

FILED

OCT 21 2014

BUREAU OF REAL ESTATE

By Agred Danner

Bureau of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013

(213) 576-6913

BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-39229 LA
PARK KRIEGER HAWS,)	L-2014 010 861
Respondent.)	<u>STIPULATION AND AGREEMENT</u>
	<u>and DECISION AFTER</u>
	<u>REJECTION</u>

It is hereby stipulated by and between PARK KRIEGER HAWS (sometimes referred to as Respondent), and the Complainant, acting by and through James R. Peel, Counsel for the Bureau of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on December 27, 2013, in this matter.

1. The Real Estate Commissioner held a hearing on this Accusation on May 29, 2014, before the Office of Administrative Hearings for the purpose of proving the allegations therein. Respondent was present at the hearing and participated therein. Further, Respondent has had an opportunity to read and review the Proposed Decision of the Administrative Law Judge.

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1 2. Respondent understands that pursuant to Government
2 Code Section 11517(c), the Real Estate Commissioner has rejected
3 the Proposed Decision of the Administrative Law Judge.

4 Respondent further understands that pursuant to the same
5 Section 11517(c), the Real Estate Commissioner may decide this case
6 upon the record, including the transcript, without taking any
7 additional evidence, after affording Respondent the opportunity to
8 present written argument to the Real Estate Commissioner.

9 3. Respondent further understands that by signing
10 this Stipulation and Waiver, Respondent is waiving his right to
11 obtain a dismissal of the Accusation through proceedings under
12 Government Code Section 11517(c) if this Stipulation and Waiver
13 is accepted by the Real Estate Commissioner.

14 4. Respondent, pursuant to the limitations set forth
15 below, hereby admits that the factual allegations in the
16 Accusation filed in this proceeding are true and correct and the
17 Real Estate Commissioner shall not be required to provide
18 further evidence of such allegations.

19 5. It is understood by the parties that the Real
20 Estate Commissioner may adopt the Stipulation and Agreement and
21 Decision After Rejection ("Stipulation") as his Decision in this
22 matter, thereby imposing the penalty and sanctions on
23 Respondent's real estate license and license rights as set forth
24 in the below "Order". In the event that the Commissioner in his
25 discretion does not adopt the Stipulation, it shall be void and
26 of no effect, and Respondent shall retain the right to proceed
27 under all the provisions of the APA and shall not be bound by

any admission or waiver made herein.

6. The Order or any subsequent Order of the Real Estate Commissioner made pursuant to this Stipulation shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Bureau of Real Estate with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.

7. This Stipulation and Respondent's decision not to contest the Accusation is made for the purpose of reaching an agreed disposition of this proceeding and is expressly limited to this proceeding and any other proceeding or case in which the Bureau of Real Estate ("Bureau"), the state or federal government, or an agency of this state, another state or the federal government is involved.

DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions and waivers and solely for the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed that the following determination of issues shall be made:

The conduct of Respondent, as described in Paragraph 4, is grounds for the suspension or revocation of all of the real estate licenses and license rights of Respondent under the provisions of Sections 490 and 10177(b) of the Business and Professions Code.

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1 of a restricted license until four years have elapsed from the
2 effective date of this Decision.

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

15 5. Respondent shall notify the Commissioner in writing
16 within 72 hours of any arrest by sending a certified letter to
17 the Commissioner at the Bureau of Real Estate, Post Office Box
18 137000, Sacramento, CA 95813-7000. The letter shall set forth
19 the date of Respondent's arrest, the crime for which Respondent
20 was arrested and the name and address of the arresting law
21 enforcement agency. Respondent's failure to timely file written
22 notice shall constitute an independent violation of the terms of
23 the restricted license and shall be grounds for the suspension
24 or revocation of that license.

25 DATED: 10-8-14

26 James R. Peel
27 JAMES R. PEEL
Counsel for Complainant

1 * * *

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3 I have read the Stipulation, and its terms are
4 understood by me and are agreeable and acceptable to me. I
5 understand that I am waiving rights given to me by the
6 California Administrative Procedure Act (including but not
7 limited to Sections 11506, 11508, 11509 and 11513 of the
8 Government Code), and I willingly, intelligently and voluntarily
9 waive those rights, including the right of requiring the
10 Commissioner to prove the allegations in the Accusation at a
11 hearing at which I would have the right to cross-examine
12 witnesses against me and to present evidence in defense and
13 mitigation of the charges.

14 Respondent can signify acceptance and approval of the
15 terms and conditions of this Stipulation by faxing a copy of the
16 signature page, as actually signed by Respondent, to the Bureau
17 at the following telephone/fax number: (213) 576-6917.

18 Respondent agrees, acknowledges, and understands that by
19 electronically sending to the Bureau a fax copy of his actual
20 signature as it appears on the Stipulation that receipt of the
21 faxed copy by the Bureau shall be as binding on Respondent as if
22 the Bureau had received the original signed Stipulation..

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08/19/2014 TUE 7:34 FAX

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Further, if the Respondent is represented in these proceedings, the Respondent's counsel can signify his agreement to the terms and conditions of the Stipulation by submitting that signature via fax.

DATED:

8/24/14Park K HawsPARK KRIEGER HAWS
Respondent

DATED:

8/24/14Frederick M. Ray
Frederick M. Ray
Counsel

* * *

The foregoing Stipulation and Agreement and Decision After Rejection is hereby adopted as my Decision in this matter and shall become effective at 12 o'clock noon on _____, 2014.

IT IS SO ORDERED _____, 2014.

Real Estate Commissioner

1 Further, if the Respondent is represented in these
2 proceedings, the Respondent's counsel can signify his agreement
3 to the terms and conditions of the Stipulation by submitting
4 that signature via fax.

5 DATED: _____

6 PARK KRIEGER HAWS
Respondent

7 DATED: _____

8 Frederick M. Ray
Counsel

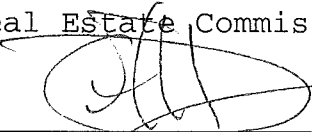
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10 * * *

11 The foregoing Stipulation and Agreement and Decision
12 After Rejection is hereby adopted as my Decision in this matter
13 and shall become effective at 12 o'clock noon on
14 NOV 10 2014, 2014.

15 IT IS SO ORDERED

OCT 15 2014

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17 Real Estate Commissioner

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19 JEFFREY MASON
20 Chief Deputy Commissioner
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FILED

AUG 06 2014

BUREAU OF REAL ESTATE

By Horn

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

PARK KRIEGER HAWS,

Respondent.

No. H-39229 LA

OAH No. 2014010861

NOTICE

TO: PARK KRIEGER HAWS, Respondent and FREDERICK M. RAY, Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated June 25 2014, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated June 25, 2014, 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 May 29, 2014, any written argument hereafter submitted on behalf of Respondent and Complainant.

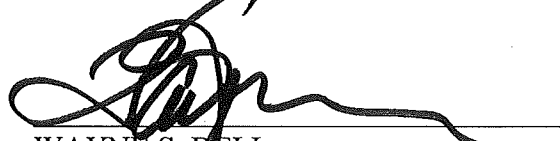
Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of May 29, 2014, at the

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

6 DATED: 7/31/2014

7 REAL ESTATE COMMISSIONER

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10 WAYNE S. BELL

FILED

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

AUG 05 2014

BUREAU OF REAL ESTATE

By Howard Posner

In the Matter of the Accusation of:

Park Krieger Haws,

Respondent.

Case No. H-39229 LA

OAH No. 2014010861

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on May 29, 2014.

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

Respondent was present at the hearing, represented by attorney Frederick M. Ray.

Oral and documentary evidence was received and the matter was submitted May 29, 2014.

Complainant brings this Accusation to revoke Respondent's real estate broker license. For the reasons set out below, the license is revoked, but Respondent may apply for a restricted license.

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant issued this Accusation in her official capacity.
2. Respondent held a real estate broker license as the officer of Park K. Haws, Inc., from June 9, 2006 until June 8, 2010, when the license expired. He obtained a real estate broker license in his individual capacity on January 25, 2011. That license bears an expiration date of January 24, 2015. On December 27, 2013, Complainant brought this Accusation to revoke his license, and Respondent timely requested a hearing.

Criminal Conviction

3. On October 3, 2012, in the Superior Court of California, County of Orange, case number 12HM06389, Respondent was convicted on his no contest plea of driving with a blood alcohol concentration of .08 percent or more (Veh. Code, § 23152, subd (b)), and leaving the scene of an accident resulting only in damage to property without stopping to give the other party identification and contact information (Veh. Code, § 20002, subd, (a)), both misdemeanors. Respondent was fined \$1,090, ordered to complete 80 hours of community service, and placed on summary probation for three years. Probation terms included completing 80 hours of community service and completing a three-month alcohol first-offender program. They also included paying restitution "as determined" by the court, but no restitution was ordered.

Mitigation, Aggravation and Rehabilitation

4. Respondent's convictions resulted from an arrest on February 27, 2012. He had lunch, including a margarita, at a Costa Mesa restaurant known for the size and alcoholic strength of its margaritas. On the way back to his home, where he has an office, he stopped at a convenience store to buy a carton of ice cream. When he backed out of his parking space in the convenience store lot, his car's rear bumper hit the rear bumper of a car driven by a plainclothes Costa Mesa police officer. Respondent drove away without stopping. He testified at hearing that he was unaware of the collision. This testimony is consistent with all his previous statements in the record, and is credible inasmuch as it was a very low-grade collision that (according to the police report) caused no damage other than scratched paint on both vehicles, Respondent's car radio was playing loudly, and (as the police report makes clear) Respondent was impaired by alcohol. There were several alcohol test results cited in the police report, showing blood alcohol concentrations as high as .1 per cent. In his testimony and his previous statements to the Bureau, Respondent said he had backed into a "police cruiser." He was surprised to learn at hearing that it was an unmarked car.

5. Since the 1990's, Respondent has published real estate newsletters that are used as promotional material for real estate brokerages. He supplies the editorial content and does the design and layout.

6. Respondent performed his 80 hours of community service with Community Haven, an organization that assists persons with disabilities. In a May 2, 2013 letter (Exhibit C), Bethany Higgins, the organization's director of development in Santa Ana, confirmed that Respondent had completed his required 80 hours, and added, "Park has contributed greatly to re-branding efforts over the last few weeks which included the re-design of our business cards, letterheads, brochures, and other marketing material." The letter was written on the letterhead Respondent designed.

7. Respondent paid the fines for his convictions. He completed the three-month alcohol program on December 21, 2012. He remains on probation until October 2015. His convictions have not been expunged.

8. Respondent is 68 years old. He is divorced and has no children. He has no history of license discipline. He has no significant involvement in community or charitable organizations.

9. Respondent acknowledged responsibility for his actions, and is now more careful about not drinking and driving. He has not been arrested for driving under the influence since February 27, 2012.

10. Respondent introduced three character letters from friends or business colleagues who have known him more than 15 years (one of them has known him more than 40 years) and vouched for his ethics and trustworthiness. None of the letters indicated that the writer knew about his convictions or the present accusation.

11. There was no evidence of Complainant's costs of investigation and enforcement.

LEGAL CONCLUSIONS

1. There is cause to revoke or suspend Respondent's license under Business and Professions Code sections 490 and 10177, subdivision (b),¹ as paragraph 4 of the Accusation alleges. Section 490, subdivision (a) allows a board to revoke a license if 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." Section 10177, subdivision (b), which applies specifically to the Bureau, similarly allows it to revoke a license if the licensee has been convicted of "a crime substantially related to the qualifications, functions, or duties" of a real estate licensee. Leaving the scene of an accident (Factual Finding 3) is a substantially related crime under CCR section 2910, subdivision (a)(8), because it is an "unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another." His convictions are also substantially related because they constitute "[t]wo 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." (CCR § 2910, subd. (a)(11).)

2. Complainant has not established cause to make an award of costs of investigation and enforcement (Factual Finding 11.)

3. Respondent has the burden of showing rehabilitation. He meets some of the applicable criteria of rehabilitation set out in CCR section 2912, and fails to meet others:

a. Two years have not passed since his convictions (CCR §2912, subd. (a); Factual Finding 3.)

¹ Further references to section or "§" are to the Business and Professions Code, unless preceded by "CCR," which refers to the title 10 of the California Code of Regulations.

- b. He has paid the fine. (CCR §2912, subd. (g); Factual finding 7.)
- c. He has not completed probation (CCR §2912, subd. (e); Factual Finding 7) and his convictions have not been expunged. (CCR §2912, subd. (c); Factual Finding 7.)
- d. There was no evidence of new and different social and business relationships (CCR §2912, subd. (h)), or stability of family life. (CCR §2912, subd. (j); Factual Finding 9.)
- e. He has not shown significant involvement in programs designed to provide social benefits or to ameliorate social problems. (CCR §2912, subd. (l); Factual Finding 8.)
- f. He has shown a change in attitude from that which existed at the time of the crimes, acknowledging that what he did was wrong, and has avoided driving under the influence. (CCR §2912, subd. (m).)
4. Respondent's unblemished record as licensee is evidence that his continued licensure is not a threat to the public, and his convictions, while serious, do not indicate otherwise. Concerns about his fitness can be addressed by restricting his license.

ORDER

All licenses and licensing rights of Respondent Park Krieger Haws under the Real Estate Law are revoked, but a restricted real estate broker license shall be issued to Respondent under Section 10156.5 of the Business and Professions Code if Respondent applies for, and pays to the Bureau of Real Estate the appropriate fee for, the restricted license within 90 days from the effective date of this Decision. The restricted license shall be subject to all 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 before 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 before 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, or for the removal of any of the conditions, limitations or restrictions of a restricted license until four years have elapsed from the effective date of this Decision.

Not Adopted

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 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.

5. Complainant's prayer for cost recovery is denied.

DATED: June 25, 2014

Howard Posner

HOWARD POSNER

Administrative Law Judge

Office of Administrative Hearings