

FILED

JUN 25 2019

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPT. OF REAL ESTATE

By *[Signature]*

* * *

In the Matter of the Accusation of:	)	DRE No. H-41278 LA
	)	
LEON DEVORE JACKSON,	)	OAH No. 2019021049
	)	
Respondent.	)	

DECISION

The Proposed Decision dated May 9, 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, 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.

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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 ~~JUL 15 2019~~.

IT IS SO ORDERED June 13, 2019

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

LEON DEVORE JACKSON,

Respondent.

Case No. H-41278 LA

OAH No. 2019021049

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles on April 16, 2019.

Julie L. To, Staff Counsel, represented Complainant Veronica Kilpatrick, Supervising Special Investigator of the State of California.

Respondent Leon Devore Jackson represented himself.

Oral and documentary evidence was received at the hearing, and the matter was submitted on April 16, 2019.

Complainant brings this Accusation to discipline Respondent's real estate broker license. Respondent failed to report a criminal conviction to the Department within 30 days as Business and Professions Code section 10186.2 requires. Therefore, his license is revoked, but a restricted broker license is granted.

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant issued the Accusation solely in her official capacity.
2. On July 29, 2002, the Department of Real Estate (Department) issued a real estate broker license to Respondent. (The Department was called the Bureau of Real Estate between July 1, 2013, and July 1, 2018, but will be called "the Department" throughout this Decision.) The license was last renewed in 2018, and expires July 28, 2022. On January 25, 2019, Complainant brought this Accusation to discipline his license, and Respondent timely requested a hearing.

Failure to Report Criminal Conviction

3. On October 13, 2016, in the Superior Court of California, Los Angeles County, case number BA445921, Respondent was convicted on his no contest plea of assault with a deadly weapon other than a firearm (Pen. Code, § 245, subd. (a)(1)), a felony. The conviction arose out of a March 2, 2016 incident while he was driving in West Los Angeles. He and three men in another car were shouting at each other for reasons not apparent from the record. One of them threw coins at Respondent's car, making a loud noise when they hit the car that Respondent, who worked as a police officer for many years, mistook for gunshots. He also believed that the men in the other car were flashing gang signs. The incident ended with Respondent driving his car over a curb to hit a passenger who had gotten out of the other car, because Respondent thought he had a gun. The victim suffered minor injuries—pain in his legs and abrasions on his arms and hands—and refused to be taken to a hospital. On the day he was convicted, the court ordered Respondent to perform 30 days of community service and complete a one-year anger management program, and set sentencing for October 13, 2017, on which date the court reduced the conviction to a misdemeanor under Penal Code section 17, subdivision (b), and sentenced Respondent to the two days in jail he had already served, assessed fines and fees of \$220, and placed him on two years of summary probation. On March 8, 2019, the court terminated probation early and dismissed the conviction under Penal Code section 1203.4.

4. Respondent did not report his conviction to the Department until July 2018, when he filed his license renewal application and answered "yes" to the question on the application that asked if he had been convicted of a crime in the last six years. He did not know that he was required to report a criminal conviction within 30 days of the conviction. He has never received notice from the Department that it had learned of the conviction from a source other than Respondent.

Mitigation, Aggravation and Rehabilitation

5. Respondent is 63 years old, with two adult children and three grandchildren. He obtained a Bachelor of Science degree in criminal justice from California State University, Los Angeles, in 1985. He joined the Los Angeles Police Department in 1985, rising to the rank of sergeant, before leaving in 2001 to become a security officer for a private firm providing security services at Los Angeles International Airport. He worked for the Transportation Safety Administration at the airport between 2004 and 2008, and then joined the security division of the Department of Water and Power, a job that involved investigation and personnel supervision; he retired as a captain in 2016.

6. Respondent, doing business as Sky Line Real Estate, is the employing broker for two real estate salespersons. He does not work full time in real estate, and testified that he wants to start working again as an investigator. His two salespersons apparently do not work full time in real estate, and have closed few transactions.

7. Respondent has no other convictions and no history of license discipline.

8. Respondent introduced 49 pages of character evidence, nearly all of it pertaining to his police and security work, and nearly all of it predating his conviction. Only three sentences, in a letter from the former mayor of Hawthorne (ex. A, p. 42), mention anything about Respondent's being a real estate broker, and those three sentences show no personal knowledge about the subject.

Costs

9. Complainant introduced evidence that the Department incurred \$1,258.20 in investigation costs, consisting of 20.1 hours of Special Investigator Gin-Sheng Yee's time at \$62 per hour and .15 hour of Supervising Special Investigator Veronica Kilpatrick's time at \$80 per hour. Complainant also introduced evidence that the Department incurred enforcement costs of \$360.45, consisting of 4.05 hours of attorney Julie To's time at \$89 per hour. All these costs, totaling \$1,618.45, are reasonable.

LEGAL CONCLUSIONS

1. As paragraph 4 of the Accusation alleges, there is cause to discipline Respondent's license under Business and Professions Code Section 10177, subdivision (b), which provides for license discipline if the licensee has been convicted of "a crime substantially related to the qualifications, functions, or duties of a real estate licensee[.]" Respondent's conviction for assault with a deadly weapon (Factual Finding 3) is substantially related under CCR section 2910, subdivision (a)(8), under which "any unlawful act with . . . the intent or threat of doing substantial injury to the person or property of another" is substantially related.¹

2. As paragraph 6 of the Accusation alleges, there is cause to revoke or suspend Respondent's license under Business and Professions Code section 10186.2, which requires a licensee to report "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 in writing within 30 days of the conviction. Failure to report a conviction is cause for discipline. (§ 10186.2, subd. (b).) Paragraph 5 of the Accusation alleges that Respondent did not report his conviction to the Department within 30 days of October 13, 2017, which it alleges to be the conviction date. This appears to be generous to Respondent, inasmuch as he was actually convicted a year earlier (Factual Finding 3), but in either case he failed to notify the Department as required.

¹ Respondent argued at hearing that the conviction itself cannot be a cause for discipline because it was dismissed under Penal Code section 1203.4 after Complainant brought the Accusation. But the Business and Professions Code § 480, subdivision (c), on which he relies, does not apply to a proceeding to discipline an existing license. Section 480 provides that an agency "may deny a license regulated by this code" (§ 480, subd. (a)), and subdivision (c) provides that "a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203[.]"

3. Complainant has shown by clear and convincing evidence that there is cause to discipline Respondent's license. Respondent therefore has the burden of proving rehabilitation and fitness to hold a license. (*Martin v. Alcoholic Beverage Appeals Control Bd. of Cal.* (1959) 52 Cal.2d 259.) He presents a mixed picture. More than two years have elapsed since the conviction, and more than three years have elapsed since the offense. (Factual Finding 3.) The conviction has been expunged under Penal Code section 1203.4 (Factual Finding 3.) He has had a long career in law enforcement. (Factual Finding 5.) He did not try to conceal the conviction, reporting it to the Department before the Department found out on its own (Factual Finding 4), but he was responsible for knowing that he was required to report the conviction within 30 days. He has been a licensee for nearly 17 years without any untoward incident, but has had few real estate dealings in that time (Factual Finding 6), so his history as a licensee is not as strong a mitigating factor as it would be if he were more active as a broker.

4. Licensing statutes exist to protect the public. (*Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016.) Respondent's conviction and failure to report his conviction timely, in the absence of other evidence that he might be a threat to the public, does not require revocation of his license. A suitable period of restriction is appropriate.

5. As paragraph 7 of the Accusation alleges, Complainant is entitled, under Business and Professions Code section 10106, to have Respondent pay reasonable costs of investigation and enforcement. Complainant's investigation and enforcement costs, totaling \$1,618.45, are reasonable (Factual Finding 9) and are awarded.

ORDER

Respondent Leon Devore Jackson's license and licensing rights under the Real Estate Law² are revoked; but a restricted real estate broker license shall be issued to Respondent under Business and Professions Code section 10156.5 if Respondent applies, and pays to the Department the appropriate fee, for the restricted license within 90 days from the effective date of this Decision. The restricted license shall be subject to all 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 may be suspended before hearing by Order of the Real Estate Commissioner if Respondent is convicted of, or pleads nolo contendere to, a crime substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted license may be suspended before 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.

² Section 10000 et. seq.

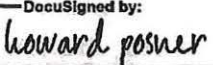
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license, or for the removal of any of the conditions, limitations or restrictions of a restricted license, until two years have elapsed from this Decision's effective date.

4. Within nine months from this Decision's effective date, Respondent shall present evidence satisfactory to the Real Estate Commissioner that since the most recent issuance of an original or renewal real estate license, Respondent successfully completed the continuing education requirements in 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 suspend 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.

5. 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 state 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.

6. Respondent shall pay the Department investigation and enforcement costs of \$1,618.45.

DATED: May 9, 2019

DocuSigned by:

HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings