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FILED

FEB 06 2018

BUREAU OF REAL ESTATE

By *Sigurd Mennert*

**BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation of)	Case No. H-40694 LA
)	OAH No. 2017071136
TOM NGUYEN,)	
)	
Respondent.)	

DECISION AFTER REJECTION

This matter came on for hearing before Administrative Law Judge H. Stuart Waxman (“ALJ Waxman”) of the Office of Administrative Hearings, in Los Angeles, California, on September 6, 2017. Julie To, Counsel, represented the Complainant, Maria Suarez, Supervising Special Investigator for the State of California Bureau of Real Estate (“Bureau”). Respondent Tom Nguyen¹ (“Respondent”) appeared in person, and was represented by David Klehm, Esq. Oral and documentary evidence were received. The matter was submitted on September 6, 2017.

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¹ The police report (Exhibit 4) states the name on Respondent’s California driver license is “Toan Quyen Nguyen.”

1 On September 13, 2017, ALJ Waxman issued a Proposed Decision that proposed
2 revoking Respondent's broker license, and issuing him a restricted salesperson license pursuant
3 to certain terms and conditions.

4 On or about October 23, 2017, Respondent was served with notice of my
5 determination not to adopt the Proposed Decision of ALJ Waxman along with a copy of said
6 Proposed Decision pursuant to California Government Code section 11517(c). Respondent was
7 notified that the case would be decided by me upon the record, the transcript of proceedings held
8 on September 6, 2017, and upon any written arguments offered by Respondent and
9 Complainant. On or about January 2, 2018, Respondent filed Respondent's Brief in Response
10 to Commissioner's Non-Adoption of Proposed Decision of Administrative Law Judge After
11 Hearing. On or about January 4, 2018, Complainant filed Complainant's Argument After
12 Rejection of Proposed Decision.

13 I have given careful consideration to the record in this case, including, but not
14 limited to, the transcript of the proceedings of September 6, 2017 and the written arguments
15 submitted by Respondent and Complainant.

16 The following shall constitute the Decision of the Real Estate Commissioner in
17 this proceeding.

18 19 FACTUAL FINDINGS

20 *Background*

21 1. On June 9, 2005, the Bureau issued a real estate broker license (license
22 no. 01495604) to Respondent. The license is set to expire on June 8, 2021 unless renewed.
23 Respondent also holds a Mortgage Loan Originator ("MLO") license endorsement (National
24 Mortgage Licensing System ID 350188).

25 ///

26 ///

1 2. Respondent is the president and CEO of Integrity Escrow, Inc. and
2 Carrington Real Estate, Inc.

3 3. According to Respondent's Interview Information Statement (Exhibit 5),
4 Respondent is involved in various community groups, such as the Cox Elementary School
5 Parent-Teacher Association ("PTA"), various chambers of commerce in Orange County,
6 California, Living Waters Christian Church, Kiwanis Club, and the Asian Business Association
7 in Orange County.

8
9 *First Cause of Action: Criminal Charges and Conviction*

10 4. On August 17, 2016, in the Superior Court of California, County of
11 Orange, case no CHPW 15-0795, Respondent was convicted of violating California Vehicle
12 Code section 20002(a) (hit and run with property damage), a misdemeanor, after a jury found
13 Respondent guilty of such. In the same action, the jury found Respondent not guilty of violating
14 California Vehicle Code sections 23152(a) (driving under the influence of alcohol) and
15 23152(b) (driving with a blood alcohol level of 0.08 percent or more), both misdemeanors.
16 Respondent was sentenced to three (3) years of informal probation under certain terms and
17 conditions, including paying fines and fees totaling \$1,494.00. Respondent paid these fines and
18 fees.

19 5. The facts and circumstances underlying the conviction are as follows: On
20 June 16, 2015 at approximately 10:00 p.m., Respondent was driving home from a restaurant in
21 his new 2015 Tesla Model S85 car. As Respondent was exiting the southbound I-405 freeway
22 onto a curving off-ramp, Respondent struck and damaged approximately fifteen (15) feet of
23 guardrail. The impact damage was mostly to the front left section of Respondent's car,
24 including, but not limited to, the front left bumper and front left tire, which became detached.
25 Immediately thereafter, Respondent telephoned his wife to pick him up. Respondent left with
26 his wife a few minutes later abandoning his car in the traffic lanes of the off-ramp. At
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1 approximately 10:37 p.m., the California Highway Patrol found Respondent's car in the traffic
2 lanes, and called a tow truck to remove it. At approximately 12:01 a.m. that same night,
3 California Highway Patrol officers located Respondent asleep in his home. When they
4 interviewed him, they noticed he had an odor of alcohol emitting from his breath and his eyes
5 were bloodshot and watery. Respondent failed a series of pre-Field Sobriety Tests, and a breath
6 test revealed Respondent had a blood alcohol level of 0.08 percent or more.

7 6. At the administrative hearing, Respondent testified he consumed two (2)
8 alcoholic beverages at the restaurant prior to driving home that night. This is consistent with
9 Respondent's statement to police that he had "two scotch" before driving that night, as shown in
10 the police report (Exhibit 4). However, in his Interview Information Statement (Exhibit 5) that
11 Respondent submitted to the Bureau, Respondent stated he simply consumed an alcoholic
12 beverage after he arrived at home that night, and did not mention he consumed two (2) alcoholic
13 beverages prior to driving. In addition, Respondent testified at the administrative hearing that
14 the front left tire of his car blew out, which caused his car to hit guardrail, and that he did not
15 call the police because it was simply a flat tire.

16
17 *Second Cause of Action: Failure to Report Conviction*

18 7. Respondent failed to report his conviction to the Bureau within thirty (30)
19 days of the conviction date as required by California Business and Professions Code section
20 10186.2. Respondent testified he was unaware of his obligation to do so.

21
22 *Third Cause of Action: Failure to Disclose Conviction*

23 8. On April 25, 2017, Respondent electronically filed his Broker Renewal
24 Application with the Bureau. Having filed similar applications to renew his broker license in
25 the past, Respondent was familiar with the question on the application that inquired as to
26 whether, in the past six (6) years, Respondent had been convicted of any violation of the law at
27

1 the misdemeanor or felony level. Nonetheless, Respondent answered, "No," to the question,
2 despite having been convicted less than a year before of violating California Vehicle Code
3 section 20002(a) (hit and run with property damage), a misdemeanor. At the administrative
4 hearing, Respondent testified that he believed he answered the question accurately because he
5 was found not guilty of two of the three criminal charges and did not think of the third criminal
6 charge, which he was found guilty of. This testimony is not credible. Respondent was present
7 at all phases of his three (3) day criminal trial where several witnesses testified and exhibits
8 were entered into evidence. Respondent was present with his attorney in court when he was
9 pronounced guilty of violating California Vehicle Code section 20002(a) (hit and run with
10 property damage), and sentenced that same day. Respondent was aware he was on probation,
11 and paid all the fines and fees that he was ordered to pay as a result of his conviction.

12
13 *Cost Recovery*

14 9. Complainant incurred investigation and enforcement costs of \$910.20 and
15 \$342.65, respectively, for a total of \$1,252.85 for this matter. These costs are found to be
16 reasonable.

17
18 LEGAL CONCLUSIONS

19 *Burden and Standard of Proof*

20 1. Complainant bears the burden of proving that the charges in the
21 accusation are true. (California Evidence Code section 115.) The standard of proof in an
22 administrative action seeking to suspend or revoke a professional license is "clear and
23 convincing evidence." (*Ettinger v. Board of Medical Quality Assurance*, 135 Cal. App. 3d 853,
24 856 (1982).) Clear and convincing evidence requires a finding of high probability, or evidence
25 so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the
26

1 unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court*, 130 Cal.App.4th
2 586, 594 (2005).)

3
4 *Relevant Statutory Authority*

5 2. California Business and Professions Code section 490 provides in
6 relevant part:

7 (a) In addition to any other action that a board is permitted to take
8 against a licensee, a board may suspend or revoke a license on the ground
9 that the licensee has been convicted of a crime, if the crime is substantially
10 related to the qualifications, functions, or duties of the business or
11 profession for which the license was issued.

12 (b) Notwithstanding any other provision of law, a board may exercise
13 any authority to discipline a licensee for conviction of a crime that is
14 independent of the authority granted under subdivision (a) only if the
15 crime is substantially related to the qualifications, functions, or duties of
16 the business or profession for which the licensee's license was issued.

17 3. California Business and Professions Code section 10177 provides in
18 relevant part:

19 The commissioner may suspend or revoke the license of a real estate
20 licensee . . . who has done any of the following . . . :

21 (a) Procured, or attempted to procure, a real estate license or license
22 renewal, for himself or herself or a salesperson, by fraud,
23 misrepresentation, or deceit, or by making a material misstatement of fact
24 in an application for a real estate license, license renewal, or reinstatement.

25 (b)(1) Entered a plea of guilty or nolo contendere to, or been found guilty
26 of, or been convicted of, a felony, or a crime substantially related to the
27 qualifications, functions, or duties of a real estate licensee . . .

28 *Substantial Relationship*

29 4. California Business and Professions Code section 481 provides:

30 Each board under the provisions of this code shall develop criteria to aid
31 it, when considering the denial, suspension or revocation of a license, to
32 determine whether a crime or act is substantially related to the
33 qualifications, functions, or duties of the business or profession it
34 regulates.

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5. California Code of Regulations, title 10, section 2910 provides in relevant part:

(a) When considering whether a license should be . . . suspended or revoked on the basis of the conviction of a crime . . . the crime . . . shall be deemed to be substantially related to the qualifications, functions[,] or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the [California Business and Professions] Code if it involves:

[¶] . . . [¶]

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

6. California Business and Professions Code section 10186.2 provides in relevant part:

(a) (1) A licensee shall report any of the following to the bureau:

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, the conviction, or the disciplinary action.

(b) Failure to make a report required by this section shall constitute a cause for discipline.

Cause Exists to Impose Discipline

7. Cause exists to revoke or suspend Respondent's real estate broker license and MLO license endorsement pursuant to California Business and Professions Code sections 490(a) and 10177(b). Clear and convincing evidence established Respondent's conviction for hit and run with property damage was a crime substantially related to the qualifications, functions, or duty of a licensee pursuant to California Code of Regulations, title 10, section 2910(a)(8). By fleeing the scene, Respondent attempted to abscond his responsibility to pay restitution for the property damage he caused.

1 8. Cause exists to discipline Respondent's real estate broker license and
2 MLO license endorsement pursuant to California Business and Professions Code section
3 10186.2 for his failure to report his criminal conviction within thirty (30) days of the conviction
4 date.

5 9. Cause exists to discipline Respondent's real estate broker license and
6 MLO license endorsement pursuant to California Business and Professions Code sections
7 475(b) and 10177(a) for his failure to disclose his criminal conviction on his real estate broker
8 renewal application. Respondent lacked candor in answering, "No," as to whether he had a
9 misdemeanor or felony conviction in the preceding six (6) years.

10 10. Cause exists to grant Complainant's request for reimbursement of the
11 costs of investigation and enforcement.

12
13 *Measure of Discipline*

14 11. The purpose of an administrative proceeding seeking the revocation or
15 suspension of a professional license is not to punish the individual; the purpose is to protect the
16 public from dishonest, immoral, disreputable, or incompetent practitioners. (*Ettinger v. Board*
17 *of Medical Quality Assurance*, 135 Cal.App.3d 853, 856 (1982).)

18 12. California Code of Regulations, title 10, section 2912 sets forth the
19 Bureau's criteria of rehabilitation required by California Business and Professions Code section
20 482. Here, less than two (2) years have passed since Respondent's conviction. Respondent
21 remains on probation until August 2019. Respondent paid the fines and fees in connection with
22 his criminal conviction. Respondent has not had a change in attitude as shown by his failure to
23 admit any wrongdoing that warranted his conviction, his failure to reveal the conviction on his
24 Broker Renewal Application, and lack of candor to the Bureau either at the administrative
25 hearing or on his Interview Information Statement (Exhibit 5) or both.

1 13. Rehabilitation is a state of mind. The law looks with favor on one who
2 has achieved reformation and regeneration. (*Hightower v. State Bar*, 34 Ca1.3d 150, 157
3 (1983).) The absence of a prior disciplinary record is a mitigating factor. (*Chefsky v. State Bar*,
4 36 Ca1. 3d 116, 132, fn. 10 (1984).) Remorse and cooperation are mitigating factors. (*In re*
5 *Demergian*, 48 Ca1.3d 284, 296 (1989).) While a candid admission of misconduct and full
6 acknowledgment of wrongdoing may be a necessary step in the rehabilitation process, it is only
7 a first step. A truer indication of rehabilitation is presented if an individual demonstrates by
8 sustained conduct over an extended period of time that he is once again fit to practice. (*In re*
9 *Trebilcock*, 30 Ca1.3d 312, 315-316 (1981).) Since persons under the direct supervision of
10 correctional authorities are required to behave in exemplary fashion, little weight is generally
11 placed on the fact that such an individual did not commit additional crimes or continue addictive
12 behavior while on probation or parole. (*In re Gossage*, 23 Ca1.4th 1080, 1099 (2000).)

13 14. Here, Respondent is still on probation for hit and run with property
14 damage. Respondent did not provide sufficient evidence to show he would not commit such a
15 crime again. After being convicted, Respondent continued to display dishonesty by failing to
16 reveal the conviction on his Broker Renewal Application less than a year after his conviction.
17 Respondent's testimony as to why he did not reveal the conviction was not credible. The
18 Bureau does not have proper assurances that Respondent has been rehabilitated or is on his way
19 to being rehabilitated. It would not be in the public interest for him to hold a real estate license.

20
21 *Costs of Investigation and Enforcement*

22 15. Complainant is seeking recovery of the reasonable costs of prosecution.
23 *Zuckerman v. State Board of Chiropractic Examiners*, 29 Cal.4th 32 (2002), held that a
24 regulation imposing costs for investigation and enforcement under California Code of
25 Regulations, title 16, section 317.5, which is similar to California Business and Professions
26 Code section 10106, did not violate due process. However, it was incumbent on the board in
27

1 that case to exercise discretion to reduce or eliminate cost awards in a manner such that costs
2 imposed did not "deter [licensees] with potentially meritorious claims or defenses from
3 exercising their right to a hearing." Here, the Bureau incurred reasonable investigation and
4 enforcement costs of \$910.20 and \$342.65, respectively, for a total of \$1,252.85 for this matter.

5
6 ORDER

7 1. All licenses and licensing rights of Respondent Tom Nguyen under the
8 Real Estate Law are revoked. This includes Respondent's real estate broker license and MLO
9 license endorsement.

10 2. Within ninety (90) days of the effective date of this Decision, Respondent
11 shall pay \$1,252.85 for investigation and enforcement costs to the Bureau by mailing a cashier's
12 check to the following address: Bureau of Real Estate, Flag Section, P.O. Box 137013,
13 Sacramento, CA 95813-7013. If Respondent makes an application or petition to the Bureau,
14 Respondent shall not be issued a license prior to paying these investigation and enforcement
15 costs in full.

16 This Decision shall become effective at 12 o'clock noon on

17 FEB 26 2018

18 IT IS SO ORDERED _____

19
20 WAYNE S. BELL
21 REAL ESTATE COMMISSIONER

22
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24 By: DANIEL J. SANDRI
25 Chief Deputy Commissioner

7 Ray Decker

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FILED
OCT 23 2017
BUREAU OF REAL ESTATE
By Angela Danner

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	CalBRE No. H-40694 LA
)	
TOM NGUYEN,)	OAH No. 2017071136
)	
Respondent.)	

NOTICE

TO: TOM NGUYEN, Respondent, and RAYMOND MCMAHON , his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated September 13, 2017, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated September 13, 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 Wednesday, September 06, 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 Wednesday, September 06, 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: 10/16/17.

6 WAYNE S. BELL
7 REAL ESTATE COMMISSIONER

8 By 
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 of
TOM NGUYEN,

Respondent.

Case No. H-40694 LA

OAH No. 2017071136

PROPOSED DECISION

This matter came on regularly for hearing on September 6, 2017, at Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Maria Suarez (Complainant) was represented by Julie L. To, Real Estate Counsel.

Tom Nguyen (Respondent) was present and was represented by David Klehm, Attorney at Law.

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 brought the Accusation in her official capacity as a Supervising Special Investigator of the State of California.
2. Respondent is the holder of real estate broker license number 01495604. The license will expire on June 8, 2021, unless renewed. Respondent also holds a Mortgage Loan Originator license endorsement, National Mortgage Licensing System ID 350188.
3. On August 17, 2016, in the Superior Court of California, County of Orange, in case number CHPW 15-0795, Respondent was found guilty in a court trial of violating Vehicle Code section 20002, subdivision (a) (hit and run with property damage), a misdemeanor. In the same action he was found not guilty of violating Vehicle Code sections

23152, subdivision (a) (driving under the influence of alcohol) and 20152, subdivision (b) (driving with a blood alcohol level of 0.08 percent or greater).

4. Respondent was placed on informal probation for a period of three years under various terms and conditions including payment of fines, fees, and court costs totaling \$1,494. Respondent timely paid the fines, fees, and costs.

5. The facts and circumstances underlying the conviction are that, on June 16, 2015, Respondent exited the southbound I-405 freeway onto a curving off-ramp. As he did so, a tire blew out causing the car to strike and damage a guardrail. A tow truck was sent to the scene to remove Respondent's damaged car, and Respondent telephoned his wife to pick him up. His wife arrived before the tow truck did and, when she arrived, Respondent abandoned his car in a traffic lane of the off-ramp, and he went home. He did not believe he was required to call the police for a blown tire, and he did not go back to the guardrail to inspect it for damage. California Highway Patrol officers located Respondent asleep in his home later that night and placed him under arrest. A breath test for alcohol yielded a result of 0.08 percent or greater. In his Interview Information Statement (Exhibit 5), Respondent stated he had consumed one drink when he arrived home on the night of the accident. At the administrative hearing, he testified he had consumed two alcoholic beverages at a restaurant on the night of the accident, a statement consistent with what he told the police at the time of his arrest.

6. Respondent failed to report his conviction to the Bureau of Real Estate (Bureau) within 30 days of the conviction date as required by Business and Professions Code section 10186.2. He was unaware of his obligation to do so.

7. On April 25, 2017, Respondent electronically filed his application for renewal of his real estate broker's license. Having filed similar applications in the past, he was familiar with the question on the application which inquired as to whether, in the past six years, he had been convicted of any violation of the law at the misdemeanor or felony level. Nonetheless, Respondent answered "no" to the question. That answer was incorrect. Respondent signed the application electronically under penalty of perjury. At the administrative hearing, he testified that he believed he was answering the question accurately. That testimony was not credible. Respondent was aware he was on criminal probation at the time he submitted the application.

8. Respondent is the president and CEO of Integrity Escrow, Inc. and Carrington Real Estate, Inc. He oversees two real estate salespersons. There are no other real estate brokers in his office.

9. According to his Interview Information Statement (Exhibit 5), Respondent is the divorced father of three children, ages 9, 16, and 21. He is involved in a number of community groups including the Cox Elementary School PTA, the Westminster, Santa Ana, Anaheim, and Fountain Valley Chambers of Commerce, Living Waters Christian Church, Kiwanis Club, Orange County Hispanic Chamber of Commerce, Business Owners Advisory

Team, Asian Business Association of Orange County, Santa Ana Civic Center, Better Business Bureau of Orange County, and the Advisory Committee for the Disabled.

10. Complainant incurred costs totaling \$1,252.85 in investigation and enforcement costs relating to this action. Those costs are found to be reasonable.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's real estate broker's license and mortgage loan originator license endorsement 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, 4, and 5.

2. Cause exists to discipline Respondent's real estate broker's license and mortgage loan originator license endorsement pursuant to Business and Professions Code section 10186.2, for failure to report a criminal conviction within 30 days of the conviction date, as set forth in Findings 3 and 6.

3. Cause exists to discipline Respondent's real estate broker's license and mortgage loan originator license endorsement pursuant to Business and Professions Code sections 475, subdivision (b) and 10177, subdivision (a), for failure to disclose his criminal conviction on his license renewal application, as set forth in Findings 3 and 7.

4. Cause exists to grant Complainant's request for reimbursement of the costs of investigation and enforcement, as set forth in Finding 10.

5. The crime of which Respondent was convicted is substantially related to the qualifications, functions, and duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8).

6. California Code of Regulations, title 10, section 2912, sets forth the Bureau's criteria for rehabilitation for consideration when determining whether discipline should be imposed and the nature of the discipline to be imposed against a licensee. The regulation reads:

The following criteria have been developed and will be considered by the Bureau pursuant to Section 482(b) 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 offense(s):

(1) The passage of 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 a 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 educational or vocational training courses for economic self-improvement.
- (l) Significant and 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 commission of the criminal acts 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 with subsequent attitudes and/or behavioral patterns.
 - (3) Evidence from probation or parole officers and/or law enforcement officials competent to testify as to licensee's social adjustments.
 - (4) Evidence from psychiatrists, clinical psychologists, sociologists 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 grounds to discipline a real estate licensee which reflect an inability to conform to societal rules when considered in light of the conduct in question.

7. Fewer than two years have passed since Respondent's conviction. He has not been granted an early discharge from probation, and his conviction has not been dismissed pursuant to Penal Code section 1203.4. Respondent has paid his fines, fees, and costs. He offered no evidence concerning any different social or business relationships from those

which existed at the time of the accident and conviction, the stability of his family life, or any educational or vocational training. He is heavily involved in community activities. Respondent did not offer any evidence of a change in attitude from that which existed at the time of the accident other than to acknowledge an error in judgment by abandoning his car and leaving the scene of the accident because he did not think he had to report the accident to the police, and because he thought a tow truck would arrive and remove his car from the scene in his absence.

8. Business and Professions Code section 10186.2 states in relevant part:

(a) (1) A licensee shall report any of the following to the bureau:

[¶] . . . [¶]

B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor. [¶] . . . [¶]

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, the conviction, or the disciplinary action.

(b) Failure to make a report required by this section shall constitute a cause for discipline.

9. Business and Professions Code section 10177 states in pertinent part:

The commissioner may suspend or revoke the license of a real estate licensee . . . who has done any of the following . . .

(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or a salesperson, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

10. At best, Respondent's testimony and written statements relating to his failure to report the conviction within 30 days of its date, and his failure to disclose the conviction on his license renewal application, demonstrate a lack of knowledge regarding the real estate law. At worst, they demonstrate a penchant for dishonesty. Either way, those omissions bode poorly for public protection. Respondent testified that he had been unaware of the 30-day reporting requirement, and that he did not believe he had to disclose the conviction on his license renewal application. However, he admitted that he was familiar with the question from other license applications he had completed, and he was aware, at the time he submitted

the application, that he was on criminal probation. He signed the application under penalty of perjury.

11. Respondent's conviction is temporally recent. He has been on criminal probation for a little over one year. He is scheduled to remain on probation until August 2019. He has satisfied only a few of the Bureau's criteria for rehabilitation. He was dishonest either to the police or to the Department regarding when he consumed his last alcoholic beverage before the police arrived at his home on the night of the accident. He has either failed to maintain his knowledge of the real estate law, or he has disregarded it. As the only real estate broker in his business, Respondent works unsupervised. These facts pose a serious risk to the public safety, welfare, and interest.

12. The purpose of an administrative action such as this one is not to punish the licensee, but rather to protect the public (*Camacho v. Youde* (1979) 95 Cal.App.3d 161; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) This is true regardless of whether the licensee is being disciplined for deliberate dishonest acts, a lack of knowledge, or negligence. (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518.) In this case, Complainant established three grounds to discipline Respondent's real estate broker's license. The public cannot be adequately protected if Respondent is permitted to maintain that license. However, he will be given the opportunity to continue to practice and to re-establish his good name by being granted a real estate salesperson's license. The license will be granted on a restricted basis in order for the Department to monitor his rehabilitation and further education on the real estate law.

ORDER

All licenses and licensing rights of Respondent, Tom Nguyen, 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 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 Decision. The restricted license issued to Respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

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

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

Not adopted

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 four 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 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 the suspension or revocation of that license.

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7. Respondent shall reimburse the Bureau its costs of investigation and enforcement in the sum of \$1,252.85 within 90 days of the effective date of this Decision. Respondent shall be permitted to pay the costs in a payment plan approved by the Bureau, with payments to be completed no later than three months prior to the end of the probation term.

Dated: September 13, 2017

DocuSigned by:

H. Stuart Waxman

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H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings