

FILED

MAR 14 2018

BUREAU OF REAL ESTATE

By *CD Delois*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

HENRY NELSON,

Respondent.

) CalBRE No. H-40516 LA

) OAH No. 2017051126

DECISION AFTER REJECTION

This matter came on for hearing before Cindy F. Forman, Administrative Law Judge ("ALJ") of the Office of Administrative Hearings, at Los Angeles, California, on August 8, 2017.

The Complainant was represented by James R. Peel, Counsel for the Bureau of Real Estate.

Respondent HENRY NELSON ("Respondent") appeared personally and represented himself.

Oral and documentary evidence was received and argument was heard. The record was kept open to allow Respondent to submit up-to-date docket sheets for Respondent's four criminal convictions. On August 14, 2017, Respondent submitted certified docket sheets dated August 8, 2017, for each of his criminal convictions. The dockets sheets were marked as

1 Exhibits A, B, C, and D and they were admitted without objection. The matter was submitted for
2 decision on August 14, 2017.

3 On August 24, 2017, the ALJ submitted a Proposed Decision which I declined to
4 adopt as my Decision herein.

5 Pursuant to section 11517(c) of the Government Code of the State of California,
6 Respondent was served with notice of my determination to not adopt the Proposed Decision of
7 the ALJ along with a copy of said Proposed Decision. Respondent was notified that I would
8 decide the case upon the record, the transcript of the proceedings held on August 8, 2017, and
9 upon any written argument offered by Respondent and Complainant.

10 Respondent did not submit any written argument for my consideration. On
11 February 26, 2018, argument was submitted on behalf of Complainant.

12 I have given careful consideration to the record in this case including the
13 transcript of the proceedings of August 8, 2017. I have also considered the argument submitted
14 on behalf of Complainant.

15 The following shall constitute the Decision of the Real Estate Commissioner in
16 this proceeding:

17 FACTUAL FINDINGS

18 The Factual Findings of the ALJ's Proposed Decision in this matter, dated
19 August 24, 2017, are hereby adopted.

20 LEGAL CONCLUSIONS

21 The Legal Conclusions and Discussion of the ALJ's Proposed Decision in this
22 matter, dated August 24, 2017, are hereby adopted, with the exception to Legal Conclusion Nos.
23 7, 9, and 10.

24 Respondent's convictions are not relatively minor. Respondent was on probation
25 for the March 12, 2015 DUI conviction when he committed the offenses that led to Respondent's
26 convictions for petty theft, battery, and contempt of court. The crimes demonstrate a pattern of
27 misconduct and a disregard of, or failure to comply with, court orders.

1 As cause exists to suspend or revoke Respondent's real estate broker license,
2 Respondent bears the burden of establishing rehabilitation. (*Martin v. Alcoholic Beverage*
3 *Control Appeals Bd.* (1950) 52 Cal.2d 259, 264-265.) "Since persons under the direct
4 supervision of correctional authorities are required to behave in exemplary fashion, little weight
5 is generally placed on the fact that a bar applicant did not commit additional crimes or continue
6 addictive behavior while in prison or while on probation or parole." *In re Gossage*, 23 Cal.4th
7 1080, 1099 (2000).

8 Respondent has not met some of the applicable criteria. Respondent remains on
9 probation (Regulation 2912(e)). Respondent's convictions have not been expunged (Regulation
10 2912(c)). Respondent has not shown proof of payment of all fines and fees imposed in
11 connection with the criminal convictions (Regulation 2912(g)). A little over two years have
12 elapsed since the Respondent's four convictions between March and December of 2015. At the
13 present date, an insufficient period of time has lapsed to find rehabilitation to merit Respondent's
14 continued plenary licensure as a real estate broker. Respondent has been on probation for much
15 of the two-year period since his convictions.

16 The disciplinary procedures of the Real Estate Law are intended to protect the
17 public in its dealings with real estate licensees. (Business and Professions Code section 10050;
18 *Handeland v. Dept. of Real Estate* (1976) 58 Cal.App.3d 513). Pursuant to Business and
19 Professions Code section 10177, the degree of discipline is a matter that is within the discretion
20 of the Real Estate Commissioner. Given Respondent's recent history of substantially related
21 convictions, restriction of Respondent's real estate broker license for four years is appropriate.

