

**FILED**

**NOV 28 2018**

**DEPT. OF REAL ESTATE**

By Zri-ga

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of:	)	DRE No. H-41061 LA
	)	
JULIE KRISTINE MARTIN,	)	OAH No. 2018080497
	)	
Respondent.	)	

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DECISION

The Proposed Decision dated October 31, 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.

Factual Findings, Page 2, Paragraph No. 4, Line 2, "15HM0382" is amended to read "15HM03852".

Factual Findings, Page 2, Paragraph No. 5, Line 7, "15HM0382" is amended to read "15HM03852".

Order, Page 13, Paragraph No. 6, Line 3, "137000, Sacramento, CA 95813-7000." is amended to read "137013, Sacramento, CA 95813-7013."

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted broker license is granted to Respondent.

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 **DEC 18 2018**

IT IS SO ORDERED November 19, 2018

DANIEL J. 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:

JULIE KRISTINE MARTIN,

Respondent.

Case No. H-41061- LA

OAH No. 2018080497

**PROPOSED DECISION**

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings, heard this matter on October 17, 2018, in Los Angeles, California.

Judith B. Vasan, Real Estate Counsel, represented complainant Maria Suarez, a Supervising Special Investigator of the State of California.

Thomas N. Jacobson, Attorney at Law, represented respondent Julie Kristine Martin, who was present at the hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

**FACTUAL FINDINGS**

1. Complainant brought the Accusation in her official capacity as a Supervising Special Investigator of the State of California.

2. Respondent was licensed as a real estate salesperson on June 27, 1998. On May 15, 2014, respondent obtained Real Estate Broker license number 01241333, which expires on October 6, 2020.

*Criminal Convictions*

3. On January 5, 2017, in the Superior Court of California, Orange County, the court convicted and sentenced respondent in two separate actions (case numbers

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

15HM03852 and 16HM01599) on the basis of two alcohol-related arrests, the first on January 22, 2015 (January 2015 arrest), and the second on December 11, 2015 (December 2015 arrest). With respect to the January 2015 arrest (case number 15HM03852), respondent was convicted after entering a plea of guilty to violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol (DUI)) and section 2002, subdivision (a) (hit and run with property damage), both misdemeanors. The court found respondent's admission of guilt to be knowing and voluntary, suspended imposition of sentence, and placed respondent on summary probation for a period of three years with terms and conditions, including the completion of a nine-month Level 2 First Offender Alcohol Program and a Victim Impact Counseling program as well as the payment of court fines, fees, and restitution.

4. The facts and circumstances underlying respondent's criminal convictions in case number 15HM0382 are that on January 22, 2015, respondent lost control of her car and hit the center median curb, damaging the center median light reflector. After driving her car to the side of the road, respondent walked away from the vehicle and did not report the property damage she had caused. When the police arrived, they noticed respondent's speech was slurred and her eyes were bloodshot and watery; the police also smelled a moderate odor of an alcoholic beverage coming from her breath. Respondent was arrested and transported to the Orange County "Drunk Tank" after failing several field sobriety tests. Her blood alcohol content after her arrest tested at .28 percent.

5. With respect to the December 2015 arrest (case number 16HM01599), the court convicted respondent, on her guilty plea, of violating Vehicle Code sections 23152, subdivision (a) (DUI), and 23152, subdivision (b) (driving with a blood alcohol level of 0.08 percent or more), both misdemeanors. The court found respondent's admission of guilt to be knowing and voluntary, suspended imposition of sentence, and placed respondent on summary probation for a period of five years, to run concurrently with the probation ordered in case number 15HM0382. The court also ordered respondent to serve two jail terms, one for 30 days, with credit for eight days,<sup>2</sup> and the second for 120 days. In addition, the court ordered respondent to complete a Multiple Offender 18-month program, which superseded the First Offender program ordered in respondent's companion case, and to attend Victim Impact counseling. Respondent's driving privileges were suspended for two years.

6. The facts and circumstances underlying the conviction in case number 16HM01599 are that, on December 11, 2015, respondent, while driving, failed to stop for a red stop signal, and respondent's vehicle collided with the rear end of the vehicle in front of her. When the police arrived, respondent appeared lethargic and confused, and she was slurring her speech. Respondent admitted she had been drinking to the police. After her arrest, respondent's blood alcohol content tested at .32 percent.

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<sup>2</sup> The sentencing memorandum refers to credit for four "actual" and four other days. (Ex. 5, p. 09.) There is no evidence in the record as to whether respondent actually served four days in jail prior to her sentencing.

7. Respondent served her required jail time (her 30-day and 120-day sentences were deemed completed after 10 days in jail and 20 days of community service). She has paid all court-ordered fines, fees, and restitution as well as attended all of her required classes. Respondent's driver's license has been reinstated, and the interlock ignition device has been removed from her car. Respondent's summary probation ends on January 4, 2022.

*Respondent's 2016 Broker Renewal Application*

8. On August 15, 2016, respondent submitted a Broker Renewal Application to what is now the Department of Real Estate. In the application, respondent certified under penalty of perjury that the answers and statements given in the application were true and correct. Respondent also acknowledged her obligation "to notify the [Department] within 30 days in writing or by filing form RE238 of any conviction, indictment or information charging a felony . . . ." (Ex. 8, p. 06.)

9. Question 17 of the Broker Renewal Application asked: Are there criminal charges pending against you at this time, or are you currently awaiting judgment and sentencing following entry of a plea or jury verdict? If Yes, complete Item 22." Respondent marked "No" to the question. (Ex. 8, p. 03.) The Department renewed respondent's license shortly after receiving the application.

10. Respondent's answer to the question was false, because the criminal charges in the two above-referenced cases had been pending against her since December 2015. In explanation, respondent testified that when she answered Question 17, she believed the charged offenses were traffic offenses or violations, not crimes. Respondent therefore did not believe she had to disclose the "traffic violations" in response to the inquiry, which sought information about "criminal charges." Respondent testified the police had not told her during either arrest that she had been arrested for a crime, she was brought to the "Drunk Tank" after each of her arrests, and she never saw the criminal complaints filed in each matter, which state that respondent's alleged violations of the Vehicle Code constitute misdemeanors. Respondent also testified she never knew anyone who had been charged with a DUI. Respondent asserted she did not realize the charges she faced were "criminal" until shortly before her entry of a guilty plea and her sentencing.

11. While there is no evidence to suggest that respondent intended to deceive the Department regarding her arrest status, respondent's explanation does not excuse her failure to answer Question 17 correctly. By the time she prepared the renewal application in August 2016, respondent had already retained counsel to represent her against the DUI charges in connection with both arrests, and respondent had also attended multiple court hearings to defend against the charges relating to her arrests. On March 17, 2016, respondent pleaded not guilty to the charges, on June 6, 2016, the court set dates for jury trials on each set of charges, and at all of the hearings, the court ordered respondent to be released on her own recognizance on certain conditions. At a minimum, these circumstances placed respondent on inquiry notice regarding the nature of the charges against her. If respondent was confused by Question 17 or had any doubts about whether she was required to report the charges to the

Department, she should have sought guidance from other sources, such as a Department representative. Respondent exercised poor judgment and was negligent in not seeking that assistance before answering the subject question.

#### *Failure to Disclose Criminal Convictions*

12. Respondent did not disclose her criminal convictions to the Department within 30 days of being convicted. Although respondent acknowledged she had been informed of the Department's requirement in the renewal application she had filed in August 2016 (see Factual Finding 8), respondent testified that she had forgotten to notify the Department of her January 2017 convictions because she had been overwhelmed with the prospect of jail time and its effects on her job and family. She also was not practicing real estate at the time and thus was not thinking about compliance with the Department's rules. Respondent's explanation of her mistake was reasonable but did not excuse her failure to comply with the Department's requirements.

#### *Respondent's Evidence of Mitigation and Rehabilitation*

13. Respondent is approximately 44 years old. She shares custody of her two school-age children with her ex-husband.

14. Respondent began drinking to cope with a failing and abusive marriage. When respondent left the marriage in 2012, she continued to drink in excess as a way to deal with her economic insecurity, a difficult divorce, and contentious child custody proceedings. Respondent lost custody of her children after her first DUI arrest in January 2015.

15. Respondent has been sober since January 18, 2016. She came to terms with her alcoholism and her need for treatment after her second DUI arrest in December 2015, more than a year before she was sentenced by the court. Respondent's sobriety date is the date she enrolled in a 30-day inpatient rehabilitation facility. After respondent completed that program, she moved to a sober living facility for over a year. During that time, respondent attended Alcoholics Anonymous (AA) meetings at least twice a week. She has continued to participate in AA approximately twice a week, currently has a sponsor, and has sponsored and mentored other AA participants, particularly domestic violence victims. Respondent is also under the care of a board-certified addiction specialist, who wrote of his confidence in respondent's sobriety, both "physical and emotional." (Ex. F, p. 6610/17.)

16. Respondent recently re-gained shared custody of her two children despite the vehement opposition of her ex-husband. To convince the family court of her sobriety, respondent voluntarily submitted to random alcohol and drug screening, the results of which were uniformly negative. Respondent has also agreed to submit to alcohol testing by a facial recognition breathalyzer every four hours when her children are with her. Respondent will lose custody of her children, potentially permanently, if she suffers a relapse and resumes drinking.

17. Respondent has made significant lifestyle changes since she became sober. She has changed friends; most of respondent's friends now are people she met through AA. Respondent seeks support from her family and friends when she is under stress. Respondent is also very open and vocal about her rehabilitation and sobriety.

18. Respondent is involved in her community. She attends church weekly, and at least once a month, she counts the money collected by the church. Respondent also volunteers at the local senior citizen center.

19. Respondent has been involved in the real estate business for over 20 years. She is currently working as an escrow officer at Taylor Escrow and a broker associate at Harcourts Prime Properties (Harcourts). Taylor Escrow is the in-house escrow agent for Harcourts. As a broker's associate, respondent has sold a handful of houses each year. Respondent's employer knows of her alcoholism, and respondent will lose her job if she resumes drinking.

20. Respondent has no history of prior discipline by the Board. She recently received two awards for her work in the real estate profession. Respondent's clients think highly of her.

21. Respondent submitted letters from her therapist, sponsors, friends, and supervisor in support of her continued licensure. Each reference was aware of respondent's criminal convictions and her alcoholism. Her former supervisor when respondent worked at Granite Escrow from 2016 to 2017 observed she "never had a harder working, more reliant assistant." (Ex. F, p. 4810/17.) A friend noted respondent's dedication as a mother and wrote that respondent's children "are her pride and joy and primary motivation to stay sober and not only succeed, but excel in her career." (*Id.*, at p. 4910/17.) Respondent has received glowing comments on Zillow for her real estate sales work. (*Id.*, at pp. 5310/17 – 5410/17.) Respondent's first sponsor, who is also an Interventionist and Treatment Center Consultant, attested to respondent's "continued recovery and ability to maintain a sober, healthy lifestyle." (*Id.*, at p. 5910/17.) These letters lend credibility and substance to respondent's own testimony of rehabilitation. "Favorable testimony of acquaintances, neighbors, friends, associates and employers with reference to their observation of the daily conduct and mode of living" can be helpful in determining whether a licensee is rehabilitated. (See *In re Andreani* (1939) 14 Cal.2d 736, 749.)

22. Respondent loves real estate and is dedicated to her clients. Her reputation for integrity and honesty is important to her, and respondent insisted she would not do anything to jeopardize her standing in her profession.

### *Costs of Investigation and Prosecution*

23. The Department incurred costs of investigation and prosecution totaling \$1,796.40, comprised of \$1,057.70 of investigation costs and \$783.70 of enforcement costs. These costs are reasonable pursuant to Business and Professions Code<sup>3</sup> section 10106.

24. Respondent testified that her living expenses currently exceed her income. After completing her 30-day residential treatment program in 2016, respondent had no job, no car, and no money. Respondent eventually found employment, but she lost her job when she went to jail, and she had to start over when her jail term ended. She currently earns \$3,000 net of taxes plus approximately \$500 of commission each month. Respondent is required to pay spousal support of \$698 per month, and she is responsible for paying for the expenses of her two children. She pays rent of \$2,700 per month and is looking for a roommate to offset some of her rent expense. Her monthly food and gas bills are approximately \$500 per month; respondent pays \$250 per month for medical insurance and \$100 per month for utilities and telephone. She has sought family assistance to help with her bills.

### LEGAL CONCLUSIONS

1. Complainant bears the burden of proving by clear and convincing evidence to a reasonable certainty that respondent has engaged in conduct warranting suspension or revocation of respondent's real estate licenses. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853,855-6.) Clear and convincing evidence means the evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corp.* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

#### *Respondent's Criminal Convictions Are Cause for Discipline*

2. The first ground for discipline alleged in the Accusation is respondent's criminal convictions relating to two DUIs. Sections 490, subdivision (a), and 10177, subdivision (b), authorize the suspension or revocation of a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee.

3. California Code of Regulations, title 10 (CCR), section 2910, subdivision (a), provides that "[w]hen 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

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<sup>3</sup> All future statutory references shall be to the Business and Professions Code unless otherwise stated.



meaning of Section[] . . . 490 . . . if it involves [¶] . . . [¶] (8) Doing of any unlawful act 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.”

4. Cause exists to suspend or revoke respondent’s real estate license for conviction of crimes that are substantially related to the qualifications, functions, or duties of a real estate licensee. (§§ 490, subd. (a); 10177, subd. (b).) As set forth in Factual Findings 3 through 6, respondent’s criminal convictions involve the consumption and use of alcohol and the threat of substantial injury to person and property. Respondent’s criminal convictions also demonstrate a pattern of repeated and willful disregard of the law prohibiting drunk driving.

*Respondent’s Failure to Disclose her Criminal Convictions to the Department is Cause for Discipline*

5. The second ground for discipline alleged in the Accusation is respondent’s failure to report her criminal convictions to the Department. Section 10186.2 states that a licensee shall report, in writing “the conviction of the licensee, including any verdict of guilty or plea of guilty or no contest, of any felony or misdemeanor” to the Department within thirty days of the conviction. Failure to do so constitutes cause for discipline. (§ 10186.2 , subd. (b).)

6. Cause exists to discipline respondent’s license for failure to report her criminal convictions to the Department within 30 days. Complainant presented clear and convincing evidence that respondent did not comply with this requirement. (Factual Finding 12.) Respondent’s failure to remember to report her criminal convictions explains her noncompliance but is not an excuse for it.

*Respondent’s Failure to Reveal Pending Criminal Charges on her Renewal Application is Not Cause for Discipline*

7. The third ground for discipline alleged in the Accusation is respondent’s failure to reveal the pending criminal charges against her on her 2016 Broker Renewal Application. Under section 10177, subdivision (a), the Real Estate Commissioner may suspend or revoke the license of a person who “[p]rocured, 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.” (§ 10177, subd. (a).) This section does not require a renewal applicant to make a “knowingly” false statement for an application to be denied.

8. A. License discipline under section 10177, subdivision (a), “require[s] a finding by the trier of fact that the omission be material, that is, that it be something which, if

disclosed on the application, would have prevented issuance of the license.” (*Madrid v. Dept. of Real Estate* (1984) 152 Cal.App.3d 454, 460 [emphasis in original]; see also *DeRasmo v. Smith* (1971) 15 Cal.App.3d 601 [real estate license “could not be properly revoked [under section 10177, subdivision (a)] without a showing that it would have been denied if the misstatement had not been made.”].) In both *Madrid* and *DeRasmo*, a licensee challenged revocation of his license for failure to disclose a prior conviction on his license application.

B. Unlike the circumstances in *Madrid* and *DeRasmo*, respondent’s nondisclosure involved pending criminal charges, not a criminal conviction. A pending criminal charge itself is not actionable, and it cannot be the sole basis for discipline of a real estate license. While the disclosure of pending charges in a license renewal application might trigger a Department investigation to determine whether the underlying conduct is actionable under other provisions of the Real Estate Law, the Department presented no evidence of such other Real Estate Law provisions that might have been violated by the revelation of respondent’s pending DUI charges. The *DeRasmo* court dealt with a similar issue when it rejected the trial court’s reasoning that the petitioner’s failure to disclose a criminal conviction for heroin possession deprived the Department of the opportunity to investigate the petitioner’s application fully:

The trial court, however, reasoned that [petitioner’s false responses that he had never been arrested or convicted] were material misstatements because they deprived the respondent of complete information and the opportunity to fully investigate the application before petitioner was issued a license. The thrust of this theory is that even if the conviction or arrest itself could not have served as grounds for denial of a license, knowledge of a conviction or arrest could have led to an investigation, which might have revealed information demonstrating petitioner to be unsuitable as a real estate salesman. However, no evidence was introduced as to what such an investigation would have revealed in this case. In disciplinary administrative proceedings the burden of proof is on the party asserting the affirmative, and guilt cannot be based on surmise or conjecture. (*Cornell v. Reilly*, 127 Cal.App.2d 178, 184, 273 P.2d 572.)

*Derasmo, supra*, 15 Cal.App. 3d at p. 610.

C. In the absence of evidence of what information a further investigation of respondent’s DUI charges would have revealed regarding potential violations of the Real Estate Law, complainant has failed to establish by clear and convincing evidence that respondent’s failure to disclose her DUI charges on her renewal application constituted a material misstatement. Accordingly, cause does not exist to discipline respondent for violation of section 10177, subdivision (a).

*Respondent's Rehabilitation*

9. The Department has set forth criteria to evaluate the rehabilitation of a licensee who is subject to administrative discipline because of committing a crime. (CCR, § 2912.) The relevant criteria are as follows:

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

(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 Department'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.

(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) Abstinance 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.

[¶] . . . [¶]

(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, or 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.

10. Respondent provided sufficient evidence of rehabilitation such that it would not pose a significant risk to the public's safety and welfare if she is allowed to retain a properly restricted real estate salesperson license. Respondent accepts responsibility for her

conduct and she has admitted her criminal convictions. Respondent has actively sought treatment for her addiction to alcohol. Respondent recognizes that any relapse will most likely permanently jeopardize her joint custody of her children, a powerful deterrent to recidivism. (Factual Finding 16.) Her demeanor and candor at hearing evidenced a person who was sincere about her efforts at rehabilitation.

11. When applying the Department's criteria for rehabilitation, respondent has achieved or met the overwhelming majority of the factors to be considered in determining rehabilitation. Respondent's testimony, combined with laudatory letters from family members, friends, sponsors, and her doctor, evidence respondent's firm and impressive change of attitude from that which existed at the time of her DUI arrests. She has no record of prior discipline by the Department and is held in high regard by her clients and colleagues. At the time of hearing, October 2018, almost three years had passed since respondent committed her second DUI, although the criminal convictions occurred less than two years from the hearing. Respondent has paid all fees, costs, and restitution ordered by the court; she has abstained from the use of alcohol for almost three years. Respondent has a new job and a new social network involving her recovery community; she is no longer friends with people who drink. Because of her sobriety, respondent now has a stable family life and fulfills her parental and familial responsibilities. She volunteers for her church, which she attends regularly, and for the senior citizens center in her community. (Factual Findings 15 through 22.)

12. A showing of rehabilitation, however, requires sustained exemplary conduct over an extended period. (See *In re Menna* (1995) 11 Cal.4th 975, 991.) An insufficient amount of time has passed for respondent to demonstrate full rehabilitation in light of the seriousness and recency of her criminal convictions, her continued criminal probation status, and her failure to comply with real estate law requirements regarding disclosure of her criminal convictions. (Factual Findings 3 through 7.)

13. The interests of public protection require that respondent's real estate practice be restricted and her work be monitored for three years. Revoking respondent's real estate broker license and issuing respondent a restricted real estate salesperson license will provide the Department sufficient time and opportunity to oversee respondent's conduct to safeguard the public interest and to ensure that respondent remains on her current path of rehabilitation.

#### *Cost Award*

14. The Department requests reimbursement of \$1,796.40 in investigation and enforcement costs. (Factual Finding 23.) 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 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 Department must consider a licensee's ability to pay, and the Department 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.)

15. Here, complainant's investigation was proportional to the violation. Respondent, however, did obtain a reduction in the severity of the discipline imposed from the maximum discipline requested in the Accusation, i.e. revocation. Furthermore, given respondent's financial status, payment of all of complainant's investigation and enforcement costs would be a financial hardship. However, it is reasonable to require respondent to pay \$900 of those costs on a payment schedule upon issuance of a restricted license.

### ORDER

The Real Estate Broker license issued to respondent Julie Kristine Martin 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 Department 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 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.
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 three 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 Department 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 Department 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.

7. Respondent shall pay the Department of Real Estate the sum of \$900.00, in monthly installments in such manner as the Department may direct, as reimbursement for the reasonable cost of investigation and enforcement of this matter, in accordance with Business and Professions Code section 10106.

DATED: October 31, 2018

DocuSigned by:  
*Cindy F. Forman*  
CINDY F. FORMAN  
Administrative Law Judge  
Office of Administrative Hearings