

1 Bureau of Real Estate
2 320 W. 4TH Street, Suite 350
3 Los Angeles, CA 90013-1105
4 Telephone: (213) 576-6982

FILED

APR 02 2018

BUREAU OF REAL ESTATE

By *Liquid Danner*

8 BEFORE THE BUREAU OF REAL ESTATE
9 DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation against
13 PATRICK EUGENE AURIGNAC,
14 Respondent.

} CalBRE No. H-40574 LA
} OAH No. 2017050290
} STIPULATION AND AGREEMENT AND
} DECISION AFTER REJECTION

16 It is hereby stipulated by and between Respondent PATRICK EUGENE
17 AURIGNAC ("Respondent"), individually, represented by Whitney Northington Barnick, and
18 the Complainant, acting by and through Lissete Garcia, Counsel for the Bureau of Real Estate
19 ("Bureau"), as follows for the purpose of settling and disposing of the Accusation filed on
20 March 10, 2017, in this matter:

- 21 1. On November 3, 2017, a formal hearing was held on the Accusation in
22 accordance with the provisions of the Administrative Procedure Act ("APA") before
23 Administrative Law Judge Glynda B. Gomez ("ALJ Gomez") where, after evidence and
24 testimony were received, the record was closed and the matter was submitted for decision.
- 25 2. On December 1, 2017, ALJ Gomez issued a Proposed Decision.
- 26 3. On January 4, 2018, the Commissioner rejected the Proposed Decision.

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1 4. The parties wish to settle this matter without further proceedings pursuant
2 to Government Code section 11415.60.

3 5. Respondent, pursuant to the limitations set forth below, hereby agrees that
4 the factual allegations in the Paragraphs 2, 4, 5, 6, 7, 8, 9, 11, and 12 of the Accusation filed in
5 this proceeding and are true and correct and thereby constitute cause for discipline of
6 Respondent's real estate license. The Commissioner shall not be required to provide further
7 evidence to prove such allegations.

8 6. It is understood by the parties that the Commissioner may adopt the
9 Stipulation and Agreement and Decision After Rejection ("Stipulation and Agreement") as his
10 decision in this matter thereby imposing the penalty and sanctions on Respondent's real estate
11 license and license rights as set forth in the below Order. In the event the Commissioner, in his
12 discretion, does not adopt the Stipulation and Agreement, the Stipulation and Agreement shall be
13 void and of no effect. If that occurs, the Commissioner will proceed pursuant to Section
14 11517(c)(2)(E) of the California Government Code.

15 7. The Order or any subsequent Order of the Commissioner made pursuant to
16 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
17 administrative or civil proceedings by the Bureau with respect to any matters which were not
18 specifically alleged to be causes for the Accusation in this proceeding.

19 DETERMINATION OF ISSUES

20 By reason of the foregoing stipulations, admissions, and waivers, and solely for
21 the purpose of settlement of the pending Accusation without further proceedings, it is stipulated
22 and agreed that the following Determination of Issues shall be made:

23 The conduct, acts, or omissions of Respondent PATRICK EUGENE
24 AURIGNAC, as described in the Paragraphs 2, 4, 5, 6, 7, 8, 9, 11, and 12 of the Accusation,
25 constitute cause for the suspension or revocation of all real estate licenses and license rights of
26 Respondent PATRICK EUGENE AURIGNAC under California Business and Professions Code
27 ("Code") Sections 490, 10177(b), and 10186.2.

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ORDER

All licenses and licensing rights of Respondent PATRICK EUGENE AURIGNAC under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Code if Respondent makes application therefor and pays to the Bureau the appropriate fee for the restricted license within ninety (90) days from the effective date of this Decision. The restricted licenses issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Code and to the following limitations, conditions, and restrictions imposed under Section 10156.6 of the 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, and which occurred after the last conviction considered in this Decision.

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 or petition for the issuance of any unrestricted real estate license nor for removal of any of the conditions, limitations or restrictions of a restricted license until four (4) years have elapsed from the effective date of this Decision and Order.

4. Respondent shall 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:

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

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

6 5. Respondent shall pay the sum of \$2,317.30 for the Commissioner's reasonable
7 cost of the investigation and enforcement which led to this disciplinary action within 30 days of
8 the effective date of this Decision. Said payment shall be in the form of a cashier's check made
9 payable to the Bureau of Real Estate. The investigative and enforcement costs must be delivered
10 to the Bureau of Real Estate, Flag Section at P.O. Box 137007, Sacramento, CA 95813-7007. If
11 Respondent fails to satisfy this condition, Respondent's real estate license shall automatically be
12 suspended until Respondent pays the investigation and enforcement costs.

13 6. Respondent shall, within nine (9) months from the effective date of this Order,
14 present evidence satisfactory to the Commissioner that Respondent has, since the most recent
15 issuance of an original or renewal real estate license, taken and successfully completed the
16 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal
17 of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order
18 the suspension of the restricted license until the Respondent presents such evidence. The
19 Commissioner shall afford Respondent the opportunity for a hearing pursuant to the
20 Administrative Procedure Act to present such evidence. Proof of completion of the continuing
21 education courses must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box
22 137013, Sacramento, CA 95813-7013.

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

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5 DATED: 3/22/2018

6 
Lissete Garcia, Counsel for
Bureau of Real Estate

7 * * *

8 EXECUTION OF THE STIPULATION

9 I have read the Stipulation and Agreement and Decision after Rejection, and its
10 terms are understood by me and are agreeable and acceptable to me. I willingly and voluntarily
11 agree to enter into this Stipulation and Agreement and Decision after Rejection.

12 Respondent can signify acceptance and approval of the terms and conditions of
13 this Stipulation and Agreement by electronically emailing a copy of the signature page, as
14 actually signed by Respondent, to the Bureau. Respondent agrees acknowledges, and
15 understands that by electronically sending to the Bureau an electronic copy of Respondent's
16 actual signature as it appears on the Stipulation, that receipt of the emailed copy by the Bureau
17 shall be as binding on Respondent as if the Bureau had received the original signed Stipulation.

18 By signing this Stipulation, Respondent understands and agrees that Respondent may not
19 withdraw this agreement or seek to rescind the Stipulation prior to the time the Commissioner
20 considers and acts upon it or prior to the effective date of the Stipulation and Order.

21 Respondent agrees, acknowledges and understands that by signing this Stipulation
22 and Agreement and Decision after Rejection Respondent is bound by its terms as of the date of
23 such signature and that such agreement, if adopted by the Commissioner, is not subject to
24 rescission or amendment at a later date except by a separate Decision and Order of the
25 Commissioner.

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1 MAILING

2 Respondent and Respondent's attorney shall mail the original signed signature
3 page(s) of the stipulation herein to Lissete Garcia: Attention: Legal Section, Bureau of Real
4 Estate, 320 W. Fourth St., Suite 350, Los Angeles, California 90013-1105.

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6 DATED: _____

7 _____
8 PATRICK EUGENE AURIGNAC
9 Respondent

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11 DATED: _____

12 _____
13 Whitney N. Barnick
14 Counsel for Respondent
15 *Approved as to Form*

16 * * *

17 I have read the Accusation filed herein, the Proposed Decision of the
18 Administrative Law Judge dated December 1, 2017, and the foregoing Stipulation and
19 Agreement signed by Respondent. I am satisfied that it will not be inimical to the public interest
20 to issue a restricted salesperson license to Respondent.

21 The foregoing Stipulation and Agreement is hereby adopted by me as my
22 Decision in this matter as to Respondent PATRICK EUGENE AURIGNAC, and shall become
23 effective at 12 o'clock noon on APR 23 2018.

24 IT IS SO ORDERED March 29, 2018.

25 WAYNE S. BELL
26 Real Estate Commissioner

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By: DANIEL J. SANDRI
Chief Deputy Commissioner

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FILED

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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-40574 LA
)	
PATRICK EUGENE AURIGNAC,)	OAH No. 2017050290
)	
Respondent.)	

NOTICE

TO: PATRICK EUGENE AURIGNAC, Respondent, and WHITNEY N. BARNICK, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated December 1, 2017, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated December 1, 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 Friday, November 03, 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 Friday, November 03, 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: 1/4/18

6 WAYNE S. BELL
7 REAL ESTATE COMMISSIONER

8 By *Daniel J. Sandri*
9 DANIEL J. SANDRI
10 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:

PATRICK EUGENE AURIGNAC,

Respondent.

Case No. H-40574 LA

OAH No. 2017050290

PROPOSED DECISION

This matter came on regularly for hearing on November 3, 2017, at Los Angeles, California, before Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California.

Lisette Garcia, Real Estate Counsel, represented Brenda Smith, Supervising Special Investigator (Complainant), Bureau of Real Estate (BRE).

Whitney Northington Barrick, Attorney at Law, represented Respondent Patrick Eugene Aurignac (Respondent) who was present.

Oral and documentary evidence was received and the matter was submitted for decision on the hearing date.

FACTUAL FINDINGS

1. Complainant Brenda Smith filed the Accusation on February 22, 2017, while acting in her official capacity as a Supervising Special Investigator for the State of California. Respondent timely filed a notice of defense and request for hearing.

2. The Bureau issued Real Estate Broker license number ID 01084005 to Respondent on October 22, 1993. The license was in full force and effect at all relevant times and scheduled to expire on November 19, 2020. Respondent was also licensed as a Real Estate Salesperson from August 11, 1990 until becoming a broker on October 22, 1993.

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Convictions.

3. On January 23, 2013, in the Superior Court of California, County of San Luis Obispo, Case No. M484072001, Respondent was convicted, upon his no contest plea, of violating Vehicle Code section 23152 (B) (driving with a 0.08% or more blood alcohol level), a misdemeanor. As a result of the conviction, Respondent was sentenced to five days in jail with credit for one day served and placed on court supervised probation for three years on terms and conditions including completion of a three month first offender driving while under the influence program, payment of a \$2,383 fine and court fees and assessments. The facts and circumstances of the January 2013 conviction are that on December 20, 2012 Respondent drove a vehicle while having a blood alcohol level in excess of the legal limit.

4. On September 18, 2013, in the Superior Court of California, County of San Luis Obispo, Case No. F485777001, Respondent was convicted, upon his no contest plea, of violating Penal Code section 243, subdivision (d) (battery with serious bodily injury and Penal Code section 236 (false imprisonment), misdemeanors. The original charges against Respondent included three additional felonies which were dismissed as part of a plea bargain. Although the police report (Exhibit 11) states that Respondent was arrested for felony Penal Code section 243, the court records indicate that the charge was filed only as a misdemeanor. As a result of the conviction, Respondent was ordered to serve 120 days in jail with credit for 1 day served and placed on formal probation for five years on terms and conditions including the payment of fines, fees and restitution. The facts and circumstances of the September 2013 conviction are that on January 26, 2013, Respondent was drunk, entered the reserved area of a bar/restaurant where a private party was taking place and began sampling the food and flirting with the female guests. When confronted by one of the patron/hosts, a fight ensued, and Respondent threw food and then struck a male guest rendering him unconscious, then left the scene and drove home.

5. On September 30, 2015, in the Superior Court of California, County of San Luis Obispo, Case No. 15M-14809, Respondent was convicted, upon his no contest plea, of violating Vehicle Code section 23152 (B) (driving with a 0.08% or more blood alcohol level), a misdemeanor. As a result of the conviction, Respondent was sentenced to 25 days in county jail, with credit for 25 days actual time served and placed on court supervised probation for a period of four years on terms and conditions which included payment of a \$2,761 fine and fees and attending an 18 month multiple offender Driving under the Influence (DUI) program. Respondent has paid all fines and fees and has completed the court ordered program, but remains on probation. The facts and circumstances of the September 2015 conviction are that, on May 12, 2015, Respondent was stopped by police officers for speeding, had a blood alcohol level of .110, in excess of the legal limit, and was arrested.

6. On March 8, 2016, in the Superior Court of California, County of Santa Barbara, Case No. 1478413, Respondent was convicted, upon his plea of no contest, of violating Penal Code section 485, (theft-misappropriation of lost property), a misdemeanor. As a result of the conviction, Respondent was given a suspended sentence and placed on

supervised probation for a period of three years on terms and conditions including the payment of fines, fees, and restitution and ordered to complete 20 hours of community service, and 52-one hour counseling sessions. The facts and circumstances of the conviction are that on August 20, 2015, Respondent was involved in a physical and verbal altercation with his former girlfriend at a hotel. Respondent and his former girlfriend met at a hotel to discuss their possible reunification and her return of an expensive watch to him. After both parties consumed alcohol there was a physical altercation. After the altercation, police were called to the hotel and Respondent was arrested when the former girlfriend's iPad that had been left in his room was not returned to her. Respondent later gave the iPad to his attorney who returned it to her.

7. Respondent's convictions are 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), because all of the convictions involve the use of alcohol and demonstrate a pattern of disregard for the law.

Failure to Disclose Convictions

8. Respondent failed to comply with the requirement of Business and Professions Code section 10186.2, which requires that licensees report any felony or misdemeanor charges or conviction within 30 days. Respondent did not report any of the charges or his convictions to the Bureau within 30 days as required. Respondent did not know that he was required to report charges and convictions independent of his Broker renewal application.

9. Respondent submitted his Real Estate Broker license renewal application (Application) on November 19, 2016. Question 16 on the Application asks the licensee whether or not he has been convicted of any misdemeanor or felony within the previous six years. Respondent checked the "no" box. Question 22 of the Application asks for specific details of each conviction and provides space for the licensee to provide the information. Respondent left Question 22 blank and did not disclose his convictions. (Exhibit 3). When Respondent was contacted by the Bureau in February of 2017, he obtained and disclosed all relevant information including court documents and completed an interview information statement. (Exhibit 14)

Mitigation/Rehabilitation

10. Respondent has been in the real estate business for 27 years. He has completed over 300 transactions and supervised more than 1000 transactions. At one time, he had 15 agents in his office. Currently, Respondent and his son work together in Respondent's real estate brokerage. Respondent began his career in real estate while he was a student at California State University, San Luis Obispo. Since 2006, Respondent has been a single parent providing support and raising his two sons.

11. Respondent provided credible testimony of his remorse and rehabilitation at hearing. Respondent acknowledged that he has had a problem with alcohol and has made

poor decisions while under the influence of alcohol, including driving an automobile, and that he has had problems with anger management. He believes that he received tremendous benefit from court-ordered classes and counseling. Specifically, Respondent has learned what his triggers are and that alcohol is the common thread to most of the problems he has had and the convictions he has suffered. Upon completing the court-mandated classes and counseling, Respondent commenced private therapy sessions with therapist Patricia Glickman and believes that he has learned new tools to deal with his anger, alcohol abuse and depression. Respondent sees Dr. Glickman for two hours, twice per week.

12. Respondent has changed many of his friends and associates. He has also substantially cut back on his alcohol consumption. Although Respondent still consumes alcohol, he only drinks occasionally while out at social events in the evening and does not drive a car anymore. Respondent either takes Uber or has his son, an agent in his office, drive him when he needs to go somewhere. Respondent now makes sure to get appropriate exercise, nutrition and rest. He believes that the general change in life style and addition of private therapy to his routine have made a difference. Respondent left what he described as a "toxic" relationship and has moved on to rebuild his life and health.

13. Respondent expressed remorse for his conduct and acknowledged the seriousness of his behavior. He believes that he has taken steps through his therapy, compliance with his current probation, attending anger management classes and court ordered therapy, cutting back on his alcohol consumption and not driving a car that will protect the public and address the Bureau's concerns about his convictions and ability to perform his duties as a licensed real estate broker.

14. Respondent presented a letter from Patricia Glickman, Ph.D., a licensed Marriage and Family Therapist and certified drug and alcohol counselor, dated October 30, 2017 verifying his therapeutic relationship since January of 2017. According to the letter, Respondent has completed 60 hours of therapy. Dr. Glickman notes:

The focus of your work has included, but not been limited to: communication; relationships; grief; anger management; mood regulation; substance use, abuse and addiction. You have been fully invested in your self-improvement and have been engaged in the process. You have been forthcoming with both past and current relational issues, showing self-awareness, accountability and transparency in solution focused goals. In this process you have showed (*sic*) a high level of integrity.

I have seen growth and insight as well as authentic desire to continue self-awareness, healthy interactions and reactions.
(Exhibit 17)

15. Respondent also presented a letter dated August 1, 2016, from Licensed Clinical Psychologist Halley M. Moore, Ph.D., verifying that Respondent completed 35 sessions of therapy focusing on anger management and domestic violence education. (Exhibit 18)

16. In an October 26, 2017 letter, Lisa Fraser, Executive Director of the Center for Family Strengthening, attested to Respondent's service to her agency. She wrote:

[¶] ...[Respondent] volunteered his time to guide our relocation process. With [Respondent's] guidance, the Center for Family Strengthening-the designated Child Abuse Prevention Council of San Luis Obispo County benefited from his expert negotiation skills. We moved into a highly desirable location with a reasonable lease agreement appropriate for our budget. In addition to [Respondent's] contribution of time, he donates hotel lodging for professional development keynote presenters and actively sponsors our fundraising events....

(Exhibit 19)

17. In a September 15, 2016 letter to the Bureau, Melissa M. Musgrave, on behalf of the Homeless/Foster Youth Services of San Luis Coastal Unified School District, wrote of Respondent's service to her organization:

[¶]...[Respondent] has completed numerous hours of volunteer work, made several donations and assisted in the collection of items to be donated to low income students for San Luis Coastal USD/Homeless and Foster Youth Services Department.

[¶]...[Respondent] has purchased new school supplies and also helped with outreach to private donors to increase donations. In addition, [Respondent] assisted with not only the collection of school supplies but also the sorting and organizing of such donations.

(Exhibit 20)

18. Respondent also submitted letters of reference from friends and associates including: Don Ernst, an attorney, Toney Breault, a business owner, Bradley Goodwin, MBA, a business associate, Gregory C. Jacobson, an attorney, longtime friend Justin J. Perino, real estate salesperson and former employee Melissa Kues.

A. On October 31, 2017, Attorney Don Ernst of the Ernst Law Group has known Respondent for more than 20 years, wrote:

Without question [Respondent] is one of the finest and most knowledgeable real estate professionals that I know. He works hard, is straight forward, understands the market place, helps his

clients, is very professional, and has vision. This statement is based upon personal knowledge of [Respondent's] work, as well as where [Respondent] has acted as a professional broker. On the one occasion where [Respondent] was my broker, he exhibited the finest type of professional conduct and ethical behavior that one could hope for. He was a model of what a broker should do and act, not only from a work ethic standpoint, but also from a personal ethic standpoint. He was a credit to the real estate profession.

(Exhibit 21)

B. In his October 30, 2017 letter to the Bureau, Tony Breault, a former college classmate of Respondent and a client, who has known Respondent for 30 years, wrote:

For the past 6 years, [Respondent] has been the broker on numerous properties of mine. He was professional and great to work with. ...[Respondent] went above and beyond...I could not be happier with his professionalism and creativity. He is excellent at what he does and I will use him in all transaction (sic) in the future. [Respondent] is an amazing father to his two boys and a loyal friend....

(Exhibit 22)

C. In his October 30, 2017 letter to the Bureau, Bradley J. Goodwin, MBA, an experienced real estate investor, who has known Respondent for more than 10 years wrote:

I have had relationships with many real estate brokers over the years. I have noticed that some brokers and agents put their own interests ahead of their client's interest if there is an opportunity to build more margin in the deal. Not [Respondent]. [Respondent] always puts his client's interests above his own, as any real estate broker should. That is why I started going to [Respondent] for my real estate transactions and will continue to do so. I have also sent numerous referrals his way and have heard nothing but good things about [Respondent]. I have come to rely heavily on [Respondent's] understanding of our market and various deals. Respondent has been an asset to my business and I'm sure he will remain so.

(Exhibit 23)

D. On October 27, 2017, in a letter to the Bureau, attorney Gregory C. Thompson, who represented Respondent in some of his criminal cases wrote:

Based on my relationship with [Respondent], I believe he is a stand-up citizen. He is not a criminal. He is a good real estate

broker and businessman. Unfortunately, [Respondent] has had some unhealthy relationships that have led to some poor personal decisions. However, [Respondent] understands his shortcomings and continues to make great efforts to confront those challenges to better himself.

(Exhibit 24)

E. In a letter dated October 30, 2017, Real Estate Salesperson Melissa Kues, a former employee of Respondent, wrote:

I have known [Respondent] for the last 12 years. When I was 20, [Respondent] took a chance and hired me without any experience. [Respondent] mentored me throughout my career and was always ready, willing and able to help with any transaction. I always knew to could [sic] come to him with any problem.

[Respondent] has always been a role model to me and has always treated me with respect. We have participated in over 50 transactions together and continuously refer business to each other. If I cannot help a client, [Respondent] is always my first referral.

He is courteous, professional, ethical, and one of the smartest businessman (sic) I've ever met. His clients continue to come back for their real estate transactions because he has a reputation for being one of the best brokers in this town.

I have witnessed [Respondent] go through some trying times, including a divorce. He raised his two incredible boys,...., all by himself and still happened to carry on a successful career. [Respondent] has worked very hard on his personal development these last two years, including attending therapy sessions.

I have recently relocated...But, if I ever went back to San Luis Obispo, [Respondent] would be the first person I would call to hang my license.

(Exhibit 26)

19. Complainant submitted evidence of costs of investigation in the amount of \$1,160.30 and enforcement costs in the amount of \$1,157 for a total of \$2,317.30. This amount is reasonable. There was no evidence that payment of costs would result in a hardship on Respondent.

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. (*Borror v. Dept. of Real Estate* (1971) 15 Cal.App.3d 531.)
2. There is cause to suspend or revoke Respondent's real estate broker license pursuant to Business and Professions Code section 490 and 10177, subdivision (b), because Respondent was convicted of crimes that are substantially related to the qualifications, functions or duties of a real estate salesperson, as set forth in California Code of Regulations, title 10, Section 2910, subdivisions (a), by reason of factual findings 1-7.
3. There is no cause to suspend or revoke Respondent's real estate broker license pursuant to Business and Professions Code sections 498 and 10177, subdivision (a) because Respondent's failure to report the charges and convictions was inadvertent and not a misrepresentation or intentional material misstatement, and was not an act of fraud or deceit, by reason of factual findings 1-9.
4. There is cause to suspend or revoke Respondent's real estate broker license pursuant to Business and Professions Code section 10186.2, subdivision (b), in conjunction with Business and Professions Code section 490 and 10177, subdivision (d) and (g), based upon Respondent's failure to provide timely written notice of the charges against him and his convictions by reason of factual findings 1-9.
5. California Code of Regulations, title 10, section 2912 sets forth the Bureau's criteria for rehabilitation to be used in determining whether a licensee is sufficiently rehabilitated. The regulation provides in pertinent part:

The following criteria have been developed by the Bureau pursuant to Section 482 of the Business and Professions Code for the purpose of evaluating whether or not a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee is rehabilitated:

(a) The time that has elapsed since commission of the act(s) or offenses(s):

(1) The passage of not less than two years after the most recent criminal conviction or act of the licensee that is a cause of action in the Bureau's Accusation against the licensee is inadequate to demonstrate rehabilitation.

(2) Notwithstanding subdivision (a)(1), above, the two year period may be increased based upon consideration of the following:

(A) The nature and severity of the crime(s) and/or act(s) committed by the licensee.

(B) The licensee's history of criminal convictions and/or license discipline that are "substantially related" to the qualifications, functions, or duties of a real estate licensee.

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee, or escheat to the State of these monies or other properties if the victim(s) cannot be located.

(c) Expungement of the conviction(s) which culminated in the administrative proceeding to take disciplinary action.

(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 and/or alcohol for not less than two years if the criminal conviction was attributable in part to the use of controlled substance and/or alcohol.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

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

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

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

(1) Testimony and/or other evidence of rehabilitation submitted by the licensee.

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

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

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

(5) Absence of subsequent felony convictions, misdemeanor convictions or other conduct that provides ground to discipline a real estate licensee, which reflect an inability to conform to societal rules when considered in light of the conduct in question.

5. The criteria are analyzed as follows: (a) One year and eight months have elapsed since Respondent's last conviction and more than two years have elapsed since the underlying act; (b) Respondent has paid all fines, fees and restitution ordered by the criminal court for his convictions; (c) Respondent's crimes have not been expunged; (d) Respondent was not required to register in any way; (e) Respondent remains on probation until March of 2018; (f) Respondent's alcohol abuse was at the heart of all of his convictions and he has sought and continues to undergo treatment to deal with the root problems which led to his alcohol abuse. Respondent has curtailed his use of alcohol and no longer drives an automobile. (g) Respondent has paid all court-ordered fees, fines and penalties; (h) Respondent's real estate business practices were not at issue; (i) Respondent has terminated an unhealthy romantic relationship, made new social connections and has refocused his energies on his health, therapy, family and business; (j) Respondent has a stable support network with his two adult sons, one of whom works with him, a large group of supportive

friends and colleagues, and a therapist; (k) Respondent completed his continuing education classes, anger management classes, court ordered classes and is undergoing intensive weekly therapy; (l) Respondent has participated in a variety of charitable activities in his community. In addition to financial support, he has volunteered many hours in charitable activities in his community; and (m) Most importantly, Respondent has displayed a change in attitude. Respondent expressed great regret, remorse and shame for his conduct and has not suffered any additional convictions.

6. The statutes relating to licensing of professionals generally are designed to protect the public from dishonest, untruthful and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) Such proceedings are not for the primary purpose of punishing an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, in issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Ibid.*, See also, *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.)

7. 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.)

8. Respondent fully acknowledges the wrongfulness of his actions and Respondent has completed more than half of his three year term of probation. Typically, the recency and number of Respondent's convictions would weigh in favor of outright revocation of all of Respondent's licensing rights. Because he is still on probation, he is not yet eligible for a dismissal pursuant to Penal Code section 1203.4, and any good conduct must be viewed with caution because he is still under the supervision of the criminal justice system. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099). However, it was established by clear and convincing evidence through the credible and sincere testimony of Respondent, that the convictions and the underlying conduct are the result of alcohol abuse that Respondent engaged in when under stress and were an aberration his typical law-abiding conduct during an isolated period of time. Respondent no longer drives and has learned to drink alcoholic beverages responsibly and infrequently and is undergoing therapeutic treatment.

9. Respondent made some serious mistakes while under the influence of alcohol and is dealing with the criminal consequences of his actions. Of additional concern is Respondent's ignorance of the real estate laws requirement that he report charges and convictions within 30 days and his failure to disclose his convictions on his Application. While Respondent presents no clear danger to the public in continued real estate activities, his failure to notify the Bureau of his convictions and his subsequent failure to disclose the convictions on the Application cast some doubt about his level of rehabilitation. Taken together with the poor judgment demonstrated by Respondent in the underlying facts of his convictions, the interests of public protection require that Respondent's real estate practice be restricted and that he be monitored for a period of time to ensure public protection.

10. Accordingly, Respondent has been sufficiently rehabilitated such that the interests of public protection will not be endangered by the revocation of Respondent's real estate broker license and the issuance of a restricted real estate salesperson license. The Bureau must have the opportunity to oversee Respondent's conduct for a period of time in order to ensure public protection and that Respondent remains on his current path of rehabilitation. The granting of a restricted real estate salesperson license will accomplish this without depriving Respondent of his livelihood.

11. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost recovery provision similar to Code section 10106. In so doing, however, the Court directed the administrative law judge and the licensing agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. The Bureau must consider a licensee's ability to pay, and the Bureau may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct. (*Id.* at p. 45.)

12. In this case, the reasonable costs of investigation and enforcement are \$2,317.30.

ORDER

The Real Estate Broker license issued to Respondent Patrick Eugene Aurignac is hereby revoked; provided, however, that a restricted real estate salesperson 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 Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this. 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 Business and Professions Code section 10156.6:

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, and which occurred after the last conviction considered in this Decision.

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

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

4. Respondent shall submit with any application for 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 the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

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

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7. Respondent shall pay \$2,317.30 in costs to the Bureau of Real Estate within 30 days of the effective date of this decision.

Dated: December 1, 2017

DocuSigned by:
Glynda B. Gomez

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings