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**FILED**

NOV - 7 2018

BEFORE THE DEPARTMENT OF REAL ESTATE DEPT. OF REAL ESTATE  
STATE OF CALIFORNIA By 

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In the Matter of the Accusation of:	)	DRE No. H-40943 LA
	)	
ROBERT SCOTT TEANEY,	)	OAH No. 2018071066
	)	
Respondent.	)	

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DECISION

The Proposed Decision dated October 5, 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.

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

Pursuant to Government Code Section 11521, the Department 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 Department'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 November 27, 2018.

IT IS SO ORDERED October 25, 2018

DANIEL SANDRI  
ACTING REAL ESTATE COMMISSIONER

*Daniel J. Sandri*

BEFORE THE  
DEPARTMENT OF REAL ESTATE<sup>1</sup>  
STATE OF CALIFORNIA

In the Matter of the Accusation of  
  
ROBERT SCOTT TEANEY,  
  
Respondent.

Case No. H-40943 LA  
  
OAH No. 2018071066

**PROPOSED DECISION**

This matter came on regularly for hearing on September 11, 2018, at Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Veronica Kilpatrick (Complainant) was represented by Steve Chu, Real Estate Counsel.

Robert Scott Teaney (Respondent) appeared and represented himself.

Oral and documentary evidence was received. The record was held open to and including September 25, 2018, for Respondent to submit additional documentary evidence by September 18, 2018, and for Complainant to submit objections to that evidence by September 25, 2018.

On September 19, 2018, Respondent submitted a letter from John Pozza, dated September 12, 2018, and approximately 88 pages of medical records from a June 28, 2018 "Okay to Book" visit to Rancho Springs Medical Center. The letter was marked as Respondent's Exhibit D for identification. The medical records were marked collectively as Respondent's Exhibit E for identification.

On September 24, 2018, Complainant submitted "Complainant's Objection to Respondent's Documentary Evidence" which was marked as Complainant's Exhibit 12 for identification. That document contained objections to Exhibits D and E on grounds of "administrative hearsay" and lack of timeliness. "Administrative hearsay" is not a legal ground to object to an offered document. Presumably, Complainant objects to the documents on hearsay grounds, but does not object to their being admitted as "administrative hearsay" pursuant to Government Code section 11513, subdivision (d). That objection is sustained.

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<sup>1</sup> The Bureau of Real Estate became the Department of Real Estate on July 1, 2018.

There having been no prejudice to either party by the submission of Exhibits D and E one day past the deadline, the timeliness objection is overruled. Exhibit D and E are admitted as administrative hearsay.

Exhibit E contained extensive confidential medical information as well as Respondent's signed waiver of confidentiality. (Exhibit E, page 3.) Nonetheless, having read and considered the medical records in Exhibit E, on his own motion, the administrative law judge issued a protective order and ordered the exhibit sealed due to the records' highly personal and confidential nature. The sealing of the records in Exhibit E does not preclude the records being considered, used, and referenced in this decision.

On September 25, 2018, the record was closed, and the matter was submitted for decision.

### FACTUAL FINDINGS

1. Complainant brought the First Amended Accusation in her official capacity as a supervising special investigator of the State of California.
2. Respondent was licensed as a real estate salesperson effective May 31, 2008. He was licensed as a real estate broker effective March 18, 2013, and was granted a mortgage loan originator license endorsement on March 29, 2013. He is an officer of Espey Reality, Inc. in Lake Elsinore, California. Respondent has no record of license discipline.
3. On December 16, 2015, in the Superior Court of California, County of Riverside, in case number SWM1502090, Respondent pled guilty and was convicted of violating Penal Code section 192, subdivision (c)(2) (vehicular manslaughter without gross negligence), a misdemeanor.
4. Respondent was placed on summary probation for a period of 36 months under various terms and conditions including incarceration for 30 days in the Riverside County Jail, completion of the electronic monitoring program, payment of fines and fees totaling \$645.82, payment of restitution to the victim in an amount to be determined by Respondent's probation officer, and performance of 245 hours of community service.
5. On September 20, 2017, Respondent admitted to a violation of probation. He was ordered to serve an additional 30 days in the Riverside County Jail, and his probation was extended to April 18, 2020.
6. The facts and circumstances underlying the conviction are that, on December 4, 2014, respondent was driving on a city street waiting for a traffic light to change so he could make a left turn. When the light changed, he waited for the intersection to clear. He then began his left turn but struck an elderly pedestrian who was crossing the street. The pedestrian succumbed to her injuries.

7. On September 20, 2017, in the Superior Court of California, County of Riverside, in case number SWF1700223, Respondent pled guilty and was convicted of violating Penal Code section 273a, subdivision (a) (endangering a child or causing or permitting a child to suffer physical pain, mental suffering, or injury, a misdemeanor, and Vehicle Code section 23152, subdivision (b), with enhancement under Vehicle Code sections 23572, subdivision (a)(1), 23577, and 23578 (driving with a blood alcohol level of 0.08 percent or greater), a misdemeanor.

8. Respondent was placed on summary probation for a period of 48 months under various terms and conditions including incarceration for 90 days with credit for two days served and two days good time/work time, to be served in the Work Release Program, performance of 20 hours of community service, payment of fines and fees totaling \$734.58, payment of restitution in an amount to be determined by Respondent's probation officer, enrollment in a one-year minimum child abuse treatment program, satisfactory completion of a first-offender DUI program, and a prohibition against driving with any measurable amount of alcohol or drugs in his blood or within six hours of consuming any alcohol or drugs.

9. The facts and circumstances underlying the conviction are that, on March 24, 2017, Respondent, while intoxicated, picked up his 11-year-old daughter from a Boys and Girls Club after school and drove her home. He then fell asleep in his truck. While speaking with the arresting police officer, Respondent was swaying and had to hold onto his truck to maintain his balance. Respondent refused to participate in a field sobriety test. His blood was drawn by way of a search warrant.

10. Respondent was under a great deal of stress at the time of his arrest. His son had recently been in a traffic accident in which two people were killed, and Respondent was going through marital difficulties with his wife. At the administrative hearing, Respondent testified that, to deal with the stress, he had gone to his driveway, sat in his truck, and drank alcohol, but he did not drink and drive on that day. That testimony was not credible. The hood of Respondent's truck was warm when the arresting officer initially approached Respondent, and the arresting police officer spoke with Respondent's daughter who told him her father had driven her home from the Boys and Girls Club that day. In addition, Respondent's plea of guilty constitutes an admission of his guilt and of every element of the charged offense. (*Arenstein v. California State Bd. of Pharmacy* (1968) 265 Cal.App.2d 179, 190.)

11. Respondent describes himself as an alcoholic. In his Interview Information Statement, dated November 20, 2017, he answered "no" to whether his record indicated a substance abuse problem, including alcohol. (Exhibit 7, pages 65 and 67.) That answer was false. When questioned about it at the administrative hearing, he said that he had "obviously missed it" and that he had misread the question.

12. Respondent testified that he has not consumed alcohol since April 1, 2017. That testimony was not persuasive because, on June 28, 2018, he was arrested on a domestic

violence charge involving his wife.<sup>2</sup> At the administrative hearing, Respondent testified that he had not consumed alcohol on the day of the incident. The incident had occurred at approximately 8:00 a.m. (Exhibit 11, page 78.) However, during the police investigation of the incident, one of his daughters told the police that Respondent had been drinking all day the day before the incident. In addition, when police took Respondent to the Emergency Department of Rancho Springs Medical Center for an “Okay to Book” examination that day, medical personnel found that Respondent showed “evidence of alcohol use here today.” (Exhibit E, page 18.)

13. Respondent is still on probation for all three of his convictions. None of the convictions have been dismissed pursuant to Penal Code section 1203.4. He is still attending the child abuse and alcohol programs. He attends Alcoholics Anonymous (AA) meetings five days per week. Respondent has completed 277.5 hours of community service, exceeding the 265 cumulative hours ordered by the court.

14. Respondent has resigned from being the broker of record for Espey Realty and is now an associate broker, thus adding a level of supervision for the firm.

15. Respondent has three children, ages 13 through 22, and a 20-year-old step-daughter. He had good relationships with his daughters until the instant administrative action arose, but those relationships have changed. He is close with his son. Respondent has reconciled with his wife.

16. Respondent has not accepted responsibility for his 2017 crimes. In fact, he denied drinking and driving on the day of his 2017 arrest. He did not show remorse for any of his crimes.

17. Complainant incurred costs of \$1,319.80 for investigation and enforcement of this action. Those costs consist of \$696.80 in investigation costs, and \$623 in enforcement costs. The enforcement costs are reasonable. The investigation costs are not. Between December 14, 2017, and January 24, 2018, the investigator assigned to the case billed 6.75 hours over seven days in “Deputy Review” time at an hourly rate of \$62. That time included three “Deputy Review” entries on a single day. The three other time categories referenced in the billing (Telephone Time, Interview Time, and Report Writing) totaled 3.65 hours. Combined, that total is approximately half of the billing for “Deputy Review.” Given the approximately 40 days the matter was investigated, two and one-half hours is reasonable for “Deputy Review” time. The investigative costs will be reduced to \$433.30. Complainant will recover a total of \$1,056.30 for its costs of investigation and enforcement.

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<sup>2</sup> That case was not prosecuted. The Riverside County District Attorney’s Office declined to file charges for lack of sufficient evidence.

## LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's real estate broker's license pursuant to Business and Professions Code sections 490, and 10177, subdivision (b), for conviction of a crime substantially related to the qualifications, functions and duties of the licensed activity, as set forth in Findings 7, 8, and 9.

2. Cause does not exist to discipline Respondent's real estate broker's license pursuant to Business and Professions Code sections 490, and 10177, subdivision (b), for conviction of a crime substantially related to the qualifications, functions and duties of the licensed activity, as set forth in Findings 3, 4, 5, and 6.

3. Cause exists to grant Complainant's request for reimbursement of the costs of investigation and prosecution pursuant to Business and Professions Code section 10106, as set forth in Finding 17.

### *Substantial Relationship*

4. Complainant argues that the three crimes of which Respondent was convicted are substantially related to the qualifications, functions, and duties of a real estate broker pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(8), (10), and (11). The regulation reads in relevant part:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Bureau within the meaning of Sections 480 and 490 of the 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. [¶] . . . [¶]

(10) Conduct which demonstrates a pattern of repeated and willful disregard of law.

(11) 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.

5. Respondent did not commit any of his crimes for a financial or economic benefit, and he did not intend to or threaten to do a substantial injury to anyone. Therefore,

subdivision (a)(8) of the regulation is inapplicable. Only the two 2017 convictions involved alcohol. Respondent had not been drinking alcohol at the time he struck the pedestrian with his car. Respondent did not willfully disregard the law when he struck the pedestrian. Striking the pedestrian was an accident. Therefore, neither subdivision (a)(8), (a)(10), nor (a)(11) apply to Respondent's 2015 conviction for vehicular manslaughter. However, he did drink alcohol when he drove while under the influence in 2017. Because Respondent's two 2017 crimes occurred simultaneously, they do not constitute a pattern of repeated and willful disregard for the law.

6. Accordingly, because both of the 2017 crimes involved alcohol, they are substantially related to the qualifications, functions, and duties of a real estate broker pursuant to subdivision (a)(11). However, the vehicular manslaughter crime is not substantially related and is therefore not considered as a cause for discipline.

### *Rehabilitation*

7. California Code of Regulations, title 10, section 2912, sets forth the Department's criteria of rehabilitation for consideration when determining whether discipline should be imposed and, if so, the nature and extent of the discipline to be imposed against a licensee who has committed a crime. The regulation reads:

The following criteria have been developed by the Bureau pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of 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.

(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the Bureau. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the Bureau.)

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

(c) Expungement of the conviction or convictions 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 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.
- (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 of applicant (*sic*).
  - (2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.
  - (3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's (*sic*) 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 or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

8. Less than two years has passed since Respondent's most recent conviction. He is still on probation for all three of his convictions, and he has not yet completed the DUI program and the child abuse course. None of the three convictions has been dismissed pursuant to Penal Code section 1203.4. Respondent has not abstained from the use of alcohol for two years or more. He claims to have paid all court-imposed fines relating to his three convictions. His family life appears to be improving by way of reconciliation with his wife and the good relationship with his son. Respondent offered no evidence of vocational training or formal education. However, he performed more community service work than he was ordered to by the court. He offered no evidence of a change in attitude from that which existed at the time of his 2017 arrest. That notwithstanding, the reconciliation with his wife offers an incentive to abstain from the use of alcohol which may make it easier for Respondent to maintain his sobriety. However, with his last known alcohol use occurring in June 2018, it is too early to tell.

9. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

10. Rehabilitation is evaluated on the basis of two different scales. One is an internal, attitudinal scale, and the other is an external objective scale. In other words, Respondent must present evidence both of a state of mind and a state of facts showing he has been rehabilitated. The state of mind demonstrating rehabilitation is one that has a mature, measured appreciation of the gravity of the misconduct and remorse for the harm caused. Acceptance of responsibility is a necessary prerequisite to establishing rehabilitation. The rehabilitative state of facts is demonstrated by a record of conduct that convinces and assures the Department that the public will be safe in granting full privileges of licensure to Respondent. A respondent must establish a record of reliable, responsible and consistently appropriate conduct.

11. Respondent is scheduled to remain on probation from his 2015 conviction until April, 2020, and he is scheduled to remain on probation from his 2017 convictions until September 2021. Since people have a strong incentive to obey the law while under the supervision of the criminal justice system, little weight is generally placed on the fact that a licensee has engaged in good behavior while on probation or parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

12. The purpose of a disciplinary action such as this one is not to punish the licensee, but to protect the public. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

13. Respondent's attendance at AA meetings and his stepping down from management of Espey Realty are good, but beginning steps toward rehabilitation. However, with his most recent convictions less than two years old, Respondent simply has had insufficient time to establish his full rehabilitation to the extent that the Department will be satisfied that he does not present a threat to the public. Respondent has not shown an appreciation for the gravity of his misconduct. In fact, he denies drinking and driving before his 2017 arrest, and he was less than candid about his alcohol consumption and the last time he consumed alcohol, which now appears to have been in June 2018. Insufficient time has passed without any other bad acts or convictions that can give the Department adequate assurance to justify continued licensure. More time is necessary, preferably while Respondent is not on probation, to establish his full rehabilitation.

14. Respondent has not satisfied most of the Department's applicable criteria for rehabilitation, and absent a better acceptance of responsibility for his misconduct, genuine remorse for that misconduct, and the passage of adequate time to demonstrate his full rehabilitation, the public safety, welfare, and interest cannot be adequately protected by Respondent's continued licensure.

#### ORDER

1. All licenses and licensing rights of Respondent, Robert Scott Teaney, under the Real Estate Law are revoked.

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2. Respondent shall reimburse the Department its costs of investigation and enforcement in the sum of \$1,056.30 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 Department.

Dated: October 5, 2018

DocuSigned by:  
*H. Stuart Waxman*  
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H. STUART WAXMAN  
Administrative Law Judge  
Office of Administrative Hearings