street, waiting for a ride home when she was arrested on a DUI.

8. Respondent is an admitted alcoholic. All of her legal problems stem from her alcoholism. Respondent takes responsibility for her actions. Her sobriety date is November 11, 2011. Respondent attends Alcoholics Anonymous (AA) meetings. It is an integral part of her life. Respondent attends AA meetings in Riverside. She is active on the AA Board. At hearing, Respondent submitted 2014 AA attendance sheets. (Part of Respondent's Exhibit B.)

9. Respondent is employed as an auctioneer. She has been an auctioneer for many years. Respondent graduated from the Western College of Auctioneering in 1997. She is employed at I-15 Auctions, owned by her parents. I-15 Auctions provides auction services in the areas of livestock, farm equipment, vehicles and charity auctions. Respondent is a member in good standing of the National Auctioneers Association.

10. Auctioneers are not licensed by the state of California. They are required to be bonded. Respondent has a surety bond.

11. Todd Boren, an investment banker, testified on behalf of Respondent. He has known her for six months. He said she was very forthcoming about her alcohol problems. Boren appreciated how hard Respondent has worked to change her life. He opined that she has no desire for alcohol.

12. Steve H., Chairperson for the AA group, the Alano Club, in Riverside, wrote a letter in support of Respondent. He said, "Since Jo G.[s] involvement[,] the meetings have record attendance and fully supports it[self] financially with extra to spare." (Respondent's Exhibit A.)

13. Rhonda Graham, Respondent's mother, wrote a letter in support of Respondent. She said, "I'm just sending a quick letter that since her arrest on 11-10-11[,] she has done everything possible to change her life around. Including to stay in Jail[,] to seek help upon her release[,] she has been heavily involved in AA and is on a path of success and recovery. She works closely with her family and has her fathers and [my] complete support. She is constantly raising money and is growing into the daughter that leaves her father and me feeling proud every day." (Part of Respondent's Exhibit B.)

14. Melissa Nebon, an I-15 Auctions employee, also wrote a letter in support of Respondent. She said, "I have worked closely with Johan over the past two years. She is a remarkable person who is ambitious, energetic, and has a big heart. There have been numerous instances that she has gone out of her way for me because of things that have popped up in my own life. Johan was my boss who accommodated my school schedule to coincide with my work schedule. She encouraged my schooling and when something came up she never had a problem and was always supportive." (Part of Respondent's Exhibit B.)

15. Respondent is engaged in community activities. She has been involved in numerous charitable auction events. For example, Respondent is active in Wild Horsemen of America (WHOA), a nonprofit organization. She was recently involved in WHOA's charity ride. The charity ride raised money for Junior Livestock Programs, Community and COPS, (Concerns of Police Survivors) and Fallen Police Officers in the Line of Duty. (Part of Respondent's Exhibit B.)

16. Respondent obtained her real estate salesperson's license in 2005. Although she has not worked as a real estate salesperson, she would like to combine her auctioneer career and auction real property in the future.

17. Respondent lives with her parents in Apple Valley.

LEGAL CONCLUSIONS AND DISCUSSION

1. The standard of proof for the Bureau to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (See *Borror v. Dept. of Real Estate* (1971) 15 Cal.App.3d 531; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal—so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

2. Under Business and Professions Code section 10177, subdivision (b), a real estate licensee may have her license disciplined for conviction of a crime if it is substantially related to the qualifications, functions, or duties of a real estate licensee.

3. Under Business and Professions Code section 490, the Bureau 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.”

4. Under California Code of Regulations (CCR), title 10, section 2910, subdivision, (a)(11), “two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs,” bears a substantial relationship to the functions, duties and qualifications of a Bureau licensee.

5. The acts for which Respondent was convicted (DUI and excessive alcohol in blood) are crimes that fall under CCR, title 10, section 2910, subdivision (a)(11).

6. Cause exists to impose discipline on Respondent’s real estate salesperson license pursuant to Business and Professions Code section 490 and section 10177, subdivision (b), because Respondent has been convicted of crimes which are substantially related to the qualifications, functions, or duties of a real estate salesperson, as set forth in Factual Findings 3 through 6.

8. Although cause for discipline exists, it is necessary to determine whether Respondent has been sufficiently rehabilitated to warrant her continued licensure. Rehabilitation is a “state of mind” and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved “reformation and regeneration.” (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.)

9. The Bureau has established criteria for rehabilitation from a conviction of a crime to warrant continued licensure. The criteria, found at CCR, title 10, section 2912, are summarized as follows:

Subdivision (a), passage of at least 2 years since the conviction or the underlying acts;
Subdivision (b), restitution;
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 her 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.

10. Respondent provided evidence of rehabilitation. She has taken steps to address her addiction. Respondent has demonstrated that she has reformed and that she recognizes her wrongdoing. Two and a half years have passed since Respondent last committed the misconduct for which she was most recently convicted. Although Respondent has not completed probation, she has paid all court ordered fines, fees and restitution. Respondent has also completed all court ordered alcohol rehabilitation programs. She has abstained from alcohol since November 11, 2011. Respondent is active and has taken a leadership role in AA. She is involved in community events raising money for worthy causes. Respondent received letters of support attesting to her good character. Respondent's history of alcohol spans more than four years. Respondent is committed to her sobriety and has a stable family life. Lastly, by her testimony and demeanor at hearing, Respondent established that she had a significant change in attitude from that which existed at the time of her convictions. (CCR, section 2911, subdivision (n).) The public will be adequately protected by issuing Respondent a restricted license.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent Rhonda Johan Graham under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Business and Professions Code section 10156.5, if Respondent makes application therefore and pays to the Bureau 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 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 license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence 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.

2. 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 date of issuance of the restricted license to Respondent.

3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and


(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

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4. Respondent shall notify the 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.

DATED: June 23, 2014


GLORIA A. BARRIOS
Administrative Law Judge
Office of Administrative Hearings

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