

FILED

MAY 19 2021

DEPT. OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:)
) DRE No. H-41827 LA
) RICHARD CANTU III,)
) OAH No. 2021020067
) Respondent.

DECISION

The Proposed Decision dated April 19, 2021, 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 JUN 8 2021.

IT IS SO ORDERED 5.13.21

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

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

In the Matter of the Accusation of

RICHARD CANTU III,

Respondent.

Case No. H-41827 LA

OAH No. 2021020067

PROPOSED DECISION

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on March 24, 2021.

Andrea Bentler, Counsel, represented Maria Suarez, Supervising Special Investigator of the State of California (Complainant).

Richard Cantu III (Respondent) represented himself.

Testimony and documents were received in evidence. The record was closed and the matter was deemed submitted on March 24, 2021.

SUMMARY

Complainant seeks to discipline Respondent's real estate salesperson license based on his January 11, 2019 alcohol-related criminal convictions and his failure to timely report those convictions. Respondent established rehabilitation from his misconduct. Thus, outright revocation of Respondent's license is not warranted. However, considering the nature and recency Respondent's misconduct, further monitoring of his licensed activities is required. Thus, the issuance of a restricted license will be adequate and appropriate to protect the public interest.

FACTUAL FINDINGS

1. Respondent presently has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (Code), as a real estate salesperson, license number 01512609. The Department of Real Estate (Department) initially issued a conditional salesperson license to Respondent on August 20, 2005; that license was suspended on February 21, 2007, for failure to satisfy licensing education requirements, and Respondent's salesperson rights expired on September 19, 2009. The Department reissued a salesperson license to Respondent on September 15, 2014, and Respondent has worked for various brokers since that time. Respondent's salesperson license is scheduled to expire on September 14, 2022.

2. On November 19, 2020, Complainant filed the Accusation, dated October 22, 2020, in her official capacity. The Accusation seeks discipline of Respondent's license under Code sections 490, 10177, subdivision (b), and 10186.2 based on Respondent's alcohol-related criminal convictions and his failure to timely report those convictions.

3. The Department received Respondent's Notice of Defense on Accusation, dated December 1, 2020. This hearing followed.

Criminal Convictions and Reporting

4. On January 11, 2019, in case number 18-017723 in the Superior Court of California, County of Orange, the court convicted Respondent, based upon his plea of nolo contendere, of violating Vehicle Code sections 23152, subdivision (a), driving under the influence of alcohol (Count 1); 23152, subdivision (b), driving under the influence of alcohol with a blood concentration of 0.08 percent or higher (Count 2); and 20002, subdivision (a), hit and run with property damage (Count 3), all misdemeanors. Respondent's sentencing for his Count 2 conviction was stayed pursuant to Penal Code section 654.

5. As to Counts 1 and 3, the court placed Respondent on informal probation for three years, with terms of conditions including serving one day in Orange County Jail, with a one-day credit for time served; completing 49 hours of Cal Trans/Physical Labor as directed by OneOC, instead of paying fines; completing an additional 40 hours of community service to run consecutively with the 49 hours of community service; completing a nine-month Level One First Offender alcohol and drug program; and paying fines and fees. In addition, the court ordered Respondent to pay restitution to the victim as determined by the victim; however, no restitution was ever requested. Respondent's informal period of probation ends on January 10, 2022.

6. The facts and circumstances of Respondent's criminal convictions are that on May 2, 2018, at approximately 3:30 p.m., while driving a Jeep, Respondent rear-ended a vehicle stopped in front of him, causing major damage to the vehicle, and then drove away without stopping.

7. An eyewitness provided the license number of the Jeep to the police, who located Respondent. When asked about what had occurred, Respondent answered he did not know what happened and could provide any information regarding the collision. (Exhibit 4, p. 9.) In his conversations with the police, Respondent admitted he had drunk "a lot" and exhibited bloodshot watery eyes, slurred speech, and an unsteady gait. (*Id.* at p. 14.) Respondent also had the odor of an alcoholic beverage on his breath. Respondent refused to submit to a breathalyzer test or to provide a blood sample. The court issued a warrant for his blood, and a blood sample was taken. The results of the blood test are not included in the court records.

8. Respondent failed to provide written notice to the Department of his criminal convictions within 30 days of those convictions, i.e., by February 10, 2019.

Respondent's Evidence of Mitigation and Rehabilitation

9. Respondent took full responsibility for his actions both in his Conviction Detail Report, dated June 17, 2019, and submitted to the Department (Exhibit 6), and at the hearing. When asked in the Report to explain his crime, he answered "Stupidity." (*Id.* at p. 3.) He provided additional remarks in the Report as follows:

I take full responsibility of my convictions. These convictions are taken very seriously. My selfishness the day of my convictions is not the man that I am. I completed a nine month program (Academy of Defensive Driving) along with 27 A.A. [Alcoholics Anonymous] meetings. I no longer consume alcoholic beverages. . . . I apologize for my convictions.

(*Id.* at p. 7.)

10. Respondent also did not dispute his failure to notify the Department of his criminal convictions. He testified he was unaware of the requirement and also was preoccupied during this time with his criminal convictions and meeting the terms of his probation.

11. Respondent has complied with the terms of his probation. (Exhibit A.) He completed 44 hours of group sessions, 4.75 hours of individual counseling, 14 hours of alcohol education, and 38 hours of self-help sessions as part of his required 9-month course at the Academy of Defensive Driving. He completed 40 hours of assigned community service on April 12, 2019, and an additional 49 hours of assigned community service on December 11, 2019. Respondent has not suffered any additional criminal convictions since the convictions at issue here.

12. Respondent considers himself a man of the church. He is active in Calvary Chapel San Juan Capistrano and his community. He is part of the Calvary Cares Ministry, which helps those in need. He serves with the construction team of New Life Beginnings, which provides safe shelter for women in crisis. Respondent also participates in Armor of Light Ministry, which provides meals for the U.S. Marines stationed at Camp Pendleton.

13. Respondent currently works at Realty One Group (Realty One) in Mission Viejo. He has worked with this Realty One office for five to six years and has never been disciplined for his work. He attends weekly meetings at the office to keep current with the market and legal developments.

14. Respondent has also worked part-time at Costco for the past 15 years. Respondent has never been disciplined at his job at Costco.

15. Respondent denies he suffers from an alcohol abuse problem. He testified the drinking that led to his criminal convictions was the result of a social gathering. He has foresworn drinking alcohol since his May 2019 arrest.

16. Respondent was arrested and convicted for driving under the influence 28 years ago. Other than that criminal conviction and the criminal conviction giving rise to the Accusation, Respondent has not suffered any arrests or criminal convictions. Respondent has also never been disciplined by the Department.

17. Respondent's wife submitted a letter to the Department vouching for Respondent's character and fitness to hold a real estate license. Respondent's wife, who is a registered nurse, has known Respondent for 31 years and described him as honest, hardworking, and devoted to "loving and providing the best for his family." (Exhibit 6, p. 8.) According to Ms. Cantu, Respondent's experience with the law has "taught him more responsibility, more perseverance, and even more appreciation of his job and the service he provides for his clients." (*Ibid.*) She also noted that Respondent's inability to work as an agent would "devastate and hinder his ability to be the provider in our family." (*Ibid.*)

18. Respondent has a 29-year-old son who recently became a Correctional Deputy with the Riverside County Sheriff Department. Respondent submitted a card from his son in which his son thanked him for being a good role model and a good father. (Exhibit 6, p. 12.) His wife confirmed the strength of Respondent's relationship with his son. (*Id.* at p. 8.)

19. Respondent's testimony was candid and non-defensive. He expressed genuine remorse for his conduct. He testified the acts leading to his criminal convictions were uncharacteristic of who he was and uncalled for. He recognized the seriousness of his actions and repeatedly stated those actions were "never going to happen again."

Respondent is committed to working in the real estate industry and maintaining his license.

Costs

20. The Department requested \$585.60 in enforcement costs, reflecting 6.1 hours of attorney time at \$96 per hour, and \$695.50 in investigation costs, reflecting 10.25 hours of investigator time at \$62 per hour and 0.75 hours of supervisor time at \$80 per hour. The total costs of investigation and prosecution are \$1,281.10.

21. Respondent indicated he had sufficient financial resources to pay these costs under a reasonable payment plan.

LEGAL CONCLUSIONS

Legal Principles

1. Complainant has the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Med. Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

2. A real estate license may be disciplined when the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Code, §§ 490, subd. (a), 10177, subd. (b).) A crime is deemed to be substantially related to the qualifications, functions, or duties of a real estate license if it involves the "doing of any unlawful act with the intent or threat of doing substantial injury to the person or property of another" (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8)) or it involves "two or more convictions involving the consumption or use of alcohol or

drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(11).)

3. According to the Real Estate Law, a licensee must make a written report to the Department of the conviction of any crime within 30 days of such conviction; failure to make the required report constitutes a cause for discipline. (Code, § 10186.2, subds. (a)(1)(B) & (b).)

Causes for Discipline

4. Respondent's criminal convictions for driving while intoxicated and hit and run with property damage involved the doing of an unlawful act with the threat of causing substantial injury to the driver, which also caused actual damage to the driver's vehicle. (Factual Findings 4–7.) Moreover, both criminal convictions involved the consumption of alcohol and driving. Respondent's criminal convictions are therefore substantially related to the qualifications, functions, and duties of a real estate license pursuant to California Code of Regulations, title 10 (Regulations), section 2910, subdivisions (a)(8) and (a)(10). Cause therefore exists to discipline Respondent's license under Code sections 490 and 10177, subdivision (b).

5. Respondent failed to notify the Department of his criminal convictions within 30 days after they occurred in violation of Code section 10186.2, subdivision (a)(1)(B). (Factual Finding 8.) Cause therefore exists to discipline Respondent's license under Code section 10186.2, subdivision (b).

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Disposition

6. After cause for disciplinary action is established, the burden shifts to a licensee to demonstrate that it would not be inconsistent with the public health, safety, and welfare to allow him to retain his license. The Department has set forth the criteria to be applied when determining whether a licensee convicted of a substantially related crime has established rehabilitation. (Cal. Code Regs., tit. 10, § 2912.) The relevant rehabilitation criteria include: (1) the time elapsed since commission of the acts or offenses; (2) restitution to any person who has suffered monetary losses through the substantially related acts or omissions of the licensee; (3) expungement of the conviction(s) which culminated in the disciplinary proceeding; (4) successful completion or early discharge from probation or parole; (5) abstinence from the use of alcohol for not less than two years if the criminal conviction was attributable in part to the use of alcohol; (6) payment of any court-imposed fine in connection with the licensee's criminal conviction; (7) new and different social and business relationships from those which existed at the time of the commission of the acts that led to criminal convictions at issue; (8) stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction; (9) completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement; (10) significant and conscientious involvement in community, church, or privately sponsored programs designed to provide social benefits or to ameliorate social problems; and (11) change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by the licensee's testimony and other evidence of rehabilitation, evidence from family members, friends and/or other persons familiar with the licensee's previous conduct and with subsequent attitudes and/or behavioral patterns, and absences of subsequent criminal 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. The criteria further provide that the passage of less than two years since the licensee's most recent criminal conviction is inadequate to demonstrate rehabilitation, and the two year period may be increased based on the nature and severity of the crimes at issue and the licensee's criminal history. (Cal. Code Regs, tit. 11, § 2912, subd. (a).)

7. Respondent's misconduct was serious, caused property damage, and had the potential to cause substantial injury to the driver of the vehicle. In aggravation, Respondent drove off after the collision, too inebriated to take responsibility for his actions and to check whether the driver was injured. However, considering the applicable facts and the criteria outlined in Regulations, section 2912, subdivision (a), Respondent has demonstrated substantial rehabilitation from his misconduct. (Factual Findings 9–19.) More than two years have passed since his criminal convictions and nearly three years since his arrest. His only other criminal conviction occurred 28 years ago. Although Respondent remains on informal probation until January 2022, he has completed the terms of his probation, including community service, alcohol education, and the payment of fines and fees. Respondent is active in his community, volunteering with his church and other ministries to help women suffering from domestic violence, U.S. Marines in need of a meal, and others in need. He has not suffered any subsequent criminal convictions or demonstrated any conduct reflecting an inability to conform to societal rules.

8. Respondent expressed great remorse for his past misconduct. Immediately after his arrest, Respondent foreswore alcoholic beverages, and he has remained sober since. His wife and son vouched for the changes in his conduct and confirmed the devastating impact Respondent's arrest and criminal convictions have had on him and his family. Their letters state that Respondent's misconduct was an aberration, and he is

a responsible and ethical individual. Respondent has never been disciplined at work; nor has he suffered discipline from the Department. He participates in weekly meetings with his real estate company and is dedicated to the real estate profession.

9. This administrative proceeding is not intended to punish Respondent. Rather, its purpose is to protect the public. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) The facts of this case show that Respondent has made sufficient progress toward rehabilitation such that outright revocation of all licensing rights would be overly harsh. Issuing a restricted real estate salesperson license to Respondent will adequately protect the public.

10. Code section 10106, provides, in pertinent part, that in any order issued in the resolution of a disciplinary proceeding before the Department, the Commissioner may request the administrative law judge to direct a licensee found to have committed a violation to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. The Department incurred costs of \$1,281.10. (Factual Finding 20.) These costs are reasonable, and the application of the factors set forth in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal 4th 32, 45, does not support a reduction of these costs. As the Order sets forth below, Respondent shall reimburse the Department for these costs based on a reasonable payment plan.

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ORDER

All licenses and licensing rights of respondent Richard Cantu III 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 two 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 its costs of prosecution and investigation totaling \$1,281.10, pursuant to a payment plan by agreement with the Commissioner.

DATE: 04/19/2021


Cindy F. Forman (Apr 19, 2021 08:42 PDT)
CINDY F. FORMAN
Administrative Law Judge
Office of Administrative Hearings