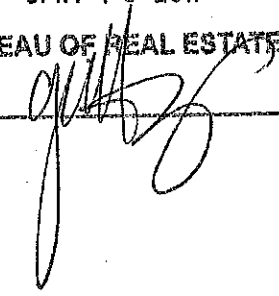


FILED

JAN 18 2017

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	CalBRE No. H-40355 LA
)	
SHARON KATE JIMENEZ,)	OAH No. 2016090476
)	
Respondent.)	

DECISION

The Proposed Decision dated December 8, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision.

Factual Findings, Page 1, Paragraph No. 2, Line 2, "September 27, 2005" is amended to read "July 23, 2005".

The Decision suspends or revokes one or more real estate licenses.

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 **FEB - 7 2017**.

IT IS SO ORDERED 1/5/17

WAYNE S. BELL
REAL ESTATE COMMISSIONER

Daniel J. Sandri

By: DANIEL J. SANDRI
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Amended Accusation
Against:

SHARON KATE JIMENEZ,

Respondent.

Case No. H-40355 LA

OAH No. 2016090476

PROPOSED DECISION

This matter was heard on November 10, 2016, by Eileen Cohn, Administrative Law Judge with the Office of Administrative Hearings (OAH), in Los Angeles.

Lissete Garcia, Counsel, represented complainant.

Sharon Kate Jimenez (respondent) was present and represented herself.

Oral and documentary evidence was received, argument was heard, the matter submitted, and the record closed on November 10, 2016.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant Maria Suarez made and filed the Accusation solely in her official capacity as a Supervising Special Investigator Commissioner for the Bureau of Real Estate (Bureau), State of California.

2. Respondent is licensed by the Bureau as a real estate salesperson. Her real estate salesperson license, S/01701327, was originally issued on September 27, 2005. Respondent's real estate salesperson license was last renewed on November 30, 2014 and has an expiration date of November 29, 2018.

3. The First Amended Accusation was filed on October 6, 2016. Respondent timely submitted a Notice of Defense which contained her request for a hearing in order to present a defense and matters in mitigation to the allegations in the Accusation.

Misdemeanor convictions

4. On November 1, 2013, in the Superior Court of the State of California, County of Orange, case number 13WM08049, respondent was convicted, upon her plea of guilty, of violating Vehicle Code section 23152, subdivision (a) [driving under the influence of alcohol with two priors], and Vehicle Code section 23152, subdivision (b)[driving with a blood alcohol concentration of .08 percent or more with two priors], Vehicle Code section 14601.2, subdivision (a)[driving on a suspended license], and Vehicle Code section 20002, subdivision (a) [hit and run with property damage], misdemeanors. Imposition of sentence was suspended, and respondent was placed on five years of formal probation, with terms and conditions, including fees, fines and assessments. Respondent was ordered to serve 240 days in county jail, with credit for two days, but stayed the jail time an ordered it to be served instead at home as supervised electronic confinement. As part of her probation, respondent was also ordered to attend and complete an 18-month Multiple Offender Alcohol Program and Mothers Against Drunk Driving (MADD) Victim's Impact Panel, to submit to chemical blood testing, and use or possess any alcoholic beverage or alcohol at her residence. Respondent was sanctioned with 8 hours of community service for being late to mandatory drug testing.

5. Respondent abided by the terms of her probation. Respondent completed her court-ordered alcohol and MADD programs and made payment on her fees outright or served jail time in lieu of payment. On February 20, 2015, the court granted her motion to vacate her remaining fees, permanently stayed 120 days of her remaining jail term, relieved her of formal probation, and modified her probation to informal probation. At the time of the hearing, respondent mistakenly thought probation had been terminated, but according to court records she remains on informal probation until November 1, 2018 (exhibit 5).¹

6. The circumstances of the conviction are as follows: On July 22, 2013, police officers were called to respondent's apartment building where they found her vehicle at the north fence of the parking lot after the vehicle had apparently side-swiped the rear of another vehicle. The investigating police officer observed the damage to respondent's vehicle and the other car, was consistent with reports that respondent was found by her neighbors, who heard a loud bang and left their apartments to assist respondent from her vehicle after she drove it into the fence, helped her out of her car, and walked her back to her apartment (exhibit 6). Respondent admitted to the investigating police officer she had been driving her vehicle "earlier" but did not remember hitting into any parked vehicles or the fence (*ibid*). In her explanation to the Bureau (exhibit 11) respondent insisted that she was not driving and not drinking. At hearing she also admitted that she did not recall the incident, because, she had "blacked out," and only recalled standing in her apartment when the police arrived. Respondent questioned why the neighbor had the car keys and why she was not sued,

¹ At hearing, respondent stated she still owes about \$2200 in total in fines or fees, and is paying it slowly because, as she testified, "she has no money". Based on the docket of the 2013 conviction, it is unclear, what, if anything she still owes, or if her remaining debt is due to this last offense or previous offenses.

suggesting somehow that she was not at fault. She claimed she was "railroaded" into pleading guilty. She also paid a total of \$600 to repair the fence, suggesting again, not because she was at fault, but due to her landlord's threat to evict her. Her car was later repossessed. In an administrative hearing concerning licensing rights, an applicant such as respondent may not collaterally attack her convictions by arguing she was not guilty of the crimes as a matter of fact; the entry of the pleas leading to his convictions are treated as conclusive evidence of her guilt of the crimes for which she was convicted. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.) Respondent's attempt to deflect her responsibility for the circumstances of her conviction, were contrary to her plea of guilty and undermined her credibility.

7. In addition to her November 1, 2013 conviction, complainant offers two other previous convictions of respondent, which were aggravating factors in respondents' 2013 sentence.

7(A) On June 2, 2008, in the Superior Court of the State of California, County of Los Angeles, case number 8LT0073701, upon her plea of nolo contendere, respondent was convicted of violating Vehicle Code section 23152, subdivision (b), [driving with a blood alcohol level of .08 percent or higher], a misdemeanor. Respondent committed the offense on April 24, 2008. Respondent's sentence was suspended and she was placed on summary probation for a period of 36 months, ordered to pay restitution, fines and fees, and complete a three-month first offender alcohol education and counseling program. Respondent paid her fines and fees by May 23, 2011, and it appears from the court docket that the proceedings were terminated (exhibit 8). Based upon the length of the terms of her probation, respondent violated her probation when she was arrested in December 2010 for the 2011 conviction.

7(B). On March 24, 2011, in the Superior Court of the State of California, Count of Los Angeles, case number 1BF0095001, upon her plea of nolo contendere, respondent was convicted for violating Vehicle Code section 23152, subdivision (b), [driving with a blood alcohol level of .08 percent or higher], a misdemeanor. The circumstances of the 2011 conviction occurred on December 2, 2010. Respondent's sentence was suspended and she was placed on summary probation for a period of 48 months, and ordered to pay, fines and penalties, participate in 33 hours of community service and enroll and participate in an 18-month second offender alcohol education and counseling program. Respondent violated her probation when she was terminated from her alcohol program failed to enroll and complete her alcohol program. Respondent's probation was terminated on October 29, 2014 after she satisfied her court-ordered payment for various fees and fines. (Exhibit 7.) Based on the length and terms of her probation for her 2011 conviction, respondent violated probation when she was convicted in 2013.

Respondent's application

8. On November 30, 2014, respondent submitted a Salesperson Renewal Application to the Bureau. Respondent failed to disclose her 2008, 2011 and 2013

convictions set forth in factual findings 4-7. Respondent replied "no" in response to Question number four of the application which stated:

WITHIN THE SIX-YEAR PERIOD PRIOR TO FILING THIS APPLICATION, HAVE YOU BEEN CONVICTED OF A MISDEMEANOR OR FELONY? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY. (emphasis in the original).

9. In aggravation, on May 15, 2009, respondent answered "no" to the same question in her renewal application and failed to disclose her 2008 offense.

10. Respondent provided a variety of excuses for her omissions, which were not credible and do not provide sufficient support for her continued licensure. Respondent offered she did not read the conviction section; she signed under penalty of perjury a copy of the same form, with the exception of her continuing education requirements, she signed when she first applied in 2005. She also offered that she did not understand what her convictions were despite her representation by counsel at the court proceedings. She only understood she pleaded to driving under the influence, but she did not know it was a conviction. She also offered that she did not think any conviction was relevant that did not directly relate to her job performance as a real estate salesperson.

11. Respondent apologized for her omissions, but did not take responsibility for her actions. She noted the Bureau did not contact her at the time of her 2009 renewal, and she suggested the Bureau could have easily resolved this action without revoking her license if it had contacted her when it discovered her omissions. Respondent thought the Bureau should "just tell me what to do". Respondent does not believe that her convictions for driving under the influence have anything to do with her license as she never drives clients and her conduct during her work as a real estate salesperson has always been appropriate and professional, and is not being challenged.

Rehabilitation

12. Respondent's desire and commitment to being a real estate agent is genuine and she wants to maintain her license to support herself her children and to continuing helping people. Respondent has worked with various real estate brokers without incident. Respondent briefly shared her personal family divorce and custody challenges during the past few years which have deeply affected her financially and emotionally. Her financial situation became so dire she was homeless for a time; she recently obtained housing. Respondent has made great effort to support herself as a real estate salesperson and in other jobs, which she held at the same time she was completing her community service.

13. Respondent has made great progress during her probation; however, having introduced no evidence that her probation has been terminated early, respondent is expected to serve her full term through November 1, 2018. Respondent acknowledges she is an alcoholic; she started drinking when she was 13. Respondent insists her last conviction convinced her to maintain her sobriety. In her explanation to the Bureau on May 9, 2015 she said she had her last drink on July 22, 2013 (exhibit 11.) At hearing, respondent confirmed she does not attend Alcoholics Anonymous meetings, but she has a "sober friend" she calls each day. Contrary to her 2015 written statement, respondent conceded she drinks, but admitted to only drinking about every two weeks. Respondent has a high school diploma and an associate of arts degree. She has two children and is active in her church. Respondent testified on her own behalf, but offered no character witnesses or letters attesting to her sobriety, her work ethic or her community involvement.

14. Respondent presented herself at hearing as an individual with many talents and capabilities. However, she provided insufficient evidence that she is rehabilitated from her last conviction for driving under the influence, and given her omissions on her application, and her excuses, she has not demonstrated that she is capable of attending to her obligations as a real estate salesperson.

Cost Recovery

15. The Bureau incurred investigation costs in the amount of \$1,751.20, and enforcement costs in the amount of \$667.50. These costs are deemed reasonable, based on the declarations of Maria Suarez and Lissete Garcia (exhibits 12 and 13). Respondent objected to the costs of investigation and enforcement and credibly demonstrated she is unable to pay.

LEGAL CONCLUSIONS

1. Cause exists to revoke or discipline respondent's license because she received 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 4-7. 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)).

2. Cause exists to revoke respondent's real estate license pursuant to Code section 498 and Regulation section 10177, subdivision (a) for knowingly omitting to state a material fact on her license application in 2014, based on factual findings 8-11. Respondent elected not to disclose her convictions because she determined they did not have anything to do with the practice of real estate. She pleaded guilty or nolo contendere to each conviction and received probation for each conviction. She is still serving probation. Given the number of convictions, and her plea to each conviction, respondent's insistence she did not understand her convictions are misdemeanors is not credible. While respondent may have not understood her obligations in her 2009 renewal application, by the time of her 2014 renewal she had been in court many times for similar convictions, entered pleas for each conviction and clearly understood the implications of the convictions.

3. 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's convictions for driving under the influence establish respondent is a risk to the public. Her failure to report her convictions reflects a lack of integrity and undermines public confidence in the Bureau's licensees.

4. The Bureau has developed criteria of rehabilitation that are to be considered in evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of a license has been initiated. The criteria, which are set forth at California Code of Regulations, title 10, section 2912, subdivisions (a) – (m), have been considered.

5. Respondent has not satisfied important rehabilitation criteria consistent with protection of the public. Respondent's last conviction is three years-old (subd. (a)) but it was the third conviction for driving under the influence. Respondent is still on probation and is not due to be released from probation until 2018 (subd. (e).) Respondent has made great strides in fulfilling the terms of her probation, but she cannot yet demonstrate that she is rehabilitated. Since people have a strong incentive to obey the law while under the supervision of the criminal justice system, little weight is generally placed on the fact that an applicant has engaged in good behavior while on probation or parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

6. Respondent fails to appreciate the relationship between her alcoholism and her license. Contrary to her belief that her alcoholism is not connected to her ability to fulfill her professional obligations, the Regulations (legal conclusion one) expressly state that repeated convictions for driving under the influence are substantially related to a real estate salesperson license and constitute cause for revocation or discipline. Respondent has admitted, contrary to her previous representation to the Department that she still drinks, and given her ongoing probation and history, more time and evidence is needed of her rehabilitation before she can be considered for licensure. Respondent has many positive qualities which were apparent at the hearing, but she did not provide sufficient evidence, mainly from employers, past or potential, to support the issuance of a restricted license. For these reasons, respondent's license is revoked.

Cost Recovery

7. 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 13, the costs claimed are \$691. These costs are reasonable. However, the circumstances require a downward adjustment.

8. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost recovery provision similar to Code section 10106. In so doing, however, the Court directed the administrative law judge and the licensing agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Thus, the Bureau must not assess the full costs where it would unfairly penalize a licensee who has committed misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the Bureau must consider a licensee's subjective good faith belief in the merits of his or her position and whether the licensee has raised a colorable challenge; the Bureau must consider a licensee's ability to pay; and the Bureau may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct. (*Id.* at p. 45.)

9. In this case, respondent has used the due process hearing to defend the charges, and has shown that she is unable to pay the costs of investigation or enforcement. For these reason, respondent will not be required to pay the cost of investigation and enforcement.

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ORDER

All licenses and licensing rights of respondent Sharon Kate Jimenez under the Real Estate Law are revoked. Respondent shall not be required to pay the costs of investigation and enforcement.

DATED: December 8, 2016

DocuSigned by:
Eileen Cohn
386320161658474

EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings