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JUN 12 2018

BUREAU OF REAL ESTATE

By CDelorio

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of DANNY DE LA TORRE, Respondent.))))	CalBRE No. H-40772 LA OAH No. 2017120845
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DECISION

The Proposed Decision dated May 3, 2018, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision.

Page 1, document heading, reads as "Case No. H-407772 LA" corrected to read "Case No. H-40772 LA".

Page 1, PROPOSED DECISION, paragraph 1, reads as "...matter on February 13, 2018,..." corrected to read as "...matter on March 19, 2018,..."

The Decision suspends or revokes one or more real estate licenses.

Pursuant to Government Code Section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

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

This Decision shall become effective at 12 o'clock noon on 7/2/18.

IT IS SO ORDERED 6/8/2018

WAYNE S BELL
REAL ESTATE COMMISSIONER

A handwritten signature in blue ink, appearing to read "Wayne S Bell", is written over a horizontal line.

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DANNY DE LA TORRE,

Respondent.

Case No. H-407772 LA

OAH No. 2017120845

PROPOSED DECISION

Carmen D. Snuggs, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on February 13, 2018, in Los Angeles.

Steve Chu, Counsel for the Bureau of Real Estate (Bureau), appeared on behalf of complainant Lupe Felix, Supervising Special Investigator for the Bureau (Complainant).

Frank M. Buda, Esq., represented Danny De La Torre (Respondent), who was present.

At the outset of the hearing, pursuant to the stipulation of the parties, the ALJ amended the Accusation at page two, line two, by changing "2016" to "2006."

Oral and documentary evidence was received. The ALJ left the record open to allow Respondent to submit by the close of business on March 26, 2018, proof of payment of court ordered fines and fees in Superior Court of California, County of Los Angeles, case number SDY00151, and for Complainant to file and serve by April 4, 2018, any objection. On March 26, 2018, Respondent filed a letter explaining that through no fault of his own, he was unable to obtain proof of payment from GC Services, the company that processed the payment. The letter was marked as Exhibit L. On March 27, 2018, Respondent submitted a letter from GC Services stating that Respondent paid the court-ordered fines and fees in full on January 20, 2017. Respondent's cover letter and letter from GC Services, both dated March 27, 2018, were marked as Exhibit M. On April 3, 2018, Complainant filed an objection to Exhibit M on hearsay and timelines grounds. Complainant's objection was marked as Exhibit 12. In the interest of securing a complete record, and because Respondent detailed his efforts to obtain proof of payment of the fines and fees by the deadline, Complainant's objections are overruled. The ALJ admitted Exhibit M as administrative hearsay.

The record was closed and the matter was submitted on April 4, 2018.

FACTUAL FINDINGS

Parties and Jurisdiction

1. On May 17, 2017, Complainant filed the Accusation in her official capacity. Respondent timely filed a notice of defense.

2. The Bureau issued real estate salesperson license number S/01514734 to Respondent on October 17, 2005. The license expired on February 11, 2018. The expiration of a license issued by the Bureau does not deprive the Bureau of its authority to institute or continue a disciplinary proceeding against the licensee or take disciplinary action against the licensee. (Bus. & Prof. Code, § 118, subd. (b).)

Respondent's Convictions

3. On January 25, 2017, in the Superior Court of California, County of Los Angeles, case number 5BF07490, Respondent was convicted on his nolo contendere plea of violating Vehicle Code section 23152 subdivision (b), (driving with a blood-alcohol content exceeding 0.08 percent), a misdemeanor, with an enhancement for suffering the conviction within 10 years of a separate violation of Vehicle Code section, 23152, subdivision (b). At the time of Respondent's conviction, he admitted a prior conviction on January 5, 2006, for violating Vehicle Code section 23152, subdivision (b). The court suspended imposition of sentence, and placed Respondent on summary probation for four years on condition that, among other things, he: a) serve 96 hours in the Los Angeles County Jail, less credit for 48 hours; b) pay fines and fees in the amount of \$2,081; c) enroll and participate in, and successfully complete, an 18-month second-offender alcohol and other drug education and counseling program; and d) complete a Mothers Against Drug Driving (MADD) Victim Impact Program.

4. The facts and circumstances underlying Respondent's conviction are that on August 7, 2015, Respondent consumed alcohol while out celebrating with his friends. He backed his vehicle into another vehicle while attempting to leave the location of the celebration. Respondent explained that at the time of the accident, he was arguing with this girlfriend and became distracted. Respondent was arrested after failing field sobriety tests and after two breath alcohol tests revealed his blood alcohol content to be .10 percent and .11 percent, respectively.

5. Respondent attended the MADD Victim Panel Presentation and paid the court-ordered fines and fees. He also served 48 hours in the Los Angeles County Jail. As of March 1, 2018, Respondent completed 83 percent of the alcohol and drug education and counseling program. At the time of the hearing, Respondent had attended an additional face-to-face meeting and one group meeting. He remains on probation until January 2021.

6. On September 9, 2015, in the Superior Court of California, County of Los Angeles, case number 5DY00151, Respondent was convicted on his nolo contendere plea of violating Vehicle Code section 20002, subdivision (a) (hit and run), a misdemeanor. The court found a factual basis for Respondent's plea and placed Respondent on summary probation for two years on condition that, among other things, he: a) serve 10 days in the Los Angeles County Jail; b) pay fines and fees in the amount of \$258; and c) pay restitution.

7. The facts and circumstances underlying Respondent's conviction are that on June 19, 2014, at approximately 1:00 a.m., Respondent was involved in a traffic collision after leaving his parents' house where he and his girlfriend had been watching a movie. He testified that he fell asleep at the wheel prior to the collision, and that he lost consciousness after the impact. He explained that he walked away from the scene of the accident because he was scared and he panicked. Police officers were able to locate and contact Respondent's mother, the registered owner of the vehicle that Respondent was driving, and requested that she have Respondent contact the Downey Police Department. Respondent went to the police station approximately 15 hours after the traffic collision occurred. The driver of the other vehicle sustained visible injuries to the right side of his face.

8. Respondent paid all court-ordered fines and fees, and was released after serving one day in the Los Angeles County Jail. On November 9, 2015, the court took the restitution hearing off calendar. Respondent testified that his insurance company resolved the other driver's property damage claim. He also testified that he complied with all terms of his probation.

9. Complainant alleged as a factor in aggravation, that on January 5, 2006, in the Superior Court of California, County of Riverside, case number RIM479079, Respondent was convicted on his guilty plea of violating Vehicle Code section 23152 subdivision (b), (driving with a blood-alcohol content exceeding 0.08 percent), a misdemeanor. The court suspended imposition of sentence, and placed Respondent on summary probation for four years on condition that, among other things, he: a) serve 15 days in the custody of the Riverside County Sheriff, less one day credit for time served, with the commitment to be served on consecutive weekends; b) pay fines and fees in the amount of \$1,501.40; and c) attend and satisfactorily complete a Drinking Driver Program.

Mitigation and Rehabilitation

10. Respondent most recently worked for Realty World Capero. He testified that he began working for the company in 2010. Respondent has no history of professional misconduct, but he allowed his license to expire on two previous occasions. Respondent knew of the expiration dates, and acknowledged his errors in not ensuring that he renewed his license before it expired. On February 21, 2018, he completed 48 hours of continuing education and on that same date, Respondent hand-delivered to the Bureau his most recent renewal application. Respondent intends to return to Realty World Capero when his license is renewed. He stated that his license is very important to him, and that his income from working as a real estate salesperson allows him to support his parents and his family. He has

been in a relationship with his girlfriend for eight years, and supports her and her three children. Respondent lives together with his parents, his girlfriend and the children.

11. Respondent believes that he had a problem with alcohol. He denied being intoxicated while conducting business as a real estate licensee. He has abstained from alcohol and has been sober since July 4, 2017. Respondent has attended Alcoholics Anonymous for six months and is still attending the court-ordered alcohol education and counseling program. The progress report from Southern California Alcohol and Drug Programs, Inc. indicated that Respondent was a "no-show" on 10 occasions. Respondent explained that he missed the classes due to work but made up the classes he missed. He has learned the seriousness of drinking and driving and the long term effects of alcohol, and stated that he has changed. Respondent described himself as being a better person since he suffered his convictions, and he believes that he is more caring and more responsible. He stated that he will no longer put himself in situations that will jeopardize his license or engage in the conduct that led to his convictions. He also expressed remorse and embarrassment due to his actions.

12. Sergio Pena, the manager at Realty World Capero, testified on Respondent's behalf. He is familiar with Respondent's business practices, and is aware of Respondent's convictions. He estimated that Respondent closed 81 real estate transactions and described Respondent as one of the "top" people in the office. Mr. Pena has never received a client complaint regarding Respondent's conduct, and he described Respondent as honest, a hard worker, and ethical. He has never seen Respondent intoxicated while working with clients and believes Respondent has changed his ways. Mr. Pena stated that if Respondent was allowed to retain his license, he, along with the broker, would supervise him.

13. Francisca Ramirez-Pena, President of Residential Escrow, is familiar with Respondent's professional conduct. She has received no consumer complaints regarding Respondent's interactions with clients. Ms. Ramirez-Pena is aware of Respondent's convictions. He expressed to her remorse and regret for his actions. In her experience, Respondent is honest and professional, and he cares for his clients. For these reasons, Ms. Ramirez-Pena supports Respondent's request to retain his license.

14. Manuel Casas, Respondent's former client and a current Los Angeles County Sheriff's Department Deputy, has known Respondent for 10 years. Respondent has represented Mr. Casas in real estate transactions involving both the purchase and sale of several properties. Mr. Casas found Respondent to be honest and responsible. He is aware of Respondent's convictions and Respondent has stated to Mr. Casas that he is sorry for his actions. He does not believe Respondent is a threat to the public because he found Respondent to be truthful and honest in completing real estate forms and conducting real estate transactions. Mr. Casas has seen Respondent consume alcohol in social gatherings but has not seen him do so since August 2015, when he and Respondent attended a party.

15a. Respondent submitted eight character reference letters from individuals that support Respondent's request to retain his license. A majority of the individuals know

Respondent in a professional capacity, including the co-owner of Realty World Capero and several real estate professionals. Respondent also offered a letter from his parents and personal acquaintances, including the individual that installed the interlock ignition device on Respondent's vehicle. All express knowledge of Respondent's criminal history, and all describe Respondent as honest, trustworthy, and caring. Several of the individuals also attest to Respondent's change in attitude and abstinence from alcohol in their presence in both social and business settings. Included is a letter from Efren Martin, the Broker for Realty World Capero. Mr. Martin has known Respondent since 2010. He is aware of Respondent's convictions and the Accusation. Mr. Martin believed Respondent's expression of deep remorse, and he has never seen Respondent under the influence of alcohol or any other substance while Respondent was conducting business. Mr. Martin described Respondent as caring, hardworking and honest, and defined his business ethics and professionalism as exemplary. Mr. Martin further endorsed Respondent as follows:

I would like to take this opportunity to implore you to consider allowing Danny to keep his real estate license. I am more than willing to closely supervise and work with him in all his business dealings, whether he is granted his real estate license or a restricted license.

(Ex. D.)

15b. Carlos Rossil, the co-owner of Realty world Capero, has known Respondent for nine years. He has observed Respondent in social and professional settings, and described Respondent as a role model to his co-workers and an asset to the company. He also stated that there have been no client complaints against Respondent and that he will re-hire Respondent if he is allowed to retain his license. He is aware of Respondent's convictions for driving under the influence and expressed knowledge that Respondent had been sober for eight months as of the time Mr. Rossil wrote the letter on March 19, 2018. Mr. Rossil also indicated that Respondent expressed remorse for his actions.

16. Respondent volunteers with the National Association of Hispanic Realtors. In that capacity he hosted a first-time home buyer seminar at his office and assists minorities in accomplishing home ownership. He also started a health and fitness group at Realty World Capero and leads them in exercise activity every Friday.

Costs

17. Complainant submitted documentation showing that the Bureau has incurred \$2,148.15 in investigative costs for 35.75 hours of Bureau employees' time at varying hourly rates. In addition, counsel for the Bureau has billed the Bureau \$556.25 in enforcement costs, consisting of eight and three-quarters hours of attorney time at \$89 per hour. The Bureau's total investigation and enforcement costs are \$2,926.90. This amount is reasonable.

18. Respondent testified that he would be able to pay the Bureau's investigation and enforcement costs pursuant to a payment plan if he were allowed to retain his license. He further stated that he would not be able to pay the Bureau's costs if his license was

suspended or revoked. He explained that although he owns several investment properties, he is not able to leverage the properties in order obtain the funds to pay the Bureau's costs.

LEGAL CONCLUSIONS

1. The Bureau is the state agency responsible for licensing and regulating real estate salespersons. (Bus. & Prof. Code, §10050, subd. (a)(2).)¹ The Bureau's highest priority in exercising its licensing and disciplinary functions is public protection. (*Id.* at § 10050.1.)
2. Complainant bears the burden of proof. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99; *Pipkin v. Bd. of Supervisors* (1978) 82 Cal.App.3d 652.) The standard of proof for the Bureau to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (See *Borror v. Department of Real Estate* (1971) 15 Cal.App.3d 531; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)
3. The Bureau may revoke or suspend the license of a real estate licensee if the licensee has pled guilty to or been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (§§ 490, subd. (a), 10177, subd. (b).) A crime is substantially related to the qualifications, functions, and duties of a licensee within the meaning of section 490 if it involves doing of any unlawful act with the threat of doing substantial injury to the person or property of another, or conduct that demonstrates a pattern of repeated and willful disregard of the law. (Cal. Code Regs. (CCR), tit. 10, § 2910, subd. (a), criteria (8) & (10).)² A crime is also substantially related to the qualifications, functions, and duties of a licensee within the meaning of section 490 if it involves two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs. (CCR § 2910, subd. (a), criterion 11.)
4. Respondent's 2017 conviction for violating Vehicle Code section 23152, subdivision (b) (driving with a blood-alcohol content exceeding 0.08 percent), as set forth in Factual Findings 3 through 5, is substantially related to the qualifications, functions and duties of a real estate salesperson pursuant to CCR section 2910, subdivision (a), criteria 8. Respondent's conduct had the potential to cause substantial injury to the person or property of another. In addition, Respondent's 2015 conviction for hit and run, as set forth in Factual Findings 6 through 8, is substantially related to the qualifications, functions and duties of a real estate salesperson pursuant to CCR section 2910, subdivision (a), criteria 10. Respondent's conduct demonstrates a pattern of repeated and willful disregard of law given his 2006 conviction for violating Vehicle Code section, 23152, subdivision (b) (driving with

¹ Further references to statute are to the Business and Professions Code

² Further references to the CCR are to title 10.

a blood-alcohol content exceeding 0.08 percent), as set forth in Factual Finding 9, as well as his 2015 and 2017 convictions.

5. Cause exists to suspend or revoke Respondent's real estate salesperson license pursuant to sections 490, subdivision (a), and 10177, subdivision (b), for his 2017 and 2015 convictions of crimes substantially related to the qualifications, functions, and duties of the licensee, as set forth in Factual Findings 3 through 8.

6. The purpose of imposing discipline is to protect the public. Disciplinary proceedings to suspend or revoke a real estate license are not conducted for the purpose of punishing an individual. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

7. Pursuant to CCR section 2912, the Bureau has adopted criteria for determining whether a licensee who has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee is sufficiently rehabilitated such that he is capable of continued engagement in licensed activities in a manner consistent with public protection, safety, and welfare. (Bus. & Prof. Code, § 482, subd. (b).) The relevant criteria includes:

(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.

(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.

[¶] . . . [¶]

(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 criminal conviction was attributable in part to the use of a controlled substance 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.

[¶] . . . [¶]

(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 . . .

8. Respondent meets the following applicable criteria: Respondent has paid all fines ordered by the court. (CCR, §2912, subds. (b) & (g); Factual Findings 5 and 8.) He has a stable family life and fulfills his parental and familial responsibilities. (CCR, §2912, subd. (j); Factual Finding 10.) He is involved in community programs designed to provide social benefits or to ameliorate social problems. (CCR, §2912, subd. (l).) Respondent professed a change in attitude toward drinking and driving, and has not engaged in conduct since the acts leading to his 2017 conviction that would provide grounds for disciplining a licensee. In addition, Respondent's colleagues and family attested to Respondent's change in attitude and behavior. (CCR, §2912, subd. (m); Factual Findings 11 through 15.) However, because he remains on probation until January 2021, Respondent's good behavior is accorded little weight because persons under supervision of correctional authorities are required to behave in exemplary fashion. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

9. Respondent does not meet the following rehabilitation criteria: Less than two years have passed since Respondent's most recent substantially related conviction. (CCR, § 2912, subd. (a); Factual Finding 3.) Respondent's convictions have not been expunged, and he is scheduled to remain on probation until January 2021. (CCR, § 2912, subds. (c) & (e); Factual Findings 5 and 8.) He has not abstained from the use of alcohol for two years. (CCR, § 2912, subd. (f); Factual Finding 11.)

10. Respondent satisfied the key elements of rehabilitation: remorse and acceptance of responsibility for his conduct. (Factual Finding 11.) These are the cornerstones of rehabilitation, which is a "state of mind" reflecting "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging previous wrongdoing is critical to rehabilitation (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940), and Respondent has done that. He unequivocally accepted responsibility for his criminal behavior, appreciates its seriousness, and is genuinely sorry for it. (Factual Findings 11.) Respondent also submitted evidence demonstrating his change in attitude, which was supported by character reference letters written by Respondent's colleagues and friends. (Factual Findings 11 through 15.) Respondent has been licensed for thirteen years without any history of license discipline, and his broker attests to Respondent's ability to interact honestly and competently with the public. (Factual Findings 2, 10, and 15a.) In addition, Respondent's broker and manager are committed to supervising him if he retains his license and licensing rights. (Factual Findings 12 and 15a.) However, Respondent has suffered two alcohol related convictions, the most recent in 2017, and he has not abstained from alcohol for a period of time sufficient for the Bureau to grant Respondent full licensing rights. (Factual

Findings 3 and 10, and Legal Conclusion 11.) Respondent attends AA meetings, but has not completed the court-ordered alcohol education and counseling program. (Factual Findings 5 and 11.) In addition, his probation is not scheduled to terminate until late 2021. (Factual Finding 5.) While remorse and acceptance of responsibility are necessary to show rehabilitation, a truer indication of rehabilitation is sustained conduct for an extended period of time. (*In Re Menna* (1995) 11 Cal.4th 975, 971). Respondent cannot demonstrate sustained appropriate conduct while not on probation given that he remains on criminal probation for three more years, until 2021. In addition, Respondent suffered a conviction for driving while under the influence of alcohol while on probation for his 2015 hit and run conviction. Moreover, while Respondent has become sober, his sobriety is relatively recent—fewer than 10 months ago. In light of the above factors, insufficient time has passed to establish Respondent's rehabilitation. Accordingly, to ensure the protection of the public, Respondent's real estate license and licensing rights must be revoked.

Costs

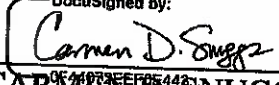
11. Because Respondent committed a violation of the Bureau's statutes, he is subject to paying the Bureau's investigative and prosecution costs in the amount of \$2,926.90. (\$10106.) But it is necessary to consider Respondent's capacity to pay. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) The evidence established that Respondent is not currently working as a real estate salesperson, and that he supports his parents, his girlfriend, and his girlfriend's three children. (Factual Finding 10.) Therefore, it would be a hardship for Respondent to pay the Bureau's costs of investigation and enforcement. Respondent must pay these costs only if he petitions for, and is granted, reinstatement.

ORDER

1. All licenses and licensing rights of Respondent Danny De La Torre under the Real Estate Law are revoked.

2. Respondent shall pay \$2,926.90 for the Bureau's investigation and enforcement costs, pursuant to a payment plan approved by the Bureau, only if he petitions for, and is granted, reinstatement

DATED: May 3, 2018

DocuSigned by:

CARMEN D. SNUGGS
Administrative Law Judge
Office of Administrative Hearings