22 ORDER

23 WHEREFORE, THE FOLLOWING ORDER is hereby made:

24 All licenses and licensing rights of Respondent HENRY NELSON under the Real
25 Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued
26 to Respondent pursuant to section 10156.5 of the Business and Professions Code if Respondent
27 makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the

1 restricted license within 90 days from the effective date of this Decision. The restricted license
2 issued to Respondent shall be subject to all of the provision of section 10156.7 of the Business
3 and Professions Code and to the following limitations, conditions and restrictions imposed under
4 authority of section 10156.6 of that Code:

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

9 2. The restricted license issued to Respondent may be suspended prior to hearing
10 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that
11 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
12 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
13 license.

14 3. Respondent shall not be eligible to apply for the issuance of an unrestricted
15 real estate license nor for removal of any of the conditions, limitations or restrictions of a
16 restricted license until four (4) years have elapsed from the effective date of this Decision and
17 Order.

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

26 5. Respondent shall notify the Commissioner in writing within 72 hours of any
27 arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office

1 Box 137013, Sacramento, CA 95813-7013. The letter shall set forth the date of Respondent's
2 arrest, the crime for which Respondent was arrested and the name and address of the arresting
3 law enforcement agency. Respondent's failure to timely file written notice shall constitute an
4 independent violation of the terms of the restricted license and shall be grounds for the suspension
5 or revocation of that license.

6 Pursuant to Government Code section 11521, the Bureau of Real Estate may
7 order reconsideration of this Decision on petition of any party. The Bureau's power to order
8 reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the
9 effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked
10 real estate license or to the reduction of a penalty is controlled by section 11522 of the
11 Government Code. A copy of sections 11521 and 11522 and a copy of the Commissioner's
12 Criteria of Rehabilitation are attached hereto for the information of Respondent.

13 This Decision shall become effective at 12 o'clock noon on 4/3/18.

14 IT IS SO ORDERED 3/12/18.

15 WAYNE S. BELL
16 Real Estate Commissioner

17 
18

19 By: DANIEL J. SANDRI
20 Chief Deputy Commissioner

Flag

FILED

APR 17 2017

BUREAU OF REAL ESTATE

By John Aguit

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
HENRY NELSON,) CalBRE No. H-40516 LA
Respondent.)

ORDER VACATING DECISION AND SETTING ASIDE DEFAULT

On February 28, 2017, a Decision was rendered revoking the real estate broker license of Respondent, HENRY NELSON, effective April 19, 2017.

On March 17, 2017, good cause was presented to vacate the Decision of February 28, 2017, and to have the matter remanded to the Office of Administrative Hearings as a contested matter.

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NOW, THEREFORE, IT IS ORDERED that the Decision of February 28, 2017, is
vacated and that the Matter of the Accusation filed on January 18, 2017, is remanded to the Office
of Administrative Hearings.

This Order shall be effective immediately.

DATED: 4/13/17.

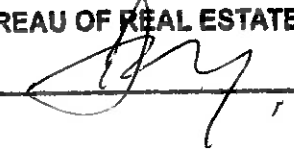
WAYNE S. BELL
REAL ESTATE COMMISSIONER

By: 
DANIEL J. SANDRI
Chief Deputy Commissioner

5a4
FILED

MAR 17 2017

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)

No. H-40516 LA

HENRY NELSON,

Respondent.)

ORDER STAYING EFFECTIVE DATE

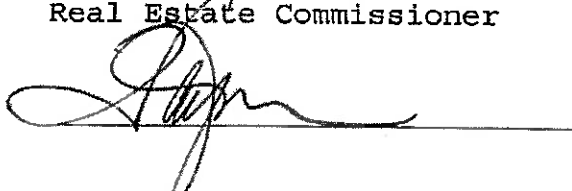
On February 23, 2017, an Order revoking real estate broker License was ordered by the Bureau of Real Estate to become effective March 20, 2017.

IT IS HEREBY ORDERED that the effective date of the Order of Revocation is stayed for a period of 30 days to consider Respondent's petition for reconsideration.

The Order shall become effective at 12 o'clock noon on April 19, 2017.

IT IS SO ORDERED

3/17/2017
WAYNE S. BELL

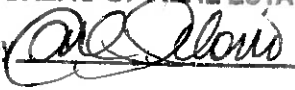
Real Estate Commissioner


FILED

FEB 28 2017

BUREAU OF REAL ESTATE

BEFORE THE BUREAU OF REAL ESTATE

By 

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) CalBRE No. H-40516 LA
HENRY NELSON,)
Respondent(s).)

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on February 15, 2017, and the Findings of Fact set forth herein, which are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

This Decision revokes a real estate license and/or license rights on grounds of criminal convictions.

Pursuant to Government Code section 11521, the Bureau of Real Estate of the State of California (hereinafter "the Bureau") 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.

FINDINGS OF FACT

1.

On January 13, 2017, Veronica Kilpatrick made the Accusation in her official capacity as a Supervising Special Investigator of the Bureau. On January 18, 2017, the Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, return receipt requested, and regular mail to Respondent's last known mailing address on file with the Bureau.

2.

On February 15, 2017, no Notice of Defense having been received or filed herein within the time prescribed by Section 11506 of the Government Code, Respondent's default was entered herein.

3.

Respondent HENRY NELSON ("hereinafter "Respondent") is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (herein "the Code") as a real estate broker. The license expired July 22, 2015. There is a two year renewal right.

4.

Attached as Exhibit "A" is a true and correct copy of the Accusation filed on January 18, 2017, which is incorporated herein as part of this Decision.

DETERMINATION OF ISSUES

1.

The evidence established that the crimes of which Respondent was convicted, as set forth in Paragraph 4 of the Findings of Fact, are substantially related to the qualifications, functions, and duties of a real estate licensee.

2.

Cause for disciplinary action against Respondent exists pursuant to Sections 490 and 10177(b) of the Code.

3.

The standard of proof applied was clear and convincing proof to a reasonable certainty.

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ORDER

All licenses and licensing rights of Respondent HENRY NELSON under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on MAR 20 2017.

DATED: 2/23/17.

WAYNE S. BELL
REAL ESTATE COMMISSIONER

By: Daniel J. Sandri
DANIEL J. SANDRI
Chief Deputy Commissioner

1 Bureau of Real Estate
2 320 West Fourth Street, Suite 350
3 Los Angeles, California 90013-1105
4 (213) 576-6982

FILED

FEB 15 2017

BUREAU OF REAL ESTATE

By R. P. [Signature]

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of)
12) NO. H-40516 LA
13 HENRY NELSON,)
14 Respondent.) DEFAULT ORDER
15)

16 Respondent, HENRY NELSON, having failed to file a
17 Notice of Defense within the time required by Section 11506 of
18 the Government Code, is now in default. It is, therefore,
19 ordered that a default be entered on the record in this
20 matter.
21

22 IT IS SO ORDERED

February 10, 2017

23 Real Estate Commissioner

24 By:

Dolores Ramos

25 DOLORES RAMOS

26 Regional Manager
27

FILED

SEP 20 2017

BUREAU OF REAL ESTATE

By [Signature]

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

HENRY NELSON,

Respondent.

CalBRE No. H-40516 LA

OAH No. 2017051126

NOTICE

TO: HENRY NELSON, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated August 24, 2017, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated August 24, 2017, 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 Tuesday, August 08, 2017, and any written argument hereafter submitted on behalf of respondent and complainant.

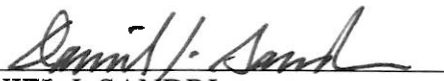
Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Tuesday, August 08, 2017, at the Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for good

1 cause shown.

2 Written argument of complainant to be considered by me must be submitted within
3 15 days after receipt of the argument of respondent at the Los Angeles Office of the Bureau of Real
4 Estate unless an extension of the time is granted for good cause shown.

5 DATED: 9/12/17.

6 WAYNE S. BELL
7 REAL ESTATE COMMISSIONER

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9 By 
10 DANIEL J. SANDRI
11 Chief Deputy Commissioner
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BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

HENRY NELSON,

Respondent.

CalBRE No.: H-40516 LA

OAH No.: 2017051126

PROPOSED DECISION

Administrative Law Judge Cindy F. Forman of the Office of Administrative Hearings heard this matter on August 8, 2017, in Los Angeles, California.

James R. Peel, Counsel for the Bureau of Real Estate (Bureau), represented Veronica Kilpatrick (complainant). Complainant is a Supervising Special Investigator for the Bureau.

Henry Nelson (respondent) represented himself.

Oral and documentary evidence was received, and argument was heard. The record was kept open to allow respondent to submit up-to-date docket sheets for his four criminal convictions. On August 14, 2017, respondent submitted certified docket sheets dated August 8, 2017, for each of his criminal convictions. The docket sheets were marked as Exhibits A, B, C, and D, and they were admitted without objection. The matter was submitted for decision on August 14, 2017.

FACTUAL FINDINGS

Jurisdiction

1. On January 19, 2002, the Bureau issued respondent his real estate salesperson license. Respondent obtained real estate broker license number 01329579 from the Bureau on July 23, 2007. Respondent recently renewed his real estate broker license on July 18, 2017, and it is scheduled to expire on July 18, 2021.

2. On January 13, 2017, complainant, acting in her official capacity, filed the Accusation seeking discipline of respondent's real estate broker license on the basis of the

four criminal convictions described below. Respondent failed to file a Notice of Defense, and, on February 10, 2017, the Bureau entered a default in the case. On February 23, 2017, the Bureau revoked respondent's real estate broker license, effective March 20, 2017. Respondent then sought reconsideration of the Bureau's revocation order, which the Bureau granted. This hearing ensued.

Criminal Convictions

3. Over the course of less than a year, from March through December 2015, respondent suffered four separate criminal convictions involving the abuse of alcohol. These were his first and only criminal convictions. Respondent does not dispute any of the facts or circumstances surrounding the convictions, and he has assumed full responsibility for his conduct during this time period. At present, only two of the cases remain open.

4(a). On March 12, 2015, in the Superior Court of the State of California, Los Angeles County, case number 5WA00232, the court convicted respondent on his plea of nolo contendere to the misdemeanor violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol concentration of 0.08% or higher). The facts and circumstances surrounding this conviction are as follows: on January 27, 2015, respondent was drinking alcohol in his car, which was parked on a movie set where he was conducting business. He was asked to move his car off the movie set to the next block, and a police officer, who had observed him drinking, stopped and arrested him when he began to drive.¹

4(b). The court placed respondent on summary probation for a period of 36 months provided he complete a nine-month licensed first-offender alcohol program and pay fines and fees of \$1,687. To avoid paying these fines and fees, the court gave respondent the option of serving 11 days in county jail or performing 130 hours of community service. Respondent was also ordered to attend two Alcoholics Anonymous (AA) meetings per week for a total of 52 meetings by September 14, 2015.

4(c). Respondent satisfied the AA meeting requirements and completed the first-offender alcohol program. As of July 17, 2017, respondent completed 97.75 of the 130 court-ordered community service hours. The court ordered respondent to complete his community service hours and pay remaining fees of \$258 by September 29, 2017. Respondent's summary probation is scheduled to end on March 12, 2018.

5(a). On December 14, 2015, in the Superior Court of the State of California, Los Angeles County, case number 5PY04867, the court convicted respondent on his plea of nolo contendere to the misdemeanor violation of Penal Code sections 484, subdivision (a), and

¹ Vehicle Code section 23152, subdivision (b), states as follows: "It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle."

490.2, subdivision (a) (petty theft).² The conviction was based on respondent's theft of several bottles of vodka with a total value of \$27.98 from a CVS pharmacy on June 13, 2015.

5(b). The court placed respondent on summary probation for a period of 36 months provided he serve 45 days in county jail or perform 200 hours of community service in lieu of jail, pay \$220 in fines and fees, and make restitution to CVS in the amount of \$27.98. The court also ordered respondent to attend at least four AA meetings per week for a total of 96 meetings.

5(c). On July 17, 2017, respondent submitted proof to the court that he had completed 50 of the 200 hours of court-ordered community service and had participated in a six month residential alcohol abuse treatment program at Chabad Residential Treatment Center for Men in Los Angeles (Chabad). In response, the court removed the AA meeting requirement from its earlier order. The court also ordered respondent to complete his remaining community service hours and to pay the \$220 in fines and the \$27.98 in restitution he owed by December 26, 2017. Respondent's summary probation is scheduled to end on December 14, 2018. Respondent testified that his probation for the DUI and theft convictions had been consolidated or combined by the court; although the docket sheets indicate that the DUI case is to follow the theft case, nothing in the docket sheets indicate that the two matters have been formally consolidated or combined.

6(a). On December 23, 2015, in the Superior Court of the State of California, Los Angeles County, the court convicted respondent in two separate cases. In case number 5PY06370, respondent pleaded nolo contendere to the misdemeanor violation of Penal Code 242 (battery).³ The facts and circumstances surrounding this conviction are as follows: on December 5, 2015, respondent was at his mother's house and was intoxicated. Despite his inebriated state, respondent was intent on driving his car to an engagement. Respondent's mother attempted to restrain respondent from entering his car. Respondent resisted his mother's efforts, and his mother was then forced to call the police in order to stop respondent from driving while intoxicated. Although there is no indication that his mother suffered any physical harm in the incident, the police charged respondent with battery.

² Penal Code section 484, subdivision (a), states in relevant part as follows: "Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him . . . is guilty of theft." According to Penal Code section 490.2, subdivision (a), any theft of property valued at less than \$950 "shall be considered petty theft and shall be punished as a misdemeanor."

³ Penal Code 242 defines a battery as "any willful and unlawful use of force or violence upon the person of another."

6(b). In case number 5PY06068, the court convicted respondent on his plea of nolo contendere to the misdemeanor violation of Penal Code section 166, subdivision (a)(4) (contempt of court).⁴ Respondent's conviction was based on an argument he had with his mother at the courthouse on November 29, 2015.

6(c). In both cases, the court placed respondent on summary probation for a period of 36 months on condition he pay \$220 in fees and costs and enroll in and complete a six month stay at Chabad to treat his alcohol addiction. In case number 5PY06068, the docket sheet indicates that the court also ordered respondent to serve 364 days in county jail (less credit for six days actually served); however, it is unclear from the docket whether respondent actually served any time in jail or whether respondent's court-ordered stay at Chabad was in lieu of a jail sentence. At the hearing, respondent did not allude to serving any jail time for his contempt conviction, and complainant did not adduce any evidence indicating that respondent's court-ordered stay at Chabad was in addition to serving jail time.

6(d). After respondent submitted proof that he had completed a six-month stay at Chabad, the court terminated respondent's summary probation in both cases on February 24, 2017, and referred any outstanding fees and costs to civil collections. Respondent has paid the fees and costs associated with these two cases.

Respondent's Evidence

7. Respondent first became involved in the real estate business when he joined his family's business in 2000 after high school. He held a number of positions in the business, including real estate salesperson, real estate broker, junior loan officer and senior loan officer. He recently was one of the owners of Five Star Film Locations, which provides short term leasing services for production companies and property owners.

8. Respondent loves the real estate business and prides himself on his honest business dealings with his clients. His alcohol addiction never interfered with his work. He has never had any prior discipline of his licenses.

9. Respondent admits he is an alcoholic. He previously had an eating disorder that resulted in gastric bypass surgery, and he transferred his unresolved issues relating to his eating disorder to alcohol. His drinking became out-of-control in 2015 after his own divorce and that of his parents, which occurred at the same time. His ex-wife took control and assumed ownership of his business, and he was forced to move in to his mother's house.

10. Respondent has received substantial treatment for his alcoholism. After he successfully completed the court-ordered six month residential program at Chabad, he

⁴ Penal Code section 166, subdivision (a)(4), states as follows: "[A] person guilty of any of the following contempts of court is guilty of a misdemeanor: [¶] . . . [¶] (4) Willful disobedience of the terms as written of any process or court order or out-of-state court order, lawfully issued by a court, including orders pending trial."

voluntarily extended his stay another month. He then moved into Stanley House, a sober living halfway house, and resided there from August 4, 2016, to July 1, 2017. While at Stanley House, he participated in three outpatient alcohol-treatment programs on his own accord.

11. Respondent is committed to remaining sober and drug-free. He attends and actively participates in three to five AA meetings each week. He speaks with his sponsor regularly and also sees a therapist once a week to help with his addiction issues. He seeks guidance from three different rabbis. When under stress, he knows to reach out to his "brothers" in the recovery community. He also regularly exercises and writes in a journal every day. Respondent's sobriety date is December 21, 2015. He has not drank any alcohol or taken any medication since that time.

12. Respondent receives significant support from his family in maintaining his sobriety. He is now reconciled with his mother and is close with his brother, speaking to both of them every day. He would like to retain his real estate broker license so he can resume working with his brother in the family's real estate business. He has kept current with his continuing education hours for his real estate broker license, recently completing 45 hours of coursework.

13. Respondent currently works at a number of jobs to support himself. He is employed part-time in a butcher shop, does free-lance catering, and also assists movie and television location companies deal with real estate issues.

14. Respondent enjoys cooking. While at Chabad, he often cooked meals for his fellow residents. He currently volunteers at a juvenile offender residential facility teaching cooking classes, and he would like to start teaching cooking to residents at Chabad.

Costs of Prosecution

15. The Bureau submitted no evidence relating to the expenses it incurred investigating and prosecuting this matter.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Bd. of Med. Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

2. Clear and convincing evidence requires a finding of high probability; the evidence must be so clear as to leave no substantial doubt; it must be sufficiently strong to command the unhesitating assent of every reasonable mind. This requirement presents a heavy burden, far in excess of the preponderance of evidence standard that is sufficient for most civil litigation. (*Christian Research Inst. v. Alnor* (2007) 148 Cal.App.4th 71, 84.)

3. The Bureau may discipline a licensee who has been convicted of a crime that is substantially related to the qualifications, functions or duties of one of its licensees. (Bus. & Prof. Code, §§ 490, subd. (c), 10177, subd. (b).)

4. Respondent's convictions are substantially related to the qualifications, functions and duties of a real estate broker under several subdivisions of California Code of Regulations (CCR), title 10, section 2910. As set forth in Factual Findings 3 through 6, respondent's repeated convictions relating to alcohol abuse demonstrate a pattern of willful disregard for the public health, safety and welfare and reflect a lack of sound professional and personal judgment that is relevant to a real estate broker's fitness and competence. (CCR, tit. 10, § 2910, subd. (a)(10).) As set forth in Factual Finding 6(b), respondent has also been convicted of contempt of court. (*Id.* at subd. (a)(9).) In addition, as set forth in Findings 3 through 6, respondent has suffered at least two convictions involving the consumption of alcohol, one of which involved driving and the use of alcohol. (*Id.* at subd. (a)(11).)

5. Cause therefore exists to discipline respondent's real estate broker license, pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), based on respondent's convictions for DUI, battery, contempt and petty theft, as set forth in Factual Findings 3 through 6 and Legal Conclusions 1 through 4.

6. A determination that legal cause exists to discipline respondent's real estate broker license does not end the inquiry. An assessment of the appropriate level of discipline must be made, which includes an examination of the nature of the crimes for which respondent was convicted, respondent's rehabilitation from those crimes and respondent's fitness to continue to work as a licensed real estate broker.

7. Respondent's criminal convictions all stemmed from respondent's alcohol addiction and, except for respondent's DUI, were relatively minor. Two of his convictions involved arguments with his mother, and both of those have been now closed in light of his successful stay at Chabad. (Factual Finding 6.) Respondent's petty theft conviction involved property worth less than \$30. (Factual Finding 5.) And while respondent had the potential of injuring himself or someone else when he started to drive his car from the movie lot after drinking alcohol, he did not do so. (Factual Finding 4.)

8. The Board has set forth criteria in CCR, title 10, section 2912, to evaluate whether respondent has established that he has sufficiently rehabilitated himself from his past crimes. The applicable criteria, as they pertain to respondent, are summarized as follows:

a) The 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;

b) Restitution to any person who has suffered monetary losses through the licensee's substantially related acts or omissions;

- c) Expungement of the convictions;
- d) Successful completion or early discharge from probation or parole;
- e) Payment of any fine imposed in connection with the criminal conviction;
- f) 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;
- g) Stability of family life and fulfillment of parental and familial responsibilities;
- h) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement;
- i) Significant involvement in community, church, or privately-sponsored programs; and
- j) Change in attitude from that which existed at the time of the commission of the criminal acts.

9. Respondent has satisfied most of these criteria and thus has demonstrated substantial rehabilitation. His most recent criminal convictions are several months shy of two years, and the only restitution owing is for less than \$30, which the court has ordered respondent not to pay until December 2017. Respondent's probation for two of the actions was discharged early, and he has completed more than 145 hours of community service. He has paid all but \$220 in fines to the courts, and payment of that amount is not due until December 2017. Respondent has turned his life around since the commission of the acts that led to his criminal convictions; he has been sober and drug-free for almost two years. He has reconciled with his family and keeps in close contact with both his mother and his brother. He has continued educational coursework to meet the requirements of his real estate broker license. He regularly volunteers his time teaching cooking to troubled youth. Most notably, respondent has developed the personal skills and the support network to help him maintain his sobriety, and he is committed to staying sober. (Factual Findings 3 through 14.)

10. Respondent has begun to seriously tackle his problems with alcohol abuse. However, as impressive as his progress has been, he has not established his fitness to continue to work as a real estate broker on an unrestricted basis considering that he still remains on summary probation for more than a year and only recently began living on his own. Given the steps he has taken thus far to rehabilitate himself, it is consistent with the public interest to issue to respondent a restricted real estate broker license.

ORDER

All licenses and licensing rights of respondent Henry Nelson under the Real Estate Law are revoked; provided, however, a restricted real estate broker 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 Department 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 has elapsed from the effective date of this Decision.
4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
5. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which the respondent engaged during the period covered by the report.

DATED: August 24, 2017

DocuSigned by:
Cindy F. Forman
5FA8153C8031440
CINDY F. FORMAN
Administrative Law Judge
Office of Administrative Hearings