

FILED

JUL 26 2016

BUREAU OF REAL ESTATE

By Qu Delouis

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) CalBRE No. H-40046 LA
ALEX D. OLSEN,) OAH No. 2016010632
Respondent.)

DECISION

The Proposed Decision dated June 20, 2016, 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 salesperson license is granted to Respondent.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. 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 Sections 11521 and 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 15 2016.

IT IS SO ORDERED 7/22/2016
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 First Amended
Accusation Against:

ALEX D. OLSEN,

Respondent.

Case No. H-40046 LA

OAH No. 2016010632

PROPOSED DECISION

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California on May 12, 2016.

Steve Chu, Counsel, Bureau of Real Estate (Bureau), represented complainant Veronica Kilpatrick, a Supervising Special Investigator of the Bureau.

Frank M. Buda, Esq., represented respondent Alex D. Olsen, who was present at the hearing.

At the end of the hearing, the Administrative Law Judge held the record open until May 19, 2016, for respondent to submit certified copies of court records in support of a request for official notice. Respondent timely submitted the records, and they were marked as Exhibit R.

The matter was submitted on May 19, 2016.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Respondent has license rights under the Real Estate Law, Business and Professions Code, division 4, part 1 (§ 10000 et seq.),¹ as a real estate salesperson, license number 01126609. He was originally licensed on December 20, 1991, and his license will expire on March 18, 2017, unless renewed.

¹ Undesignated statutory references are to the Business and Professions Code.

2. On December 1, 2015, complainant filed an Accusation in her official capacity, alleging respondent had been convicted of a crime in 2014, justifying disciplinary action against his license.

3. Respondent filed a notice of defense on December 9, 2015. On February 10, 2016, he filed another notice of defense, asserting various objections and defenses to the Accusation.

4. On March 3, 2016, complainant filed a First Amended Accusation, alleging a conviction in 2000 was a matter in aggravation. Under Government Code section 11507, respondent was not required to file a new notice of defense.

Conviction in 2014

5. On November 19, 2014, after pleading guilty in the Superior Court of California, County of Ventura, Case No. 2014017486, respondent was convicted of causing bodily injury while driving with a blood alcohol concentration of 0.08 percent or more, a felony. (Veh. Code, § 23153, subd. (b).) The conviction arose from him driving into the path of another vehicle while intoxicated in June 2014, injuring two passengers in the other vehicle. As part of the plea, respondent admitted his blood alcohol concentration was 0.15 percent or more; according to breath samples police obtained, it was actually 0.26 or 0.27 percent. The court suspended imposition of sentence and placed him on 60 months' formal probation, under terms including he serve 270 days in jail, pay a \$2,377 fine, not drink or possess alcohol, complete a multi-conviction driving under the influence counseling program, and pay victim restitution. The court also suspended his driver license for one year.

Conviction in 2000

6. On November 29, 2000, after pleading nolo contendere in the Superior Court of California, County of Sacramento, Case No. 00T04060, respondent was convicted of driving under the influence of alcohol, a misdemeanor. (Veh. Code, § 23152, subd. (b).) The conviction arose from him driving after drinking in August 2000. The court suspended imposition of judgment and sentence and placed him on informal probation for five years, under terms including he serve 120 days in jail (with credit for one day), and pay \$1,620 in fines and assessments. The court also revoked his driver license for three years, and designated him a habitual traffic offender based on his driving history. (Veh. Code, § 14601.3.)

Conviction Detail Report

7. In August 2015, respondent sent the Bureau a "Conviction Detail Report" about his conviction in 2014, stating in part: "I drove while intoxicated, which I don't ever do" This was less than candid, given his conviction in 2000, and also because he had other alcohol-related driving convictions in 1988 and 1994. But he also sent the Bureau a

Department of Motor Vehicles printout listing the convictions, and referred the Bureau to the printout.

Rehabilitation

8. Two days after the accident in June 2014, respondent was admitted to Passages, a residential alcohol abuse treatment program. He stayed there 35 days, and then went to Monarch Sober Living, where he stayed for six months. After leaving, he regularly attended Alcoholics Anonymous meetings as part of a work furlough program, which he completed in lieu of jail time. He continues to attend those meetings, participate in Self Management and Recovery Training (SMART Recovery), and see a psychologist almost every week. The psychologist, Beverly Barclay, Ph.D., wrote a letter attesting to his progress and commitment to abstinence. As of the hearing, he had been sober for almost two years, with just three weeks to go.

9. Respondent paid his criminal fines and restitution, and settled a civil case with the occupants of the other vehicle on October 7, 2015. Based on his probation compliance, the court terminated probation early on May 9, 2016, reduced the charge to a misdemeanor, ordered his guilty plea withdrawn, and dismissed the charge under Penal Code section 1203.4.

10. During his testimony, respondent expressed sincere commitment to his sobriety and remorse for his crime, especially for injuring others. Jeffery R. Becker, his sponsoring broker, wrote a letter attesting to his acceptance of responsibility, and promising to supervise him closely if he is allowed to retain his license with restrictions. A real estate client, his wife, his Alcoholics Anonymous sponsor, and a friend also wrote letters attesting to his positive life changes. He is active in local community activities, including Big Brothers Big Sisters of Ventura County (as a recent Board member), the Ventura Chamber of Commerce, and the Ventura Midtown Community Council. He is 49 years old, and has no other license discipline.

Costs

11. Complainant provided statements certifying the Bureau incurred \$1,298.30 in investigation and prosecution costs before the hearing.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving the alleged grounds for discipline in the First Amended Accusation by clear and convincing evidence to a reasonable certainty. (*The Grubb Co., Inc. v. Dept. of Real Estate* (2011) 194 Cal.App.4th 1494, 1505; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457; see also *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) “[C]lear and convincing evidence denotes proof that is clear, explicit, and unequivocal and leaves no substantial doubt. [Citations.]” (*People v. Yovanov* (1999)

69 Cal.App.4th 392, 402.) “[It] requires a finding of high probability [that it is true],” and is “ ‘ ‘sufficiently strong to command the unhesitating assent of every reasonable mind.’ ” [Citation.]” (*In re Angelia P.* (1981) 28 Cal.3d 908, 919.)

2. The Real Estate Commissioner may suspend or revoke the license of a person who has been convicted of a crime “substantially related to the qualifications, functions or duties” of a real estate licensee. (§§ 490, subd. (a), 10177, subd. (b).) The conviction need not occur as part of the licensee’s practice of the licensed profession. (See *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.) A crime is deemed “substantially related” to a real estate licensee’s qualifications, functions or duties if it involves, among other things, the “[d]oing of any unlawful act . . . with the intent or threat of doing substantial injury to the person or property of another.” (Cal. Code Regs., tit. 10 (Regs.), § 2910, subd. (a)(8).)

3. Complainant presented clear and convincing evidence of respondent’s conviction of a crime substantially related to the qualifications, functions or duties of a real estate licensee. His conviction in 2014 involved an unlawful act with the threat of doing substantial injury to others. (Regs., § 2910, subd. (a)(8).) He drove into the path of another vehicle while highly intoxicated, injuring two passengers in the other vehicle. (Factual Finding 5.)

4. Respondent asserts the Real Estate Commissioner may not impose license discipline, because one of the Bureau’s eleven “Criteria for Substantial Relationship” requires “[t]wo or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve[s] driving and the use or consumption of alcohol or drugs.” (Regs., § 2910, subd. (a)(11).) Respondent has several alcohol-related driving convictions, but only his conviction in 2014 occurred within the time limit for filing an accusation. (See § 10101.) But respondent’s conviction in 2014 is enough, because the threat of substantial injury the crime presented satisfies one of the other criteria for substantial relationship. (Regs., § 2910, subd. (a)(8).)

5. The Bureau has adopted criteria to evaluate the rehabilitation of a licensee who is subject to an administrative revocation or suspension proceeding on account of committing a crime. (Regs., § 2912.) Consideration of the criteria indicates respondent has made much progress toward rehabilitation. While his conviction occurred less than two years ago, his probation was terminated early, and the conviction was reduced to a misdemeanor and dismissed. (Regs., § 2912, subds. (a), (c), (e).) He paid his criminal fines and made restitution to the victims, and presented evidence of “[s]ignificant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.” (Regs., § 2912, subds. (b), (g), (i).) He also presented evidence of a positive change in attitude and commitment to sobriety, tempered by his less than candid statement to the Bureau that he “drove while intoxicated, which I don’t ever do” (Factual Findings 7, 10; Regs., § 2912, subd. (m).) As of the hearing, he had not been sober for two years, but was almost there. (See Regs., § 2912, subd. (f).) Given these facts, public protection does not require outright revocation of his license, but rather a restricted license.

Costs

6. Complainant requests \$1,298.30 in investigation and enforcement costs. "Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the [Bureau], the [Real Estate] [C]ommissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." (§ 10106, subd. (a).)

7. Complainant offered certified copies of the Bureau's costs, which are prima facie evidence the costs are reasonable. (§ 10106, subd. (c).) Respondent presented no evidence they are not. He did obtain a reduction in the severity of the discipline imposed from the maximum discipline requested in the Accusation, i.e., revocation. However, the reduction in severity is not so great as to warrant denying complainant's cost request. He also did not assert he was financially unable to pay the costs. Therefore, he will be ordered to pay them. (See *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.)

ORDER

All licenses and licensing rights of respondent Alex D. Olsen 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 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 three 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 real estate broker on a form approved by the Bureau of Real Estate which shall certify:

(a) That the 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 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.

6. 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 the suspension or revocation of that license.

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Respondent shall pay the Bureau of Real Estate \$1,298.30 in investigation and enforcement costs within 30 days of the effective date of this decision.

DATED: June 20, 2016

DocuSigned by:

Thomas Heller

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THOMAS HELLER
Administrative Law Judge
Office of Administrative Hearings