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BUREAU OF REAL ESTATE

*[Signature]*

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	Case No. H-40294 LA
	)	OAH No. 2016070540
CARLOS RAFAEL AVALOS,	)	
	)	
Respondent.	)	
	)	

DECISION AFTER REJECTION

This matter came on for hearing before Eileen Cohn, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on November 10, 2016. Cheryl Keily, Counsel, represented the Complainant, Maria Suarez, Supervising Special Investigator for the State of California Bureau of Real Estate ("Bureau"). The Respondent, CARLOS RAFAEL AVALOS ("Respondent"), appeared in person, and was represented by Frank M. Buda, Esq. Oral and documentary evidence were received.

On or about December 9, 2016, Administrative Law Judge Eileen Cohn ("ALJ") issued a Proposed Decision, which I declined to adopt.

Pursuant to California Government Code section 11517(c), on or about January 9, 2017, Respondent was served with notice of my determination not to adopt the Proposed Decision of the ALJ along with a copy of said Proposed Decision. Respondent was notified that

1 the case would be decided by me upon the record, the transcript of proceedings held on  
2 November 10, 2016, and upon any written argument offered by Respondent and Complainant.  
3 On or about February 17, 2017, Respondent filed Respondent's Argument After Rejection of  
4 Proposed Decision. On or about March 7, 2017, Complainant filed Complainant's Argument  
5 After Rejection of Proposed Decision with the Bureau, and served a copy on Respondent.

6 I have given careful consideration to the record in this case including the  
7 transcript of the proceedings of November 20, 2016. I have also considered the written  
8 arguments submitted by Respondent and Complainant.

9 The following shall constitute the Decision of the Real Estate Commissioner in  
10 this proceeding.

11  
12 FACTUAL FINDINGS

13 *Parties and Jurisdiction*

- 14 1. On or about June 23, 2016, Complainant Maria Suarez, a Deputy Real  
15 Estate Commissioner of the State of California, filed the Accusation in her official capacity.  
16 2. On or about July 8, 2016, Respondent filed a Notice of Defense on  
17 Accusation.  
18 3. Respondent presently has license rights under the Real Estate Law,  
19 California Business and Professions Code, division 4, part 1 (section 10000, et seq.) as a real  
20 estate salesperson, license number 01812057. Respondent originally obtained his real estate  
21 license on October 15, 2007, and the license is schedule to expire on December 15, 2019 unless  
22 renewed.

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1 *Respondent's Convictions*

2 4. On or about January 16, 2014, in the Superior Court of California, County  
3 of Los Angeles, case no. 3NW02508, Respondent was convicted of violating California Vehicle  
4 Code sections 23152(b) (driving under the influence with a blood alcohol level of 0.08 percent  
5 or more) and 23540 (driving under the influence within 10 years of a previous conviction), both  
6 misdemeanors. As part of his plea, Respondent admitted to his 2004 conviction for driving  
7 under the influence and driving with a blood alcohol level of 0.15 percent or more. Imposition  
8 of sentence was suspended, and Respondent was placed on summary probation for sixty (60)  
9 months on certain terms and conditions, including, but not limited to, serving twenty (20) days  
10 in county jail, paying fines or community service in lieu of fines, enrolling in and successfully  
11 completing an 18-month licensed second-offender alcohol and counseling (SB38) program,  
12 attending fifteen (15) Alcoholic Anonymous ("AA") meetings, completing Mothers Against  
13 Drunk Driving ("MADD") Victim Impact Program ("VIP"), using an ignition interlock device  
14 in his car, and paying various fines and fees.

15 5. The underlying facts of the conviction described in the previous  
16 paragraph are the California Highway Patrol ("CHP") stopped Respondent after witnessing  
17 Respondent swerving and weaving for approximately five (5) miles. Respondent was  
18 intoxicated. Respondent testified at hearing he was "very intoxicated" after having consumed  
19 approximately seven (7) beers while at lunch with friends. Respondent also testified at hearing  
20 he accepted responsibility for his conduct.

21 6. On or about August 21, 2015, Respondent was found to be in violation of  
22 his probation based on his conduct described in Factual Finding, paragraph 8, below. Probation  
23 was revoked and reinstated with the modification that Respondent serve 120 days in county jail  
24 and pay additional fines and fees. On August 31, 2015, Respondent finished payment of the  
25 fines and fees for his January 16, 2014 conviction.

1           7.       On or about August 21, 2015, in the Superior Court of California, County  
2 of Los Angeles, case no. 5NW02176, Respondent was convicted of violating California Vehicle  
3 Code sections 23152(b) (driving under the influence with a blood alcohol level of 0.08 percent  
4 or more) and 23540 (driving under the influence within 10 years of a previous conviction), both  
5 misdemeanors. Imposition of sentence was suspended, and Respondent was placed on summary  
6 probation for sixty (60) months and required to serve ten (10) days in jail. Respondent was also  
7 ordered to complete an alcohol and counseling (SB38) program, a Hospital and Morgue  
8 (“HAM”) Program, and MADD VIP program. Respondent has complied with the terms of his  
9 program. He completed payment of the court-ordered fines and fees on or about November 9,  
10 2016. Respondent remains on probation.

11           8.       The underlying facts of the conviction described in the previous  
12 paragraph are the CHP responded to a report of a possibly inebriated driver, and observed  
13 Respondent rolling his vehicle through a stop sign and weaving left onto and across painted  
14 solid double lines. Respondent testified at hearing he was “very intoxicated” after having  
15 consumed approximately nine (9) beers while at a restaurant with friends. Respondent also  
16 testified at hearing he accepted responsibility for his conduct.

17           7.       Rehabilitation: Respondent testified he is committed to his wife and three  
18 minor children and sobriety, and that he did not realize he had an alcohol problem until his last  
19 conviction. Respondent also conveyed contrition and remorse for his past actions, and that he  
20 regularly attends Alcoholics Anonymous (“AA”) meetings.

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22 *Costs of Investigation and Enforcement*

23           9.       The Bureau incurred reasonable investigation and enforcement costs of  
24 \$918.00 concerning this matter.

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- (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 educational 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 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 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.

California Code of Regulations, title 10, section 2912.

11. Respondent meets some criteria of rehabilitation, but does not meet others. Respondent's last conviction was less than two years ago. Respondent's 2014 and 2015 convictions were not expunged. Respondent has not completed probation for his 2014 and 2015 convictions. Respondent has not abstained from alcohol for at least two (2) years. Respondent testified he last used alcohol on July 23, 2015. Respondent paid all fines and fees ordered by the court for his 2014 and 2015 convictions. Respondent has developed strong ties with the AA community. Respondent's family life with his wife and three minor children are stable. Respondent and his wife both testified that Respondent has changed his attitude toward alcohol.

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1 *Cost Recovery*

2 9. The Bureau's \$918.00 in investigation and enforcement costs are  
3 reasonable and consistent with the criteria set forth in *Zuckerman v. State Board of Chiropractic*  
4 *Examiners*, 29 Cal.4th 32 (2002).

5  
6 ORDER

7 1. All licenses and licensing rights of Respondent Carlos Rafael Avalos  
8 under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson  
9 license shall be issued to Respondent pursuant to California Business and Professions Code  
10 section 10156.5 if Respondent makes application therefor and pays to the Bureau the  
11 appropriate fee for the restricted license within 90 days from the effective date of this Decision.

12 The restricted license issued to Respondent shall be subject to all of the provisions of California  
13 Business and Professions Code section 10156.7 and to the following limitations, conditions, and  
14 restrictions imposed under authority of California Business and Professions Code section  
15 10156.6:

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

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

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

5                   d.     Respondent shall submit with any application for license under an  
6 employing broker, or any application for transfer to a new employing broker, a statement signed  
7 by the prospective employing real estate broker on a form approved by the Bureau, such as the  
8 Restricted Salesperson Change Application (RE 214A), which shall certify: (i) that the  
9 employing broker has read the Decision of the Commissioner which granted the right to a  
10 restricted license; and (ii) that the employing broker will exercise close supervision over the  
11 performance by the restricted licensee relating to activities for which a real estate license is  
12 required.

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

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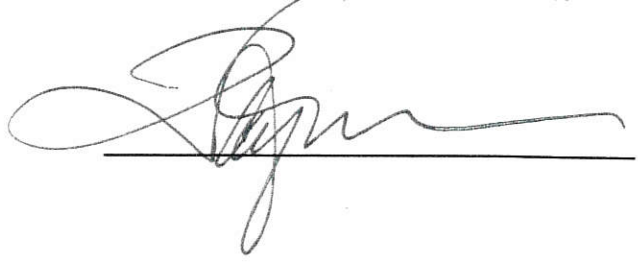
2. Pursuant to California Business and Professions Code section 10106,  
Respondent is liable for costs of investigation and enforcement in the amount of \$918.00. Six  
(6) months from the effective date of this Decision, Respondent shall pay \$918.00 in  
investigation and enforcement costs to the Bureau of Real Estate by mailing a cashier's check to  
the following address: Bureau of Real Estate, Flag Section, P.O. Box 137013, Sacramento, CA  
95813-7013. If Respondent fails to make the payment, all licenses and licensing rights of  
Respondent shall be indefinitely suspended unless and until Respondent pays the due payment.

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

MAY 08 2017

IT IS SO ORDERED April 8, 2017

WAYNE S. BELL  
REAL ESTATE COMMISSIONER



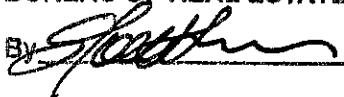
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JAN 09 2017

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	CalBRE No. H-40294 LA
CARLOS RAFAEL AVALOS,	)	OAH No. 2016070540
Respondent.	)	

NOTICE

TO: CARLOS RAFAEL AVALOS, Respondent, and FRANK M. BUDA , his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated December 9, 2016, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated December 9, 2016, is attached hereto 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 Thursday, November 10, 2016, and 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 Thursday, November 10, 2016, at the Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for good



BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

CARLOS RAFAEL AVALOS,

Respondent.

Case No. H-40294 LA

OAH No. 2016070540

**PROPOSED DECISION**

This matter came before Eileen Cohn, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California on November 10, 2016.

Cheryl Keily, Counsel, represented the Bureau of Real Estate (Bureau).

Frank M. Buda, Attorney at Law, represented Carlos Rafael Avalos (respondent) who was present.

The record was closed and the matter was submitted for decision on November 10, 2016.

**FACTUAL FINDINGS**

1. Complainant Maria Suarez filed the Accusation in her official capacity as Supervising Special Investigator for the Bureau. Respondent timely filed a request for hearing, and this action ensued.

2. On October 15, 2007, the Bureau issued real estate salesperson license number S/01812057 to respondent. On December 16, 2015, the Bureau renewed respondent's license. His real estate salesperson's license is active and is scheduled to expire on December 15, 2019.

*Misdemeanor convictions*

3. On January 16, 2014, in the Superior Court of California, County of Los Angeles, case number 3NW02508, upon his plea of nolo contendere, respondent was convicted of violating Vehicle Code section 23152, subdivision (b) [driving under the

influence of alcohol with blood alcohol of 0.08 percent or greater], and Vehicle Code section 23540 [driving under the influence of alcohol/drugs within 10 years of a previous offense], misdemeanors. As part of his plea, respondent admitted to his 2004 conviction for driving under the influence and driving with a blood alcohol content of .15 percent or more. Imposition of sentence was suspended and respondent was placed on summary probation for 60 months on certain conditions, including serving 20 days in county jail, less credit for two days, payment of fines or community service in lieu of fines, fees and restitution. As part of his probation, respondent was ordered to enroll in and successfully complete an 18-month licensed second-offender alcohol and counseling (SB38) program, attend 15 Alcoholics Anonymous (AA) meetings, one day per week, complete Mothers Against Drunk Driving (MADD) Victim Impact Program (VIP), and use an ignition interlock device in his car (exhibits 3 and J).

4. The facts underlying the conviction are that respondent was stopped on September 23, 2013, by a California Highway Patrol (CHP) officer after he witnessed respondent swerving, weaving and straddling for approximately five miles (exhibit 5.) Respondent was intoxicated. During the hearing, respondent admitted to being "very intoxicated," having consumed approximately seven beers while enjoying a social lunch on a non-workday with friends. Respondent accepted full responsibility for his conduct.

5. On August 21, 2015, respondent was found to be in violation of his probation based on the conduct described in Factual Finding 7. Probation was revoked and reinstated with the modification that respondent be ordered to serve 120 days in the county jail and to pay additional fines and fees. With the exception of his 2015 conviction, respondent has fulfilled all the conditions of his probation for the 2014 conviction, made regular payments towards his court-ordered fines and fees, and made his final payment on August 31, 2015 (exhibit H).

6. On August 21, 2015, in the Superior Court of California, County of Los Angeles, case number 5NW02176, upon his plea of nolo contendere, respondent was convicted of violating Vehicle Code section 23152, subdivision (b) [driving under the influence of alcohol with blood alcohol of 0.08 percent or greater], and Vehicle Code section 23540 [driving under the influence of alcohol/drugs within 10 years of a previous offense], misdemeanors. Imposition of sentence was suspended and respondent was placed on summary probation for 60 months, required to serve 10 days in county jail, less three days credit, and pay fines, fees and restitution. Respondent was ordered to enroll in an SB38 alcohol treatment and counseling program, and a Hospital and Morgue (HAM) program, and MADD's VIP program. Respondent has complied with the terms of his probation. Respondent has made regular payments towards his court-ordered fines and fees, completing his final payment on November 9, 2016. Respondent remains on probation (exhibits 4 and J).

7. The facts underlying the conviction are that, on July 23, 2015, a CHP officer responded to a report of a possibly inebriated driver and when he arrived to the area he observed respondent rolling his vehicle through a stop sign and weaving left on to and across

the painted solid double lines. Respondent accepted full responsibility for his conduct. During the hearing, respondent admitted that he was "very intoxicated" when he was stopped, having consumed approximately nine beers with friends at a restaurant.

### *Rehabilitation*

8. Respondent provided substantial evidence of his rehabilitation to support a restricted license. Respondent was cooperative with the Bureau and was candid about his convictions, his addiction to alcohol and his commitment to sobriety. At hearing, respondent presented as an honest, but admittedly flawed, individual, who is working daily on maintaining his sobriety, committed to his career as a real estate salesperson, and devoted to his family and community. Respondent's written statements to the Bureau were consistent with his testimony and reflected his honest and humble character. In his responses to the Interview Information Statement dated February 2, 2016, and Conviction Detail Report dated November 23, 2015, respondent listed his convictions, fully accepted responsibility for his actions, was candid about his history of alcohol abuse and reported his commitment to stop drinking entirely (exhibit 7).

9. Respondent is hard working, balancing a steady job and paycheck with his work as a real estate salesperson. He has had a consistent work history, working both as a salesperson at San Fernando Marble since 2001 and for Kelly Williams VIP Properties under designated broker Deborah Penny.

10. Respondent is solely responsible for supporting his family which includes his wife and three minor children, and takes his obligations as a parent seriously. Respondent's wife assists him with his real estate endeavors, but does not earn an income apart from respondent. His earnings from his full-time job and his real estate sales provide the only support for his family. Respondent is committed to his three children. He has disclosed to them his problems with alcohol, instructed them of its dangers, and is actively involved in their extracurricular activities.

11. Respondent provided persuasive and credible testimony of his commitment to sobriety, work, family and the community. At the time of the Accusation, respondent had been a real estate salesperson for nine years with no previous discipline or incident, and continues to work as a real estate salesperson without incident. He has worked under designated broker Deborah Penny who is committed to retaining him as a probationary licensee. Respondent has been successful in completing real estate transactions. He has completed between 8 and 22 transactions annually from 2013 through 2015.

12. Respondent fully acknowledges his alcohol addiction and embraces his sobriety. He candidly testified that from 2004 until December 2011 he understood he had a problem with alcohol and successfully abstained. He now realizes he never fully accepted he had a disease until his last conviction. When he started drinking again in December 2011 he believed that he could control his drinking and limit it to social occasions because he had matured with the passage of time. Respondent spiraled out of control and at the time of his

last arrest on July 23, 2015, he felt hopeless. Respondent realized that he did not want to continue living as he had been living and that he needed help. Respondent is now a committed and active member of AA, attending meetings three to four times each week after work and assisting in welcoming members as well as other chores. AA is now his lifestyle and he finds peace at the AA meetings. Respondent accepts that his addiction to alcohol is a disease, and he can never drink again.

13. Respondent's compelling testimony about his life and commitment to his work, family and community was supported by his employer, designated broker for Keller Williams VIP Properties (Keller Williams), Deborah Penny. Ms. Penny confirmed his honest and candid nature and commitment to sobriety by describing his meeting with her where he fully discussed the Accusation, which she reviewed, his convictions, and his commitment to sobriety. Ms. Penny has observed respondent to be "responsible, hard-working, ethical and professional;" she never observed him to be intoxicated, and has known him as a good family man (exhibit B.) Ms. Penny is fully committed to having him continue with Keller under her close supervision should the Bureau grant him a restricted license.

14. Respondent's work ethic, honesty and commitment to sobriety were endorsed by several individuals. His real estate clients praised his commitment to them and skill in dealing with their real estate transactions (exhibit C). His commitment to sobriety and active participation in AA was attested to by his AA sponsor, Mark Johnson, with whom respondent checks in daily, and Paul P. who recently became respondent's sponsor and has been working with him on the 12 Steps directly (exhibits F and G). In his letter dated November 8, 2016, Paul P. confirmed respondent has maintained his sobriety 14 months.

15. Respondent provided credible and persuasive character evidence from his wife, Rosemary Avalos, who testified on respondent's behalf. Ms. Avalos, who works with her husband as a part-time real estate salesperson, met respondent in 2004, married him in 2006 and shares responsibility for their three children. At the time of their marriage respondent had disclosed to her his previous issues with alcohol and committed to her that he would abstain from drinking and for seven years he did. Between 2004 until December 2011, Ms. Avalos never witnessed respondent drink any alcohol. She began to observe respondent drinking in December 2011. Initially, she observed him to limit his drinking to social settings, but, as time passed, his drinking became progressively worse. After his last arrest in July 23, 2015, Ms. Avalos observed respondent changed attitude and his decision to stop drinking. He is apologetic for his behavior and talks to their children regarding his arrests and uses his experience as a life lesson for their children. She testified that she sees his sincerity and does not believe he will re-offend.

16. Ms. Avalos has also observed respondent's professional behavior through her work with him as a part-time real estate salesperson. Respondent has never been intoxicated while performing any of duties as a real estate salesperson. Respondent has always been hard-working and honest and ethical in his real estate transactions.



17. Overall, respondent demonstrated maturity, contrition, remorse, and responsibility for his past actions. He convincingly established that since his last conviction he has conducted his life in a manner consistent with his stated commitment to sobriety. Respondent demonstrated he is fully committed to his work, family and community. He has the support of his employer, clients, family, and AA sponsors. The public will be adequately protected with a restricted license.

#### *Costs of investigation and enforcement*

18. The Board has incurred costs in the sum of \$517.50 in connection with its investigation (exhibit 9) and \$400.50 for enforcement of this matter, which costs based on the respective declarations of Maria Suarez and Cheryl Keily, and absent objection, argument or contrary evidence, are found to be reasonable. Respondent shall pay the sum of \$918 to the Bureau.

### LEGAL CONCLUSIONS

1. Cause exists to revoke or discipline respondent's license for two or more convictions for driving under the influence which also represented a pattern of repeated and willful disregard for the law, as set forth in factual findings 3-7. 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 "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, Code section 490, subdivisions (a) and (b), provide that a board may suspend or revoke a license, or exercise any authority to discipline a licensee, for conviction of a crime that is substantially related to the qualifications, functions or duties of the business or profession for which the license was issued. California Code of Regulations, title 10 (Regulations), section 2910, subdivision (a) defines substantially related crimes as including those involving conduct which demonstrates a pattern of repeated and willful disregard of law (subdivision (a)(10), and 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 (subdivision (a)(11).

#### *Rehabilitation factors and disposition*

2. The objective of license disciplinary proceedings is to protect the public, the licensed profession or occupation, maintain integrity, high standards, and preserve public confidence in licensees. (*Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Clerici v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d, 1016, 1030-1031.) The purpose of proceedings of this type is not to punish respondent. In particular, the statutes relating to real estate licenses are designed to protect the public from any potential risk of harm. (*Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.) Respondent provided substantial evidence of his rehabilitation such that the issuance of a restricted license will not present a risk to the public.

3. Respondent has provided substantial evidence of rehabilitation, as set forth in factual findings 8-17. Criteria have been developed by the Bureau to evaluate the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation has been initiated on account of a crime committed by the licensee. The relevant criteria, found at Regulation section 2912, are summarized below, including references to the relevant evidence.

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.) The DUI convictions occurred on January 16, 2014, and August 21, 2015. Less than two years have elapsed from the August 21, 2015, probation violation and conviction.

Subdivision (b), restitution. Respondent paid all fines, fees and restitution ordered by the court.

Subdivision (c), expungement of the conviction. The 2014 and 2015 convictions have not been expunged.

Subdivision (e), completion of, or early discharge from, the criminal probation. Respondent was not yet completed probation for either his 2014 or his 2015 convictions. Respondent's probation is currently set to terminate in 2020.

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. According to respondent, his AA sponsor and respondent's his wife, respondent has abstained from use of all alcohol since July 23, 2015, less than two years.

Subdivision (g), payment of any criminal fines or penalties. Respondent paid all fines and penalties.

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 convictions in question. Respondent has developed strong ties with the AA community, attending meetings three to four times a week.

Subdivision (j), stability of family life. Respondent's family life is stable. His wife and three minor children rely upon his income for support. He is an involved parent, participating in his children's extracurricular activities.

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Subdivision (l), significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems. Respondent is an active member of Alcoholics Anonymous, assisting in welcoming members as well as other chores.

Subdivision (m), change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by testimony of applicant and evidence from others familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns. Mrs. Avalos testified to the change in her husband's behavior in his attitude towards drinking. Respondent similarly testified that he understands that his addiction to alcohol is a disease and that he cannot ever drink again. He testified that he is no longer ashamed of being in AA and that he wants to help people who are dealing with their own issues with alcohol.

Subdivisions (d), (h), (k), (o) and (p) are not applicable.

4. The rehabilitation criteria summarized above have been formulated in an attempt to gauge whether criminal conduct is likely to be repeated. The court in *Singh v. Davi* (2012) 211 Cal.App.4th 141, 149 determined in this regard that, of the many rehabilitation criteria, arguably the most important in predicting future conduct is subdivision (n), change in attitude from that which existed at the time of the conduct in question. "California courts have considered various factors in reaching their decision as to the type of discipline or whether a person was a threat to the public. In real estate licensee disciplinary cases, some of these factors have included: (1) the likelihood of recurrence of the crime; (2) whether the person led an exemplary life before and after the incident which led to the conviction; and (3) whether the person was contrite and remorseful." (*Brandt v. Fox* (1979) 90 Cal.App.3d 737, 745-747). Respondent was remorseful for his misconduct and testified convincingly as to a change in attitude regarding his drinking.

5. The evidence established two acts in violation of the law as well as a probation violation. Respondent submitted convincing evidence of his integrity, good business reputation and trustworthiness, and that he is a fit and proper person to hold the license. He accepts responsibility for his actions and has developed new social circle to support his resolution to abstain from partaking in alcohol. However, a little more than one year has elapsed since his latest conviction for DUI, and he has not yet completed his probation for either his 2014 or 2015 convictions. Since persons under the direct supervision of correctional authorities are required to behave in an exemplary fashion, little weight is generally placed on the fact that the applicant did not commit additional crimes or engage in other misbehavior while on probation or parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) In consideration of all of the facts and circumstances of this case, particularly his demonstrated commitment to sobriety, and his employer's willingness to supervise him, the public would be adequately protected with an order of revocation and the issuance of restricted license under appropriate conditions.

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## Costs

6. Under Code section 10106, the Bureau may recover costs "not to exceed the reasonable costs of the investigation and enforcement" of this matter. As set forth in factual finding 18, the costs claimed are \$918. These costs are reasonable and are consistent with the criteria *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.

## ORDER

All licenses and licensing rights of respondent Carlo's Rafael Avalos under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.6 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 two years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for a 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 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, California 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.

7. Respondent shall pay to the Bureau of Real Estate the costs of investigation and enforcement of this matter in the amount of \$918, in accordance with Business and Professions Code section 10106. In its discretion, the Bureau may allow respondent to pay this amount in installments.

DATED: December 9, 2016

DocuSigned by:  
*Eileen Cohn*  
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EILEEN COHN  
Administrative Law Judge  
Office of Administrative Hearings