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NOV - 6 2017

BUREAU OF REAL ESTATE

By *[Signature]*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	CalBRE No. H-40548 LA
JERRY WHITE,)	OAH No. 2017031157
Respondent.)	

FIRST AMENDED DECISION

This First Amended Decision amends the Decision filed on or about October 26, 2017.

The Proposed Decision dated September 27, 2017, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. 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.

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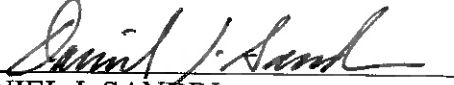
The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Government Code section 11522. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

Respondent shall pay the costs of investigation and enforcement of \$2,538.68 within six (6) months after the effective date of this First Amended Decision.

This Decision shall become effective at 12 o'clock noon on 11/15/17.

IT IS SO ORDERED 11/2/17

WAYNE S. BELL
REAL ESTATE COMMISSIONER

By: 
DANIEL J. SANDRI
Chief Deputy Commissioner

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OCT 26 2017

BUREAU OF REAL ESTATE

By *al Delois*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

*** * ***

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DECISION

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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 11/15/17

IT IS SO ORDERED

10/19/17

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: DANIEL J. SANDRI
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JERRY WHITE,

Respondent.

DRE No. H-40548 LA

OAH No. 2017031157

PROPOSED DECISION

Administrative Law Judge David B. Rosenman (ALJ), Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on August 31 and September 6, 2017. Diane Lee, Staff Counsel, represented Veronica Kilpatrick (complainant), a Supervising Special Investigator of the Bureau of Real Estate (Bureau), State of California. Jerry White (respondent) was present throughout the hearing and was represented by Frank M. Buda, Attorney at Law.

At the hearing, complainant withdrew the allegations in paragraphs 18 and 19 of the Accusation (exh. 1, Accusation, page 5, line 19, through page 6, line 14), and modified the allegation in paragraph 17 of the Accusation (exh. 1, Accusation, page 5, lines 13-17 so that paragraph 17 now reads: "Respondent's false statements of material facts in his Salesperson License Application and accompanying documents are alleged in aggravation." The changes were made by interlineation to the Accusation in exhibit 1.

The record remained open until September 11, 2017, for the parties to submit suggested redactions of social security numbers and driver's license numbers within the exhibits. Complainant's suggestions were submitted on September 6, 2017, and were marked for identification as exhibit 17. Respondent submitted a letter dated September 7, 2017 that supplied a missing page of an exhibit and indicated he had no additional suggestions for redaction. The letter was marked for identification as exhibit T.

Oral and documentary evidence was received. The matter was submitted for decision on September 11, 2017.

Respondent was granted the right to a restricted real estate salesperson license after an administrative hearing in 2010, based on five convictions, from 1974 through 2002, of crimes substantially related to the qualifications, functions and duties of a licensee of the then-Department of Real Estate (now Bureau). A sixth conviction, in 2000, was alleged as

“in aggravation.” A restricted salesperson license was issued on July 9, 2010, and was suspended as of December 31, 2015, based on respondent’s conviction for battery in 2014. Complainant currently alleges that the 2014 battery conviction is a basis for license discipline, and that the six prior convictions are “in aggravation,” as well as convictions in 1998 for petty theft and in 2011 for forgery. Complainant also alleges that, “in aggravation,” respondent misrepresented information contained in his application for licensure in 2008, relating to his proper name and the date and place of his birth. Respondent admits the convictions, contends there was no misinformation and no intent to mislead the Department or Bureau, and offers evidence in mitigation and in support of his rehabilitation to support retention of his license.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity.
2. On March 3, 2008, respondent submitted a Salesperson License Application (2008 application) to the Department with the name Jerry White. After an administrative hearing in 2010, described in more detail below, he was issued a restricted salesperson license on July 9, 2010, license number 01841838. The restricted license was suspended as of December 31, 2015, due to respondent’s conviction in 2014, described in more detail below.
3. The 2010 administrative hearing resulted in a Proposed Decision by Administrative Law Judge N. Gregory Taylor, which was adopted by a Decision of the Real Estate Commissioner on May 18, 2010, effective June 8, 2010. (Exh. 3.) The factual findings of that Proposed Decision are final. Paragraph 3 of the factual findings describes six prior convictions as follows, and is adopted as factual findings for purposes of the present matter:

“3. Respondent has been convicted of the following crimes:

“a. On October 16, 1974, in California Superior Court, County of Los Angeles, Respondent was convicted of violating two counts of Vehicle Code section 10851, taking a vehicle without consent of owner/theft, a misdemeanor; one count of violating Penal Code section 487.3, theft, and one count of violating Penal Code section 496, buying stolen property, all misdemeanors. The court placed Respondent on summary probation for a period of 24 months subject to certain terms and conditions including serving seven days in jail or payment of a \$140.00 fine.

“b. On August 23, 1976, in California Superior Court, County of Los Angeles, Respondent was convicted of violating Penal Code section 484, subdivision (a) theft of property, a misdemeanor. The court placed Respondent on summary probation for a period of twelve months and payment of a \$95.00 fine.

"c. On December 2, 1986, Respondent was convicted of violating Penal Code section 242, battery, a misdemeanor. The court placed Respondent on summary probation for a period of three years upon certain terms and conditions including fifty[-]three days in the county jail.

"d. On June 8, 2001, in the California Superior Court, County of Los Angeles, Respondent was convicted of violating Penal Code section 484, subdivision (a), theft of property, a misdemeanor. The court placed Respondent on summary probation for a period of twelve months upon certain terms and conditions including serving three days in the county jail and payment of \$163.00 for fines and fees.

"e. On August 26, 2002, in the California Superior Court, County of Los Angeles, Respondent was convicted of violating Penal Code section 666-484, subdivision (a), petty theft with a prior, a misdemeanor. The court placed Respondent on summary probation for a period of thirty[-]six months upon certain terms and conditions including serving five days in the county jail and paying a fine and fees of \$170.00.

"f. In Aggravation. On April 3, 2000, in the California Superior Court, County of Los Angeles, Respondent was convicted of violating Health and Safety Code section 11350, subdivision (a), possession of a controlled substance, a felony. The court placed Respondent on formal probation for a period of thirty[-]six months upon certain terms and conditions including serving ninety days in the county jail and following the directions of his probation officer. On September 24, 2002, Respondent was found in violation of his probation. The court ordered that Respondent serve 365 days in the county jail with the alternative that Respondent could be released to a live-in rehabilitation program. Respondent elected the live-in program and entered the Royal Palms Recovery Home. He successfully completed this program. On April 9, 2008, the court granted Respondent's motion to expunge the conviction and to relieve him from all disabilities incurred as a result thereof, pursuant to Penal Code sections 1203.4 and 1203.4, subdivision (a)." (Exh. 3, Proposed Decision, handwritten page number 3 in the lower right corner.¹)

4. The factual findings in ALJ Taylor's Proposed Decision also reference other pertinent information as of the hearing in 2010, which is summarized herein and is adopted as factual findings for purposes of the present matter.

a. Respondent admitted the criminal convictions. His problems started in 1972 and continued to the time he entered the rehabilitation program at Royal Palms Recovery Home. During that time, respondent was an alcoholic. Respondent was in the Royal Palms program for one year, and passed all sobriety tests that he was given. He attended Alcoholics Anonymous (AA) meetings as part of that program, and thereafter

¹ Several documents comprise exhibit 3, some of which have internal, typed page numbers. The entire exhibit has handwritten, consecutive page numbers, located in the lower right corner of each page.

attended meetings twice a week. His sponsors worked with him on the 12-Step Program. Respondent has been clean and sober since August 2002.

b. Respondent went to school, qualified to take the electricians license examination, and applied to the Contractor's State License Board. In that application, respondent disclosed his criminal convictions. In 2008, respondent received a C-10 Electrical Contractor license. No administrative actions have been filed against the license. Respondent owned his own business as an electrician.

c. Respondent's 2008 application to the Department was 37 pages long, and included four letters of recommendation, one from one of his counselors in the recovery program, the minister of the church he attends, the Executive Director of the World Literacy Crusade, and one of his AA sponsors. All of them were very high in their praise of respondent and his over six years of successful recovery.² At the 2010 administrative hearing, a real estate broker who was willing to hire respondent testified to support respondent's license application.

d. There was a "complete and positive change in his life since he has attained sobriety." (Exh. 3, Proposed Decision, handwritten page number 4.) Various community activities were listed.

e. Respondent disclosed three of his convictions in his 2008 application and a municipal court conviction not cited in the pleadings. He provided copies of court documents. He did not disclose three convictions for periods of time from 1974 through 1986, where the original records were no longer available and summaries had limited availability. Respondent had difficulty recalling events that occurred during the period of his alcoholism. "However, he has made no secret of the problems he created during that period in his life. Respondent has been quite candid regarding his past with all with whom he has come in contact. There was no intent of Respondent to mislead the Department in failing to disclose the earliest of his conviction[s]. . . . Under the circumstances of this case, Respondent did not knowingly make a false statement of a material fact in his license application to the Department or attempt to procure a real estate license by fraud, misrepresentation, deceit or making a material misstatement of fact." (Exh. 3, Proposed Decision, handwritten page numbers 4 and 5.)

5. ALJ Taylor found cause to deny the 2008 application based on the convictions; however, he did not find cause to deny the application based on alleged misrepresentations in the application by failing to disclose some of the convictions. ALJ Taylor concluded that respondent "presented overwhelming evidence of the significant change in life and his positive accomplishments since that change occurred. He substantially meets the Department's rehabilitation criteria. In light of Respondent's past convictions, it is prudent to initially issue Respondent a restricted license to insure protection of the public." (Exh. 3, Proposed Decision, handwritten page number 5.) The restrictions on a license

² These letters are found in exhibit R to the present matter.

issued to respondent included, among other things, that the restricted license could be suspended if respondent was convicted of a crime which is substantially related to his fitness or capacity as a licensee.

6. As noted in Factual Finding 4e, in his 2008 application respondent disclosed a conviction not included in the 2010 administrative proceeding. Complainant currently alleges that conviction, "in aggravation." On October 29, 1998, in the Municipal Court, County of Los Angeles, respondent was convicted on his plea of nolo contendere of violating Penal Code section 490.1, petty theft with a value of no more than \$50, an infraction. As it applies to this conviction, under Penal Code section 19.8, subdivision (c), conviction of an offense that is an infraction is not grounds for suspension, revocation or denial of a license.

7. Complainant currently alleges, "in aggravation," a conviction in 2011. On February 28, 2011, respondent was convicted on his plea of nolo contendere to violating Penal Code section 470, subdivision (a), forgery, a misdemeanor. (Superior Court, County of Los Angeles, case no. SA068589.) The plea was a result of a plea negotiation.³ The court found a factual basis for the plea. Respondent was given credit for serving two days in custody. Imposition of sentence was suspended and respondent was placed on summary probation for 36 months under terms and conditions, including paying fines, fees and assessments, and performing 60 days of service with CalTRANS.

8. The forgery conviction related to respondent's use of the name Jerry White in renewing his driver's license with the Department of Motor Vehicles (DMV). Respondent was born on August 15, 1956, with the name Jerome Myron Cooper. He was known as Jerry, and at age 14 obtained a driver's license using the name Jerry White and a false birthdate in 1951. White is his mother's maiden name. Respondent did not legally change his name to Jerry White until a court decree dated June 17, 2011. The charges were filed in 2008, after respondent had been informed that someone was attempting to use his identity at a store, and respondent provided information regarding his identity. Respondent was arrested in 2010 when he was asked to speak to DMV investigators.

9. The 2011 conviction is of a crime substantially related to the qualifications, functions and duties of a Bureau licensee under California Code of Regulations, title 10,⁴ section 2910, subdivision (a)(4), due to employing deceit or misrepresentation.

³ Respondent was initially charged with four counts of perjury, related to applications to renew his driver's license in 2002, 2003, 2004 and 2008. As part of the plea negotiation, count five was added, forgery, without reference to any particular act or date.

⁴ All further references to the California Code of Regulations are to title 10, and are designated "CCR."

10. Respondent complied with and completed all terms of probation for the 2011 conviction. On May 16, 2017, the court granted respondent's motion under Penal Code section 1203.4 and the 2011 conviction was dismissed, often referred to as expungement.

11. a. On March 13, 2014, respondent was convicted on his plea of nolo contendere to violating Penal Code section 242, battery, a misdemeanor. (Superior Court, County of Los Angeles, case no. 3CA19333.) The court found a factual basis for the plea. Imposition of sentence was suspended and respondent was placed on summary probation for 36 months under terms and conditions, including paying fines, fees and assessments, staying away from a retail location, performing 300 hours of community service, and completing an anger management course. The 2014 conviction is of a crime substantially related to the qualifications, functions and duties of a Bureau licensee under CCR section 2910, subdivision (a)(8), for doing an unlawful act with the intent or threat of doing substantial injury to a person.

b. Complainant also contends that the 2014 conviction was substantially related based on CCR, section 2910, subdivision (a)(10), as, in conjunction with the 2011 forgery conviction, it shows a pattern of repeated disregard for the law. Respondent contends that no pattern was shown because the 2011 conviction was pleaded "in aggravation," not as a separate basis for discipline, and that the 2011 conviction was barred as a basis for discipline under the statute of limitations in Business and Professions Code⁵ section 10101. Code section 10101 would potentially bar the Bureau from bringing a disciplinary action against respondent based on the 2011 conviction because the Bureau was aware of the conviction well before the present Accusation was filed.

c. Each party's contentions are moot, as substantial relationship of the 2014 battery conviction was established under CCR section 2910, subdivision (a)(8), as found in Factual Finding 11a.

12. The facts and circumstances underlying the 2014 conviction relate to events on August 15 and 16, 2013, when respondent was advised at a retail store to purchase a new cell phone battery and charge it overnight. When the battery did not hold the charge, respondent went to the store the next day, where an employee told him the battery could not be returned. A heated discussion turned into an argument. When the employee moved away from respondent and uttered a derogatory racial slur, "nigger," respondent became enraged, pushed over cardboard displays, and then followed the employee and punched him. The two of them exchanged more blows. A comment from a customer—is this really worth it—got respondent's attention, and respondent left the store.

13. Respondent complied with and completed all terms of probation. On June 26, 2017, the court granted respondent's motion under Penal Code section 1203.4 and the 2014 conviction was dismissed (expungement).

⁵ All further statutory references are to the Business and Professions Code.

14. All of respondent's convictions are under the name Jerome Cooper. Respondent testified that he informed his public defender during the 2014 criminal proceedings that his name had been legally changed to Jerry White. However, after the public defender conferred with the prosecutor, the public defender informed respondent that it was more expeditious to conclude the matter under the name Jerome Cooper.

15. Respondent was upset that he lost control at the store and later that day he saw a friend, Cuthbert Pyne, M.D., for examination. Dr. Pyne made several diagnoses, including "Hypertension stage 3 uncontrolled." (Exh. M.) This was the first time respondent was diagnosed with hypertension. Dr. Pyne advised respondent to follow up with his regular physician. Respondent now receives treatment from his regular physician for hypertension.

16. In his 2008 application, respondent used the name Jerry White and included that he also used the name Jerome Cooper. He attached printouts of criminal dockets under the name Jerome Cooper. The Department noted that the application was missing a date of birth and asked respondent to provide it. Respondent submitted the date August 15, 1951. This date is incorrect. Respondent's date of birth is August 15, 1956. Respondent stated at the hearing that he used the 1951 date when, at age 14, he applied for a driver's license in the name of Jerry White. In his 2008 application, respondent listed his place of birth as Memphis, Tennessee. This location is incorrect. Respondent was born in Los Angeles, California. Respondent explained that he had family in Memphis, and he used this location on the application. These misrepresentations are currently alleged as circumstances "in aggravation." It cannot be found that the Department then, or the Bureau now, was deceived by the incorrect information in respondent's 2008 application about his use of the names Jerry White or Jerome Cooper.

17. It cannot be found that the Department then, or the Bureau now, was deceived by the incorrect information in respondent's 2008 application about his date and place of birth. An exhibit submitted in the 2010 administrative hearing (present exh. Q) includes conviction and disposition information for the five convictions included in ALJ Taylor's Proposed Decision. Each conviction document, received by the Department in 2009 from the California Department of Justice, indicates respondent's date of birth is August 15, 1956, and that he was born in Los Angeles. Therefore, the Department was aware that respondent submitted incorrect information before the 2010 administrative hearing, and before it issued a restricted license to respondent.

18. Credible testimony was received from Carmen Hill, who also wrote in support of respondent. Ms. Hill met respondent in 2014 when he was a student in her class on real estate investments at Cerrito College. Ms. Hill is also a real estate broker licensed by the Bureau. They have become friends and speak often about trends in real estate. Respondent performed electrical work for Ms. Hill, who has recommended him to others. They have attended events together related to real estate, economic development and politics. She is aware of workshops where respondent taught electrical principles to elementary school students. He informed her of students who improperly obtained an exam. Based on their dealings, Ms. Hill holds the opinion that respondent is an honest and upright person. He has

expressed remorse to her about his battery conviction, and the benefits of the anger management class he attended. In her opinion, respondent is not the type of person who would repeat his mistakes.

19. Respondent presented numerous reference letters, which were received in evidence as administrative hearsay.⁶ (Exhs. G, H, I, J and K.) He provided testimony about the nature of his relationships with the authors, the circumstances under which many of the letters were written, and confirmed some of the information included in the letters, all of which were dated in June 2017.

a. Charles Thomas was a partner, with Tommy McNeil, at Black Swan Realty Advisors, for whom respondent worked for about four months before his restricted license was suspended. Respondent informed both men of his various criminal convictions, and the nature of the information included in his 2008 application. Respondent expressed remorse to them. Mr. Thomas believes respondent was not trying to mislead the Bureau, fully supports respondent's continued licensure, and agrees to closely supervise his licensed activities in the future. Mr. Thomas attests to respondent being honest, ethical, professional, and a hard worker.

b. Dorcas Green has known respondent for about 40 years. Ms. Green has been respondent's fiancé for about six years. She is aware that respondent sponsors others who are recovering from alcohol addiction. Ms. Green is an elementary school teacher and respondent has spoken to her class for career day. He volunteers at her church by assisting the youth group as well as performing electrical work for the church. Ms. Green witnessed respondent's expressions of remorse immediately after the battery occurred, and she believes that act was out of character. Ms. Green attests to respondent being honest, a hard worker, and a person who shows deep interest in others.

c. Grace Pam is the co-Pastor for the Los Angeles Faith Chapel. She has known respondent since 2012, when he began attending fellowship meetings. He volunteers with maintenance repairs, outreach activities, and fundraising. Ms. Pam attests to respondent being dedicated, professional in his work, respectful, friendly and cheerful.

d. Dom Dennis, Jr., is the director of a male mentoring program. Respondent has been a speaker multiple times to program participants in the age range of seven to 17, speaking of his profession and the need to work hard, and has brought in other speakers. Mr. Dennis attests to respondent being diligent, attentive and motivational in this role.

⁶ The term "administrative hearsay" is a shorthand reference to the provisions of Government Code section 11513, subdivision (d), to the effect that hearsay evidence that is objected to, and is not otherwise admissible, may be used to supplement or explain other evidence but may not, by itself, support a factual finding. It may be combined with other evidence to provide substantial evidence sufficient to support a finding. (*Komizu v. Gourley* (2002) 103 Cal.App.4th 1001.)

e. Robert Skeels was a neighbor of Royal Palms and has known respondent since he entered the Royal Palms recovery program in 2002. Mr. Skeels attended meetings of AA there, and became respondent's sponsor. In the process of working through the 12 steps, respondent informed Mr. Skeels of his prior convictions, expressed profound remorse, and made a good faith effort to rectify any harm he caused. Respondent also engaged in service by working with others and taking on various AA commitments. Mr. Skeels commented that respondent demonstrated a profound change in attitude. Mr. Skeels also hired respondent to do electrical work, and has referred him to others. Mr. Skeels attests to respondent being reformed, truthful and ethical.

f. Deborah Bennett used respondent as a real estate agent in the sale of a commercial property that had previously been on the market for over one year. Respondent was optimistic and detail oriented, and kept Ms. Bennett informed of all developments. Respondent also performed electrical repairs for Ms. Bennett, who stated that her contractor and the electrical utility were both impressed by respondent's work. She found respondent to be trustworthy and professional.

g. Simone Miller has known respondent for five years, first as a neighbor and now as a friend. She is aware that he has used different names and does not believe respondent intended to mislead the Department or Bureau. She is aware that respondent has taken responsibility for his alcoholism, attends AA and has maintained his sobriety. Ms. Miller has also repeatedly used respondent as an electrician. Respondent has assisted with care of her parents and has made repairs to their home without charge. Ms. Miller attests to respondent being a man of compassion, honesty, and integrity, who has overcome the difficulties and activities he engaged in as a youth and young man.

20. Respondent submitted course completion certificates, summarized as follows. Several on-line courses were completed in July 2014 to satisfy the Bureau's requirements for continuing education to maintain licensure. In 2014 respondent completed a course, over 12 weeks, on entrepreneurial training and business plans. In May 2017 respondent completed a 12-hour course by the City of Los Angeles Contractor Development and Bonding Program relating to bidding and estimating. In May 2017 respondent completed a course that met three hours per week for eight weeks to learn construction management from Turner Construction Company.

21. Respondent confirmed the information in the letters related to his participation in numerous community and church programs and projects, school programs, as well as his efforts to help friends and family.

22. Respondent spoke candidly of his struggles with alcohol and cocaine, and with sincerity of the help he received at the Royal Palms program in establishing his sobriety on August 23, 2002, and maintaining sobriety since. Respondent was particularly upset about the phone battery incident because it was his work phone. He has benefited from the court-ordered anger management class after the battery conviction by virtue of its emphasis on alternatives, triggers, consequences, and keeping control. There was no evidence that

respondent has a history of violence. He is proud of his work as an electrical contractor, but was frank in testifying that, at 61 years old, he does not meet the physical requirements of the work as well as he could before. Respondent enjoys working in the real estate field and plans to retire from contracting and sell real estate part time.

23. The Bureau incurred costs in the investigation and enforcement of this matter: \$1,268.25 for attorney's fees and \$1,905.10 in investigation costs, for a total of \$3,173.35. Respondent accepts responsibility for his actions. He is willing to accept responsibility for the Bureau's costs of prosecuting this matter. However, due to mortgage, living, business and other expenses, it would be a hardship to pay costs in a lump sum, and he requests a payment schedule.

24. The parties raised several contentions in closing arguments, some of which are referenced here.

a. Complainant notes that respondent committed the battery in 2013, while he was on probation for forgery. Complainant also notes that both convictions occurred while he was operating under license restrictions imposed in 2010 that included specific reference to any subsequent, substantially related conviction as a basis for license suspension, which has in fact occurred. Complainant further notes that respondent has suffered at least one conviction in each of the last five decades, was given a second chance when the restricted license was issued, and yet has suffered two further convictions. Complainant urges revocation of the license.

b. Respondent notes that the only allegation of a present basis for discipline is the 2014 battery conviction, and that all of the other allegations and evidence are "in aggravation." Respondent contends that the Department and, later, the Bureau were not misled by information in his 2008 application and was apprised of his use of two names at that time. Respondent contends that the Department was aware in 2009 of his correct date and location of birth, and that respondent's reliance on the issuance of his restricted license in 2010 acts as a waiver or to estop the Bureau from proceeding with those issues at this time.

25. To the extent any contention made or evidence submitted at the hearing is not referenced herein, it was irrelevant, not convincing, or both.

LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. The standard of proof for the Bureau to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (See *Borror v. Dept. of Real Estate* (1971) 15

Cal.App.3d 531; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

2. Under Code section 10177, subdivision (b), a real estate licensee may have his license suspended or revoked for conviction of a crime if it is substantially related to the qualifications, functions, or duties of a real estate licensee.

3. Under Code section 490, the Bureau may “suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.”

4. Under CCR section 2910, subdivision (a)(8), a crime is substantially related to the qualifications, functions, or duties of a real estate licensee if it was done “with the intent or threat of doing substantial injury to the person or property of another.”

5. There is cause to suspend or revoke respondent’s restricted real estate salesperson license pursuant to Code sections 490 and 10177, subdivision (b), because respondent was convicted of a crime substantially related to the qualifications, functions and duties of his license, by virtue of his 2014 battery conviction, as set forth in Factual Finding 11.

6. Criteria have been developed by the Bureau to evaluate the rehabilitation of a licensee who has committed a crime. These criteria, found at CCR section 2912, are summarized, and applied to respondent, as follows:

a. Subdivision (a), elapsed time of at least two years since the act or offense, which can be increased by considering the nature and severity of the crime and the licensee’s history of criminal convictions that are “substantially related” to the qualifications, functions, or duties of a real estate licensee.

The battery occurred in August 2013. More than two years have elapsed. Whether the time period should be increased is affected by the nature and severity of the crime. The crime was severe—respondent lost control and hit a store employee in a dispute over a cell phone battery. The nature of the crime provides some mitigation, in that respondent was informed by the store to purchase the battery, the battery did not hold a charge, the store would not take a return of the battery, the employee used a racial slur, respondent’s reaction was out of character, and it may have been affected by previously undiagnosed high blood pressure. However, the high blood pressure may have been a reaction to the incident, and not a contributing factor. On balance, the nature and severity of the crime do not serve to increase the “elapsed time” criterion of rehabilitation under this subsection.

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The two-year time period is also potentially affected by respondent's history of criminal convictions. It is here that the numerous allegations of convictions "in aggravation" may be considered. The five convictions considered by ALJ Taylor have already served the purpose of being considered as either a basis for license denial or as factors in aggravation. Their weight for consideration at this time is negligible, except that respondent has suffered further convictions. Similarly, ALJ Taylor was aware that respondent had disclosed a sixth conviction, the 1998 infraction which, by law, is not a basis for license discipline (see Factual Finding 6). Therefore, the 1998 conviction is also entitled to negligible weight. The 2011 forgery conviction likely related to respondent's renewal of his driver's license from 2002 to 2008, a period ending nine years ago. On balance, the respondent's history of criminal convictions may marginally increase the "elapsed time" criterion of rehabilitation under this subsection, to be considered with the other listed criteria.

Complainant also alleges that misrepresentations in the 2008 application are "in aggravation." However, neither this criterion of rehabilitation nor any of the other criteria, or charging statutes, makes reference to misrepresentations as a factor to be considered if the misrepresentations are not alleged as a separate basis for discipline of the license. Even if the misrepresentations are to be considered, respondent submitted convincing evidence that the Department was aware of his correct date and place of birth as of 2009, any direct action to impose license discipline may be barred by the statute of limitations, and there was no evidence of intent to deceive or misrepresent. Under these circumstances, and in the absence of any argument by complainant establishing relevance, the evidence of misrepresentations is afforded negligible weight.

b. Subdivision (b), restitution. Respondent has complied with all probation terms. It is inferred that respondent complied with any order of restitution.

c. Subdivision (c), expungement of the conviction. The 2011 forgery conviction and the 2014 battery conviction have been expunged.

d. Subdivision (d), expungement of the requirement to register as a sex offender. Not applicable.

e. Subdivision (e), completion of, or early discharge from, the criminal probation. Respondent complied with all probation terms. The expungement of the 2014 conviction occurred three months after the end of the three-year period of probation previously ordered by the court.

f. Subdivision (f), abstinence from drugs or alcohol that contributed to the crime. Respondent established his sobriety date as August 23, 2002, and his continuing commitment to sobriety and activities in AA.

g. Subdivision (g), payment of any criminal fines or penalties. Respondent has complied with all probation terms. It is inferred that respondent complied with any order to pay fines and penalties.

h. Subdivision (h), correction of any business practices causing responsibility for the crimes. It was not established that respondent had any business practices causing responsibility for the crimes. To the contrary, the evidence established that respondent's business activities under his restricted real estate license and his contractor's license have been above average.

i. Subdivision (i), new and different social and business relationships from those when the crimes occurred. The numerous references and courses submitted by respondent establish his acceptable social and business relationships.

j. Subdivision (j), stability of family life and fulfillment of parental and familial responsibilities. Respondent has known Ms. Green for 40 years and she has been his fiancée for six years.

k. Subdivision (k), enrollment in or completion of educational or training courses for economic self-improvement. Respondent completed the courses required to maintain his real estate license as well as business-related programs for economic self-improvement.

l. Subdivision (l), significant, conscientious involvement in community, church or private programs for social betterment. There was convincing evidence establishing respondent's significant, conscientious involvement in such programs, including his church, community programs, and school programs.

m. Subdivision (m), change in attitude from the time of the criminal acts to the present, evidenced by: (1) evidence of rehabilitation from respondent; (2) evidence from family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns; (3) evidence from probation or parole officers or law enforcement officials regarding respondent's social adjustments; (4) evidence from psychiatrists, psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances; and (5) absence of subsequent convictions or other conduct which reflect an inability to conform to societal rules when considered in light of the conduct in question.

Respondent submitted substantial and convincing evidence that his actions in committing battery in 2013 were very out of character, and that he is usually professional, caring, and supportive of others, and an active member of various groups for the betterment of others. The character testimony and reference letters are from a broad array of people who have interacted with respondent in different settings. The evidence in total establishes respondent's substantial positive attitude.

7. a. Respondent presents a complex scenario. His long history of convictions before his 2008 application resulted in issuance of a restricted license. After issuance, he suffered two more convictions, although only the 2014 conviction is alleged as a basis for license discipline. It was for battery, due in part to an emotional reaction to the situation. There is clearly support for revocation of his license. On the other hand, respondent

submitted substantial evidence of his good character, mitigation, and rehabilitation, including numerous character reference letters.

b. “Favorable testimony of acquaintances, neighbors, friends, associates and employers with reference to their observation of the daily conduct and mode of living” can be helpful in determining whether a person seeking licensure is rehabilitated. (See *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 317 – 318.)

c. Rehabilitation is a state of mind and the law looks with favor upon one who has achieved reformation and regeneration with the reward of the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) Respondent bears the particular burden of establishing rehabilitation sufficient to compel his licensure. (*In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309.)

d. Rehabilitation depends upon a track record of conduct that convinces the Bureau that that the public would be safe in granting privileges of licensure to respondent. A respondent must establish a track record of reliable, responsible and consistently appropriate conduct.

8. Under all of the circumstances, respondent’s restricted license should be revoked; however, he should be granted the opportunity for a new, restricted license. He has shown sufficient rehabilitation that the public interest would be adequately protected by the issuance of a restricted license for three years. A period of suspension is included as an element of progressive discipline.

9. Costs of investigation and enforcement can be recovered by the Bureau under Code section 10106. 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 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 the respondent who has committed some 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 respondent’s subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the Bureau must consider a respondent’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 respondent engaged in relatively innocuous misconduct. (Zuckerman, supra at 45.)

In this case, the actual costs of investigation and enforcement of this matter are \$3,173.35, as set forth in Factual Finding 23. However, the Bureau amended the Accusation at the hearing to eliminate certain charges. In the hearing, respondent raised colorable challenges to many allegations. Therefore, the hearing process resulted in the withdrawal of some charges and the costs should be reduced. Under the circumstances, a reduction of 20 percent is justified and appropriate. Therefore, the reasonable costs of investigation and enforcement are \$2,538.68. Respondent shall be allowed to pay these costs under a schedule established by the Bureau.

ORDER

All licenses and licensing rights of respondent, Jerry White, under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5, if respondent makes application therefore 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 Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three years have elapsed from the effective date of this Decision.
4. Respondent shall obtain from his present broker, or submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Bureau of Real Estate which shall certify:

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

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

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until 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. Any restricted real estate license issued to respondent pursuant to this Decision shall be suspended for 30 days from the date of issuance of the restricted license.

7. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of the restricted license.

8. Respondent shall pay costs of investigation and enforcement of \$2,538.68 to the Bureau during the period of restricted licensure under a schedule established by the Bureau. Respondent's failure to pay costs shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of the restricted license.

DATED: September 27, 2017

DocuSigned by:
David B. Rosenman
DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings