

FILED

DEC 23 2015

BUREAU OF REAL ESTATE

By *Deloris*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	CalBRE No. H-39903 LA
)	
ALTON R. BURGESS,)	OAH No. 2015070939
)	
Respondent.)	

DECISION

The Proposed Decision dated November 13, 2015, 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.

Pursuant to Section 11517 (c) (2) of the Government Code, the following correction is made:

Proposed Decision, Page 1, Paragraph 1, Line 3: "Steven" shall read "Steve".

Condition "6" on Page 8 of the Order is not adopted and shall not be part of the Decision.

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted salesperson license is granted to Respondent.

The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of 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 JAN 12 2016.

IT IS SO ORDERED 12/18/2015

REAL ESTATE COMMISSIONER

Wayne S. Bell
WAYNE S. BELL

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

In the Matter of the Amended Accusation
Against:

ALTON R. BURGESS,

Respondent.

Case No. H-39903 LA

OAH No. 2015070939

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on October 20, 2015 in Los Angeles, California. Steven Chu, Real Estate Counsel, represented Complainant. Bradford Calvin, attorney at law, represented Respondent Alton R. Burgess (Respondent) who was present for the hearing. At hearing, Complainant was granted leave to amend the First Amended Accusation by interlineation as follows:

- (1) adding an "s" after "conviction" on page 2, line 25;
- (2) adding "through 5" after "3" on page 2, line 25; and
- (3) adding "through 5" after "3" on page 3, line 2.

Oral and documentary evidence was received, and argument was heard. The record was closed and the matter submitted for decision on October 20, 2015.

FACTUAL FINDINGS

1. Maria Suarez, Supervising Special Investigator (Complainant), filed the Amended Accusation in her official capacity.
2. The Bureau of Real Estate (formerly Department of Real Estate) (BRE) issued real estate salesperson license number 01717094 to Respondent on November 5, 2005. The license will expire on November 4, 2017, unless renewed. The licensee has no history of discipline.

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3. Respondent is a 33-year-old man. He graduated with a bachelor's degree in Psychology from the University of California, Irvine in 2006. Respondent began working in the real estate field eight years ago and first became licensed while in college. He specializes in commercial property sales and leasing and currently serves as Senior Vice President of Lee & Associates, a commercial real estate firm in Newport Beach. Respondent is passionate about his career and has been successful financially in this field. He is the sole financial support for his wife and supports his disabled father and elderly mother.

4. On April 7, 2015, in the Superior Court of California, County of Orange, in Case No. 15HM01484 MA, Respondent was convicted, on his plea of nolo contendere, of one count of violation of California Vehicle Code Section 23152, subdivision (b)(Driving with a blood alcohol level of .08 percent or greater), a misdemeanor. Respondent was sentenced to one day in jail and informal probation for a period of three years under various terms and conditions including payment of fines and fees. Additionally, Respondent was ordered to complete a three month Level 1 First Offender Alcohol Program. Respondent is in compliance with the terms and conditions of probation.

The facts and circumstances underlying the conviction are that Respondent was arrested for driving his vehicle while intoxicated on January 1, 2015 after a New Year's Eve celebration.

5. On August 8, 2014, in the Superior Court of California, County of Orange, in Case No., 14HM05145 MA, Respondent was convicted, on his plea of nolo contendere, of one count of violation of California Penal Code Section 273.5, subdivision (a), (Domestic Violence). Respondent was sentenced to 10 days in jail and informal probation for a period of 12 months under various terms and conditions including payment of fines and fees. Respondent was also ordered to attend and complete a domestic violence batterers' treatment program. The facts and circumstances of the conviction are that Respondent and his wife had both been drinking alcohol and had been arguing during the evening of June 15, 2014, while at a party. They continued the argument during a car ride home while someone else drove them. When the car stopped, Respondent pushed his wife out of the car and she fell suffering multiple injuries.

6. As an aggravating factor, Complainant alleged, and established, by a preponderance of the evidence that on November 17, 2006, Respondent pled guilty and was convicted in the Superior Court of California, County of Orange, Case No. 06WM11015, of violation of Penal Code section 647, subdivision (f) (Public Intoxication), a misdemeanor, Penal Code section 148, subdivision (a)(1) (Resist and Obstruct Officer), a misdemeanor, and Penal Code section 415(3) (Disturbing the Peace). Respondent was ordered to pay fines and fees and complete five days of Cal Trans Community Service. The facts and circumstances of the conviction are that on August 9, 2006, Respondent was detained by police after having driven his car around with a blaring horn for 10 minutes disturbing neighbors. He was intoxicated and combative with police officers.

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7. Respondent's three misdemeanor convictions as set forth in factual findings 4, 5 and 6 above, in the aggregate, constitute convictions substantially related to the qualifications, functions and duties of a real estate salesperson pursuant to California Code of Regulations, title 10, section 2910 subdivision (a)(10) and (a)(11), because they demonstrate a pattern of repeated violations of the law and two or more convictions involving alcohol with one or more of the convictions involving driving.

8. Respondent provided credible testimony of his rehabilitative efforts and remorse at the administrative hearing. Although Respondent does not consider himself an alcoholic, he acknowledged that he has a history of alcohol abuse. Respondent has been sober since his last arrest on January 1, 2015 and plans to remain sober. Respondent has completed a court ordered batterer's treatment program and a court ordered out-patient alcohol and drug treatment program. Respondent continues to attend Alcoholics Anonymous (AA) meetings on a weekly basis. Respondent learned anger management techniques and educated himself about the effects of drugs and alcohol through these programs. He was grateful for the opportunity to achieve and maintain sobriety and realizes the negative impact that anger and alcohol had on his life and relationships. Respondent is a member of the congregation of Mariner's Church and regularly attends with his wife. Respondent and his wife contribute funds to local charities including the Nature Conservancy and its efforts to build a school in the area. Respondent also plays basketball and softball in local city leagues. Respondent is the sole source of support for himself and his wife and contributes a significant amount to the support of his elderly and disabled parents each month.

9. Respondent completed a 52 week batterer's intervention course on September 8, 2015. His counselor, Barry Hughes, wrote a letter in support of Respondent's rehabilitation. In relevant part, Mr. Hughes wrote:

I'm very pleased to have an opportunity to write a letter of support for Alton Burgess, a person I believe to have high standards of personal conduct and an extraordinary willingness to learn and grow through dealing with difficult circumstances.

In September of 2014, Mr. Burgess enrolled in a domestic violence program which I facilitated in Action Consultants/Therapy in Costa Mesa. I worked with him during weekly 2-hour sessions until I retired, at the end of May, 2015, after 16 years of working with family conflict clients in Orange County.

Mr. Burgess took a serious and constructive approach to this program. He was 100% accountable regarding the situation that brought him here and was clearly motivated to address appropriate issues. His work in group was consistently upbeat and proactive. He was able to

understand and integrate concepts and tools and report back details of how he put them to use. He assumed a leadership position in the group and was a positive role model for others in the program.

10. Respondent completed an Alcohol and Drug Substance Abuse Treatment program with Action Consultants on June 23, 2015. Laura Campana, MA, MSW, the Co-Director of Action Consultants/Therapy, wrote a letter of support for Respondent. Of Respondent, she wrote:

[Respondent] has distinguished himself as an exemplary participant recognizing the serious consequences of behaviors associated with alcohol abuse. He was motivated to improve his lifestyle, relationships and is consistent in practicing new life skills leading to a sober life. He has participated in group process in a manner accepting full accountability for his actions, and displays exemplary commitment accepting responsibility for instituting changes leading to his recovery. ...He presents as a person who is stable, remorseful, willing to take responsibility for past actions, as well as future actions.

11. Respondent has established a support network of friends, family and colleagues. Respondent's business partner Travis Haining, Respondent's long-time friend Travis Wilson and Respondent's wife also wrote letters supporting his continued licensure and recent efforts to maintain sobriety. Respondent's broker, Steven Jehorek, the President and Managing Director of Lee & Associates also wrote a letter of support for Respondent in which he wrote:

I have found him to be a hard working top producer and contributor to our office. He was quickly accepted by the other real estate professionals in our office for his honesty and strong work ethic. He has also been accepted as a new principal in our Company...

12. Complainant expended \$712 in enforcement costs consisting of 8.0 hours of attorney time at \$89 per hour. Complainant also expended \$1,056.43 in investigative costs consisting of 6.40 hours of program technician time at \$37 per hour, 10.65 hours of Special Investigator time at \$62 per hour and .2 hours of supervising investigator time at \$80 per hour. Complainant expended a total of \$1,768 in enforcement and investigation costs.

LEGAL CONCLUSIONS

1. Business and Professions Code (Code) section 10177, subdivision (b), provides that the Bureau may suspend or revoke the license of a real estate licensee who has 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. Similarly, section 490, subdivision (a), provides, in pertinent part, that 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.

2. Cause exists, pursuant to Code sections 490 and 10177, subdivision (b), in conjunction with California Code of Regulations, title 10 (Regulation), section 2910, subdivisions (a) (10) and (11) to discipline Respondent's real estate salesperson license, in that Respondent was convicted of three misdemeanor crimes which are substantially related to the qualifications, functions, and duties of a real estate licensee, based on Factual Findings 2-7 and Legal Conclusion 1.

3. The purpose of a disciplinary matter is to protect the public and not to punish the licensee. (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518; *Camacho v. Youde* (1979) 95 Cal.App.3d 161; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) As cause for discipline of Respondent's real estate license has been established, Respondent bears the burden of proving he is sufficiently rehabilitated to warrant his continued licensure. (See *Martin v. Alcoholic Beverage Control Appeals Bd.* (1950) 52 Cal.2d 259, 264-265.)

4. Regulation section 2912 sets forth the Bureau's criteria for rehabilitation to be used in evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the licensee has been initiated on account of a crime committed by the licensee. The regulation provides that the following factors are to be considered:

- (a) The passage of not less than two years since the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the Bureau.
- (b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.
- (c) Expungement of criminal convictions which culminated in the administrative proceeding to take disciplinary action.
- (d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.
- (e) Successful completion or early discharge from probation or parole.
- (f) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the Bureau action sought is attributable in part to the use of controlled substances or alcohol.

(g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction that is the basis for revocation or suspension of the license.

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

(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.

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

(k) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

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

(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 applicant.

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

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

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

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

5. The criteria, as applicable to Respondent, are analyzed as follows: (a) less than one year has passed since Respondent's last conviction; (b) not applicable; (c) the convictions have not been expunged; (d) there was not any registration requirement; (e) Respondent has not been discharged from probation, but has completed all requirements of

his probation except the passage of time; (f) Respondent has a sobriety date of January 1, 2015, has completed a first offenders drug and alcohol program, a domestic violence program, and continues to attend weekly AA meetings; (g) Respondent has paid all fines and restitution and is in compliance with all terms of his sentences; (h) not applicable; (i) Respondent has deepened his relationships with his wife, colleagues and friends, become more involved in his church and sports groups and attends AA; (j) Respondent has a stable life with his wife and provides financial support for his parents; (k) Not applicable; (l) Respondent has been involved in his church, local sports groups and local charities. Perhaps, most importantly, Respondent has displayed the change of attitude referenced in (m). This change was evidenced in his testimony about the benefit he had received from the court ordered programs and AA. It was supported by letters from, his wife, friends, colleagues, broker and counselors.

6. Respondent realizes that his conduct was serious and that the BRE has cause for concern about his continued licensure. Respondent seeks to reassure the BRE that he has changed his ways and that the conduct is unlikely to recur. Given the nature of Respondent's crimes and proximity in time, the BRE must protect the public by having the opportunity to monitor Respondent's real estate practice to ensure that he is fully rehabilitated. A properly-conditioned restricted license should accomplish that purpose.

ORDER

All licenses and licensing rights of Respondent Alton R. Burgess under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson 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 Bureau 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 issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until five years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing broker, a statement signed by a prospective employing real estate broker on a form approved by the Bureau of Real Estate which shall certify:

(a) That employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

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

6. Respondent shall attend Alcoholics Anonymous meetings twice per month during the time that his real estate salesperson license is subject to restriction. Respondent shall also maintain a log of such attendance for random inspection by the BRE.

7. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. 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 suspension or revocation of that license.

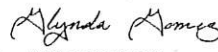
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8. Respondent shall pay the Bureau of Real Estate's reasonable costs of investigation and enforcement in the amount of \$1,768 within 90 days of the effective date of this order.

Dated: November 13, 2015

DocuSigned by:

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GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings