

FILED

SEP 17 2020

DEPT. OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:)	DRE No. H-41541 LA
)	
JOEL ADRIAN NARANJO,)	OAH No. 2019120310
)	
Respondent.)	

DECISION

The Proposed Decision dated July 6, 2020, 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 salesperson 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 October 16, 2020.

IT IS SO ORDERED

9.3.20

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

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

In the Matter of the Accusation against:

JOEL ADRIAN NARANJO, Respondent

Agency No. H-41541 LA

OAH No. 2019120310

PROPOSED DECISION

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, heard this matter by video and telephonic conference on June 10, 2020, in Los Angeles, California.

Diane Lee, Counsel, represented Maria Suarez (complainant), Supervising Special Investigator, Department of Real Estate (Department). Ms. Lee appeared at the hearing by telephone.

John D. Bishop, Attorney at Law, represented Joel Adrian Naranjo (respondent), who appeared at the hearing by telephone. Mr. Bishop appeared at the hearing by videoconference.

Oral and documentary evidence was received and argument heard. The record was closed, and the matter was submitted for decision on June 10, 2020.

FACTUAL FINDINGS

Jurisdictional Matters

1. On July 27, 2018, the Department issued a real estate salesperson license to respondent. This license is scheduled to expire on July 26, 2022, unless renewed. Respondent currently holds licensing rights under the Real Estate Law, Part 1 of Division 4, of the Business and Professions Code.

2. On November 12, 2019, complainant filed the Accusation in her official capacity. Respondent timely filed a Notice of Defense. This hearing ensued.

Criminal Conviction

3. A. On October 19, 2018, respondent was convicted on his guilty plea to violating Vehicle Code sections 23153, subdivision (a), driving under the influence (DUI) with bodily injury to another, and 23153, subdivision (b), driving with a blood alcohol level of 0.08 percent or more, both felonies. (Superior Court of California, County of Orange, case number 18NF0345.)

B. For this conviction, imposition of sentence was suspended, and respondent was placed on supervised probation for five years under terms and conditions, including incarceration for 180 days, with credit for four days served; completion of an 18-month multiple offender alcohol and drug education program; and payment of fines, fees, and restitution.

C. According to respondent, his jail sentence was converted to house arrest, which he served. Respondent completed the 18-month multiple offender alcohol and drug education program on January 14, 2020. He has paid all fines related

to this criminal conviction, although he is still making monthly payments towards court-ordered restitution. Respondent is currently on supervised probation, which is scheduled to expire in October 2023.

D. The facts and circumstances surrounding this criminal conviction¹ are as follows: On May 5, 2017, at approximately 10 p.m., respondent drove on the 91 Freeway while intoxicated. He made an unsafe lane change and collided into a vehicle, a Kia, that was traveling in front of him. The collision sent both vehicles spinning, causing respondent's vehicle to hit a light pole and the Kia to dive into a concrete ditch. When the arresting officer arrived on the scene, he administered a series of Field Sobriety Tests (FST) to respondent. Respondent was unable to perform the FST as instructed. The officer also administered the Preliminary Alcohol Screening (PAS) test to respondent. Respondent's samples on the PAS showed that he had blood alcohol content of 0.146 percent at 10:38 p.m. and 0.144 percent at 10:40 p.m. Based on the

¹The facts and circumstances surrounding respondent's criminal conviction were established by arrest reports which was admitted into evidence subject to *Lake v. Reed* (1997) 16 Cal.4th 448. In *Lake v. Reed*, the California Supreme Court held that certain information contained in a police report is admissible in an administrative proceeding. The personal observations of the investigating officer and any admissions of the arrestee or respondent as contained in the report are admissible for all purposes. However, statements in a police report that are attributable to others, such as witnesses, are admitted for the limited purpose of explaining or supplementing other evidence, pursuant to Government Code section 11513, subdivision (d).

results of the FST and the PAS, the officer arrested respondent for DUI. The driver of the Kia suffered bodily injuries as a result of the collision.

Acts in Aggravation

4. A. In aggravation, on May 21, 2013, respondent was convicted on his guilty plea to 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. (Superior Court of California, County of Orange, case number 13NM00573.)

B. For this conviction, imposition of sentence was suspended, and respondent was placed on informal probation for three years under terms and conditions, including completion of a three-month first offender alcohol and drug education program; and payment of fines and fees.

C. Respondent completed the three-month first offender alcohol and drug education program and paid all fines and fees related to this criminal conviction. Respondent completed his criminal probation in May 2016.

D. The facts and circumstances surrounding this criminal conviction are that respondent drove while under the influence of alcohol.

Respondent's Failure to Report the 2018 Criminal Conviction

5. On May 3, 2018, the Department received respondent's application (application), dated January 10, 2018, for licensure as a real estate salesperson. Respondent signed the application, certifying under penalty of perjury that all answers and statements he provided in the application were true and accurate.

6. Item 28 of the application asked, "HAVE YOU EVER BEEN CONVICTED (SEE PARAGRAPH ABOVE) OF ANY VIOLATION OF THE LAW AT THE MISDEMEANOR OR FELONY LEVEL? IF YES, COMPLETE ITEM 34 WITH INFORMATION ON EACH CONVICTION." (Capitalization and bold in the original.) Respondent answered "Yes" to Item 28, and he disclosed his 2013 DUI conviction in Item 34 of the application. (Ex. 8, pp. 3-4.)

7. Item 29 of the 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 34." (Capitalization and bold in the original.) Respondent answered "Yes" to Item 29, but he did not provide any further information regarding the pending charges in the 2018 DUI case.

8. On May 23, 2018, the Department sent a follow-up letter to respondent requesting additional information regarding his answer to Item 29 of his application. In his response dated July 10, 2018, respondent indicated to the Department that criminal charges were still pending against him. In a statement explaining the nature of these pending criminal charges, respondent wrote, "CVC-23153- A & B[.] 2nd offender DUI." (Ex. 8, p. 12.)

9. Although respondent was convicted of felony DUI with bodily injury to another and driving with a blood alcohol level of 0.08 percent or more on October 19, 2018, he did not report his conviction to the Department until May 7, 2019, when he completed an Interview Information Statement after an interview with a Department investigator. (Ex. 6, p.4.) Thus, respondent did not report to his 2018 conviction to the Department within 30 days of its occurrence, as required by Business and Professions Code section 10186.2, subdivision (a).

10. At the hearing, respondent testified that he did not know about the requirement to report his conviction within 30 days of occurrence. Respondent believed that the disclosure of the pending criminal charges on his application and the subsequent July 10, 2018 follow-up letter was sufficient and that the Department would conduct further investigations based on those disclosures. Respondent's testimony on this issue was honest and credible. Given that he had previously disclosed the pending criminal charges against him on two separate occasions, it can be reasonably inferred that respondent did not intend to conceal his criminal conviction from the Department nor did he intend to deceive the Department about his criminal history.

Mitigation/Rehabilitation

11. Respondent is 26 years old. He is a graduate of Cerritos Community College. After obtaining his salesperson license, respondent initially worked for Intero Real Estate in the City of Downey. Since November 14, 2019, respondent has been employed with Keller Williams Pacific Estates (Keller Williams) based in the City of La Mirada. Respondent lives at home with his parents and his sister's family. With his income as a real estate sales person, he helps to support his 7-year-old niece and 5-year-old nephew.

12. At the hearing, respondent testified about his problems with alcohol consumption in a candid, forthright manner. Respondent recounted that he suffered his first alcohol-related conviction at 18 years old, when he was young and reckless. Respondent conceded that he did not take his 2013 DUI conviction seriously. He continued to consume alcohol approximately twice a week and often drank to excess. After the May 5, 2017 collision which led to his second alcohol-related conviction, respondent began to recognize the gravity of his problem with alcohol. Respondent

reported that the 2018 DUI conviction significantly affected him because he realized that he could have killed himself and the driver of the Kia.

13. Respondent has been sober since May 12, 2017, and he has not suffered any relapses. On January 14, 2020, respondent completed the his 18-month multiple-offender alcohol program. As a condition of his supervised probation, respondent is required to undergo random drug and alcohol testing and to install an interlock device in his car. Respondent also attends Alcoholics Anonymous (AA) meetings once every two weeks on a voluntary basis. He has an AA sponsor, and he is on Step 4 of the 12 Steps.

14. Respondent no longer associates with his friends who drink heavily. Twice a week, he attends spiritual counseling with his church group, and he frequently discusses his sobriety with the group. Respondent is actively involved with his church, which he attends six to eight times a month. He also participates in the Men's Discipleship bible study group for approximately 45 minutes per week.

15. Respondent acknowledged that he had caused the driver of the Kia bodily harm as a result of the collision, and he was remorseful for his past actions. However, respondent believes he has matured and he has turned his life around since 2017. Respondent wishes to continue to pursue a career in real estate. He is proud of being a real estate agent and showed that he is currently working on nine active listings.

16. Additionally, respondent submitted several letters from friends and family attesting to his good character. All of the authors are aware of respondent's criminal convictions, and they describe respondent as honest, hardworking, passionate, and helpful to others. In particular, in a letter date May 17, 2020, Irma

Uruza, respondent's co-worker at Keller Williams who has known respondent for over 17 years, wrote:

I have actively worked side by side with [respondent] in Real Estate transactions as his transaction coordinator. I have also worked with hundred[s] of other realtors, and could whole heartedly say, [respondent] takes pride in servicing his clients at the best of his ability. He is very enthusiastic about being a realtor and providing clients with the opportunity to reach their real estate goals. His willingness to help others has always been a characteristic I have admired.

(Ex. E.)

Recovery Costs

17. Complainant submitted evidence of the costs of investigation and enforcement of this matter, summarized as follows: 14.55 hours in investigation activities by two Department employees at rates ranging from \$62 to \$80 per hour (subtotal \$904.80); and 4 hours of legal services at the rate of \$96 per hour (subtotal \$384). The total costs of investigation and enforcement are \$1,288.80. These costs are reasonable.

18. Respondent did not present any evidence of his income or expenses that would affect his ability to pay the Department's recovery costs.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. The standard of proof for complainant to prevail on the Accusation is "clear and convincing" evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence requires proof that is so clear as to leave no substantial doubt and that is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

Causes for Discipline

2. Under Business and Professions Code section 10177, subdivision (b), a real estate licensee may have his license suspended or revoked for conviction of a crime if it is substantially related to the qualifications, functions, or duties of a real estate licensee. Similarly, under Business and Professions Code section 490, the Department may "suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."

3. Respondent's felony conviction for DUI with bodily injury to another and driving with a blood alcohol level of 0.08 percent or more bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee under California Code of Regulations,² title 10, section 2910, subdivision (a)(8), in that his

² All references to the California Code of Regulations are to title 10, and are designated "10 CCR."

conviction involved unlawful acts done with the threat of substantial injury to the person or property of another.

4. Based on Factual Finding 3 and Legal Conclusions 1 to 3, cause exists to suspend or revoke respondent's real estate salesperson license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), because respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a real estate license.

5. A licensee must notify the Department of the "conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor." (Bus. & Prof. Code, § 10186.2, subd. (a)(1).) The notification must be made "in writing within 30 days of the date of the . . . conviction" (Bus. & Prof. Code, § 10186.2, subd. (a)(2).) "Failure to make a report required by this section shall constitute a cause for discipline." (Bus. & Prof. Code, § 10186.2, subd. (b).)

6. Based on Factual Findings 5 through 10 and Legal Conclusion 5, cause exists to suspend or revoke respondent's real estate salesperson license pursuant to Business and Professions Code section 10186.2, in that respondent failed to notify the Department of his guilty plea for felony DUI within 30 days of its occurrence.

Rehabilitation

7. Criteria have been developed by the Department to evaluate the rehabilitation of a licensee who is subject to discipline on account of a crime. These criteria, found at 10 CCR, section 2912, are summarized as follows:

Subdivision (a), passage of at least two years since the conviction; the two-year period may be increased based upon consideration of the

nature and severity of the crime(s) and/or act(s) and the licensee's history of "substantially related" criminal convictions and/or license discipline.

Subdivision (b), restitution;

Subdivision (c), expungement of the conviction;

Subdivision (d), expungement of the requirement to register as a sex offender;

Subdivision (e), completion of, or early discharge from, the criminal probation;

Subdivision (f), abstinence of at least two years from drugs or alcohol that contributed to the crime;

Subdivision (g), payment of any criminal fines or penalties;

Subdivision (h), correction of business practices causing injury;

Subdivision (i), new and different social and business relationships;

Subdivision (j), stability of family life;

Subdivision (k), enrollment in or completion of educational or training courses;

Subdivision (l), significant involvement in community, church or private programs for social betterment; and

Subdivision (m), change in attitude from the time of conviction to the present, evidenced by: testimony of the licensee and others, including

family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns, or probation or parole officers or law enforcement officials; psychiatric or therapeutic evidence; and absence of subsequent convictions.

8. Respondent has complied with a few of the Department's rehabilitation criteria set forth in 10 CCR, section 2912. He has been sober for over two years (subd. (f)); he paid all fines imposed in connection with his criminal conviction (subd. (g)); he has established new and different social relationships as he no longer associates with friends who drink and participates voluntarily in AA and in his church counseling group (subd. (i)); and he has exhibited some change of attitude from that which existed at the time of his crimes as evidenced by his candid testimony at the hearing and the reference letters attesting to his good character (subds. (m)(1) and (2)). However, respondent has failed to meet other criteria for rehabilitation. Less than two years have elapsed since his criminal conviction. Respondent remains on supervised probation. In aggravation, respondent suffered a prior criminal conviction for DUI and driving with a blood alcohol content of 0.08 percent or greater.

9. Respondent's failure to timely inform the Department of his 2018 conviction also does not reflect well on his ability to carry out one of the duties required of a real estate licensee. Though it may be explained, respondent's failure to comply with Business and Professions Code section 10186.2 cannot be excused by ignorance of the reporting requirement. Nevertheless, respondent's disclosure of the pending criminal charges against him in his January 2018 application and in the July 2018 follow-up letter to the Department demonstrate the absence of any intent to deceive. In addition, respondent ultimately took responsibility for his actions and has

made significant strides towards addressing his problems with alcohol through counseling at his church and voluntary participation in AA.

Disposition

10. The purpose of a disciplinary matter is to protect the public and not to punish the licensee. (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) Respondent has shown sufficient progress toward rehabilitation such that outright revocation of all licensing rights would be unduly harsh. The public will be adequately protected if a restricted real estate salesperson license is issued to respondent for a period of three years.

Recovery Costs

11. Under Business and Professions Code section 10106, the Department may recover costs "not to exceed the reasonable costs of the investigation and enforcement" of this matter. As set forth in Factual Finding 17, the reasonable costs of investigation and enforcement amount to \$1,288.80.

ORDER

All licenses and licensing rights of respondent, Joel Adrian Naranjo under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the 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 Section 10156.6 of that Code:

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

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

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7. Respondent shall pay costs of \$1,288.80 to the Real Estate Commissioner in the form of a cashier's check or certified check within 30 days of the effective date of this Decision, or on a payment plan by agreement with the Commissioner.

DATE: July 6, 2020

DocuSigned by:
Ji-lan Zang
JILAN ZANG
JILAN ZANG

Administrative Law Judge

Office of Administrative Hearings