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**FILED**

AUG - 1 2017

BUREAU OF REAL ESTATE

By *[Signature]*

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Application of ) No. H-40557 LA  
)  
CARLOS ALBERTO ALVAREZ, ) OAH No. 2017030363  
)  
Respondent. )

STIPULATION AND WAIVER AND DECISION AFTER REJECTION

I, CARLOS ALBERTO ALVAREZ, Respondent herein, acknowledge that I have received and read the Statement of Issues filed by the Bureau of Real Estate on February 23, 2017, and the Statement to Respondent sent to me in connection with the Statement of Issues.

I hereby admit that the allegations contained in the Statement of Issues filed against me are true and correct and constitute a basis for the denial of my real estate salesperson license application.

I further acknowledge that the Real Estate Commissioner held a hearing on this Statement of Issues on April 27, 2017, before the Office of Administrative Hearings for the purpose of proving the allegations therein. I was present at the hearing and represented myself. Further, I have had an opportunity to read and review the Proposed Decision of the Administrative Law Judge.

1  
2 I understand that pursuant to Government Code Section 11517(c), the Real  
3 Estate Commissioner has rejected the Proposed Decision of the Administrative Law Judge.  
4 I further understand that pursuant to the same Section 11517(c), the Real Estate Commissioner  
5 may decide this case upon the record, including the transcript, without taking any additional  
6 evidence, after affording me the opportunity to present written argument to the Real Estate  
7 Commissioner.

8 I further understand that by signing this Stipulation and Waiver, I am waiving  
9 my right to obtain a dismissal of the Statement of Issues through proceedings under  
10 Government Code Section 11517(c) if this Stipulation and Waiver is accepted by the Real  
11 Estate Commissioner. However, I also understand that I am not waiving my rights to further  
12 proceedings to obtain a dismissal of the Statement of Issues if this Stipulation and Waiver is not  
13 accepted by the Real Estate Commissioner.

14 I hereby request that the Real Estate Commissioner in his discretion deny my  
15 application for a real estate salesperson license and issue to me a restricted real estate  
16 salesperson license under the authority of Section 10156.5 of the Business and Professions  
17 Code.

18 I agree that by signing this Stipulation and Waiver, the conditions, limitations,  
19 and restrictions imposed on my restricted license, identified below, may be removed only by  
20 filing a Petition for Removal of Restrictions ("petition") with the Real Estate Commissioner,  
21 and that my petition must follow the procedures set forth in Government Code Section 11522.

22 I further understand that the restricted license issued to me shall be subject to all  
23 of the provisions of Section 10156.7 of the Business and Professions Code and to the following  
24 limitations, conditions, and restrictions imposed under authority of Section 10156.6 of the  
25 Business and Professions Code.

26 By reason of the foregoing and solely for the purpose of settlement of the  
27 Statement of Issues without further administrative proceedings, it is stipulated and agreed that

1 the Commissioner shall adopt the following Order:

2 ORDER

3 Respondent's application for a real estate license is denied; provided, however, a  
4 restricted real estate salesperson license shall be issued to Respondent pursuant to  
5 Section 10156.5 of the Business and Professions Code. The restricted salesperson license issued  
6 to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and  
7 Professions Code and to the following limitations, conditions and restrictions imposed under  
8 authority of Section 10156.6 of the Business and Professions Code:

9 1. The license shall not confer any property right in the privileges to be  
10 exercised including the right of renewal, and the Real Estate  
11 Commissioner may by appropriate order suspend the right to exercise  
12 any privileges granted under this restricted license in the event of:

13 (a) The conviction of Respondent (including a plea of nolo  
14 contendere) of a crime which is substantially related to

15 Respondent's fitness or capacity as a real estate licensee; or

16 (b) The receipt of evidence that Respondent has violated provisions  
17 of the California Real Estate Law, the Subdivided Lands Law,  
18 Regulations of the Real Estate Commissioner or conditions  
19 attaching to this restricted license.

20 2. Respondent shall not be eligible to petition for the issuance of an  
21 unrestricted real estate license nor the removal of any of the conditions,  
22 limitations, or restrictions attaching to the restricted license until  
23 five (5) years have elapsed from the date of issuance of the restricted  
24 license to Respondent. Respondent shall not be eligible to apply for any  
25 unrestricted licenses until all restrictions attaching to the license have  
26 been removed.

27 3. With the application for license, or with the application for transfer to a




1 new employing broker, Respondent shall submit a statement signed by  
2 the prospective employing broker on a form approved by the Bureau of  
3 Real Estate wherein the employing broker shall certify as follows:

4 (a) That the employing broker has read the Decision which is the  
5 basis for the issuance of the restricted license; and

6 (b) That the employing broker will carefully review all transaction  
7 documents prepared by the restricted licensee and otherwise  
8 exercise close supervision over the licensee's performance of acts  
9 for which a license is required.

10 4. Respondent shall notify the Commissioner in writing within 72 hours of  
11 any arrest by sending a certified letter to the Commissioner at the Bureau  
12 of Real Estate, Post Office Box 137013, Sacramento, CA 95813-7013.  
13 The letter shall set forth the date of Respondent's arrest, the crime for  
14 which Respondent was arrested and the name and address of the arresting  
15 law enforcement agency. Respondent's failure to timely file written  
16 notice shall constitute an independent violation of the terms of the  
17 restricted license and shall be grounds for the suspension or revocation of  
18 that license.


19  
20 DATED: 7-5-2017

21   
22 Judith B. Vasan, Counsel  
23 Bureau of Real Estate

24 I have read the Stipulation and Waiver and its terms are agreeable and  
25 acceptable to me. I understand that I am waiving my rights given to me by the California  
26 Administrative Procedure Act (including but not limited to Section 11506, 11508, 11509, and  
27 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those  
rights, including the right to seek reconsideration and the right to seek judicial review of the

1 Commissioner's Decision and Order by way of a writ of mandate. I can signify acceptance and  
2 approval of the terms and conditions of this Stipulation and Waiver by mailing the original  
3 signed Stipulation and Waiver to: Judith B. Vasan, Bureau of Real Estate, 320 West 4th Street,  
4 Suite 350, Los Angeles, California 90013-1105.

5  
6 DATED: 06/28/2017

  
CARLOS ALBERTO ALVAREZ  
Respondent

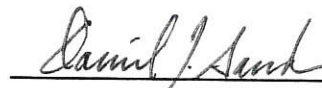
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9 I have read the Statement of Issues filed herein, the Proposed Decision of the  
10 Administrative Law Judge dated May 10, 2017, and the foregoing Stipulation and Waiver  
11 signed by Respondent. I am satisfied that it will not be inimical to the public interest to issue a  
12 restricted salesperson license to Respondent.

13 Therefore, IT IS HEREBY ORDERED that the application for real estate  
14 salesperson license of Respondent be denied and a restricted real estate salesperson license be  
15 issued to Respondent if Respondent has otherwise fulfilled all of the statutory requirements for  
16 licensure. The restricted license shall be limited, conditioned and restricted as specified in the  
17 foregoing Stipulation and Waiver.

18 This Order shall become effective at 12 o'clock noon on AUG 21 2017

19 IT IS SO ORDERED 7/26/17

20 WAYNE S. BELL  
21 REAL ESTATE COMMISSIONER

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24 By: DANIEL J. SANDRI  
25 Chief Deputy Commissioner  
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FILED

JUN 21 2017

BUREAU OF REAL ESTATE

By *[Signature]*

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Application of ) CalBRE No. H-40557 LA  
CARLOS ALBERTO ALVAREZ, )  
Respondent. ) OAH No. 2017030363

NOTICE

TO: CARLOS ALBERTO ALVAREZ, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated May 10, 2017, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated May 10, 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 Thursday, April 27, 2017, and any written argument hereafter submitted on behalf of respondent and complainant.

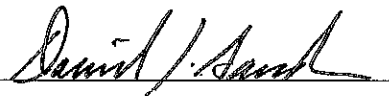
Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Thursday, April 27, 2017, at the Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for good

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: 6/15/17.

6 WAYNE S. BELL  
7 REAL ESTATE COMMISSIONER

8  
9 \_\_\_\_\_

10 By: DANIEL J. SANDRI  
11 Chief Deputy Commissioner

BEFORE THE  
BUREAU OF REAL ESTATE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Application of  
  
CARLOS ALBERTO ALVAREZ,  
  
Respondent.

Case No. H-40557 LA  
  
OAH No. 2017030363

**PROPOSED DECISION**

This matter came on regularly for hearing on April 27, 2017, at Los Angeles, California, before Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California.

Veronica Kilpatrick (Complainant) was represented by Judith Vasan, Real Estate Counsel.

Carlos Alberto Alvarez (Respondent) represented himself.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

**FACTUAL FINDINGS**

1. Complainant made the Statement of Issues while acting in her official capacity as a Supervising Special Investigator for the State of California.

2. On March 7, 2016, Respondent filed with the Bureau of Real Estate, Department of Consumer Affairs, State of California (Bureau) an application for a real estate salesperson license.

3. On January 23, 2015, in the Superior Court of California, County of Los Angeles, Case No. BA439132, Respondent was convicted, upon his nolo contendere plea, of violating California Penal Code section 455 (attempting to burn a structure and committing an act in furtherance), a felony. Respondent's conviction is substantially related to the qualifications, functions and duties of a real estate salesperson, pursuant to California Code



of Regulations, title 10, section 2910, subdivisions (a)(10) and (a)(11). Respondent received a suspended sentence, was placed on five years formal probation, served 278 days in county jail with credit for time served, completed a one-year residential dual diagnosis program, registered as a convicted arson offender, and was ordered to stay 100 yards away from the establishment.

4. The facts and circumstances of the conviction are that on September 7, 2014 while a patron in a Hooters bar/restaurant, Respondent was intoxicated and combative with the establishment manager and did not have sufficient funds to pay his tab. He threatened to burn down the establishment. The manager took Respondent's lighter and called the police department. In the meantime, Respondent emptied lighter fluid on the door of the establishment. He had another lighter on his person but did not attempt to ignite the lighter fluid. Instead, he asked for the manager to return his lighter. After an angry exchange of words with the manager, he left the establishment and crossed the street where he was arrested by the police.

5. On October 9, 2013, in the Superior Court of California, County of Los Angeles, Case No. 3WA11157, Respondent was convicted, upon his nolo contendere plea, of violating California Vehicle Code section 23152, subdivision (b) (driving while having 0.08% or higher blood alcohol content), a misdemeanor. The conviction is substantially related to the qualifications, functions and duties of a real estate salesperson pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(10) and (a)(11). The imposition of sentence was suspended and Respondent was placed on probation for 36 months, which included payment of \$2,259 in fines and fees, and completion of a 9-month first-offender alcohol and drug education/counseling program and the Victim Impact Program of Mothers Against Drunk Driving (MADD).

6. The facts and circumstances of the conviction are that on January 23, 2013, Respondent was intoxicated while driving a vehicle, and struck a curb and a parked car.

7. Respondent was previously licensed by the Bureau as a real estate salesperson (license number 01490660) on May 16, 2005 and the license expired on May 15, 2013. The license was never disciplined. Respondent worked as a full time real estate salesperson for several years after graduating from high school. He liked working as a real estate salesperson, but left the field when the recession hit because it was no longer financially viable for him.

8. Respondent candidly and credibly described the facts and circumstances of his convictions and his subsequent rehabilitation. Respondent hit bottom when he spent five months in jail and started to regain his life during a one-year residential alcohol treatment program. Respondent credibly testified that he suffered a "nervous breakdown" at the time of the incident which gave rise to the conviction set forth in factual finding 3 above. After seeking medical treatment, Respondent now understands that he has Bi-Polar Disorder and takes appropriate medication to control the symptoms. Respondent also avoids alcohol,

adheres to a regular schedule of exercise, sleep, stress reduction techniques, and attends Alcoholics Anonymous (AA) meetings, church and work.

9. Respondent has developed a support network including his parents, his sponsor, his church, AA and his girlfriend, who is expecting their twin babies. He used the court-ordered treatment as an opportunity to improve himself. He credibly testified that he now knows what his triggers for alcohol are and makes sure that he does not place himself in those situations. Respondent has been sober since September 8, 2014. Respondent's father, a recovering alcoholic with 30 years of sobriety, has been actively involved in supporting his recovery. Respondent also has a sponsor and greets newcomers at AA meetings. Respondent is a leader at AA meetings and his church. He has completed the AA 12 steps and is committed to living his life sober. He is motivated by his desire to remain sober and to provide for his twin babies.

10. Respondent graduated from college in 2013, after the incident which gave rise to his 2013 conviction, but before the incident that gave rise to his 2015 conviction.

11. Respondent provided character reference letters in support of his application and rehabilitation from members of his AA group and his church attesting to his good character, sobriety and dedication. . (Exhibits B and C.) Respondent also provided a letter from the Los Angeles County Office of Probation dated March 14, 2017 attesting to his compliance with his probation. (Exhibit A.)

## LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's application for a real estate salesperson license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), for conviction of a crime substantially related to the qualifications, functions and duties of the licensed activity, as set forth in Findings 3-6.

2. California Code of Regulations, title 10, section 2911 sets forth the Bureau's criteria for rehabilitation to be used in determining whether an applicant is sufficiently rehabilitated to be granted the privilege of licensure. The regulation provides in pertinent part:

The following criteria have been developed by the Bureau pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis

to deny the Bureau action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the Bureau.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

(c) Expungement of criminal convictions resulting from immoral or antisocial acts.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the Bureau action sought is attributable in part to the use of controlled substances or alcohol.

(g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the Bureau action sought.

(i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

(j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

(k) Correction of business practices resulting in injury to others or with the potential to cause such injury.

(l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

(n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

3. Some of the above rehabilitation criteria are not applicable to this case (i.e. restitution, expungement of Penal Code section 290 requirements, discharge of debts, restitution, change of business practices). Respondent has satisfied many of the criteria that are applicable to this case. More than two years have passed since his most recent conviction, he has complied with his probation, abstained from the use of drugs and alcohol for more than two years, enjoys a stable and supportive family life, and has not received any additional convictions. Respondent has made a conscientious and sustained commitment to his church and AA. He has also changed his social relationships and concentrates on healthful activities and stress reduction measures. Most importantly, as evidenced by Respondent's testimony and Exhibits A, B and C, Respondent has had a complete change in attitude. He acknowledges his alcoholism and mental health issues and has taken steps to handle those issues. He has successfully maintained his sobriety since September of 2014, and changed his life completely.

4. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and



regeneration.” (*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.) 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.) 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.)

5. Respondent is mid-way through a five year term of probation. Typically, the recentness of Respondent's last conviction and his probationer status would militate in favor of denial of his application. However, Respondent was previously a licensee without incident and has made substantial changes in his life which make it unlikely that he will suffer any further criminal convictions. Respondent has sufficiently rehabilitated to warrant a restricted license. Nevertheless, under these circumstances, the Bureau must have the opportunity to oversee Respondent's conduct for a period of time in order to ensure public protection.

#### ORDER

Respondent's application for a real estate salesperson license is granted. The license is immediately revoked, provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code. 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:

The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence 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 this restricted license.

Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until five years have elapsed from the date of issuance of the restricted license to Respondent.

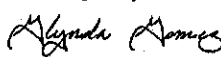
With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Bureau of Real Estate which shall certify as follows:

(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

Dated: May 10, 2017

DocuSigned by:



GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings