

Flay

FILED

NOV 17 2021

DEPT. OF REAL ESTATE

By _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	DRE No. H-41948 LA
	)	
JON THOMAS COULTRUP,	)	OAH No. 2021050369
	)	
Respondent.	)	

NOTICE

TO: JON THOMAS COULTRUP, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated September 14, 2021, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated September 14, 2021, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on Wednesday, August 18, 2021, and any written argument hereafter submitted on behalf of respondent and complainant.

Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Wednesday, August 18, 2021, at the

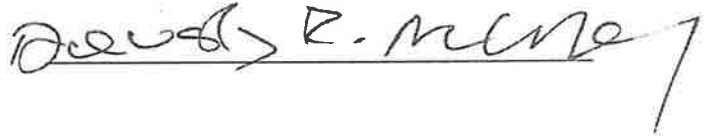
///

1 Los Angeles office of the Department of Real Estate unless an extension of the time is granted for
2 good cause shown.

3 Written argument of complainant to be considered by me must be submitted within
4 15 days after receipt of the argument of respondent at the Los Angeles Office of the Department of
5 Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 11.9.21.

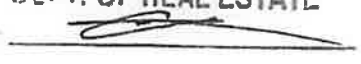
7 DOUGLAS R. McCAULEY
8 REAL ESTATE COMMISSIONER

9
10 
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

OCT 20 2021

DEPT. OF REAL ESTATE

By 

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

In the Matter of the First Amended Accusation against:

JON THOMAS COULTRUP, Respondent.

Agency Case No. H-41948 LA

OAH No. 2021050369

PROPOSED DECISION

Administrative Law Judge Deena R. Ghaly, Office of Administrative Hearings (OAH), State of California, heard this matter remotely by video and teleconference on August 18, 2021.

Department Counsel Laurence D. Haveson represented Complainant Veronica Kilpatrick, Supervising Special Investigator, Department of Real Estate (Department). Respondent Jon Thomas Coultrup represented himself.

Testimony and documentary evidence was received. The record closed, and the matter was submitted for decision on August 18, 2021.

SUMMARY

Complainant seeks to discipline Respondent's license based on his criminal conviction for domestic battery and for failing to notify the Department of the criminal

conviction. Complainant also seeks reimbursement of its investigation and enforcement costs. Respondent offered explanations for the circumstances leading to his conviction and some evidence in mitigation.

Clear and convincing evidence established the causes of discipline Complainant alleged. Applying the Department's criteria for mitigation and rehabilitation, the evidence also established that disciplining Respondent's license is warranted. Respondent's license is revoked with the revocation stayed and a term of probation including appropriate conditions imposed. Respondent is also ordered to pay Complainant's costs for investigation and enforcement.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The Department issued broker's license number 00757571 to Respondent on May 25, 1981. The license will expire on January 3, 2022 unless renewed.

2. On April 2, 2021, Complainant issued the Accusation in her official capacity. Respondent timely filed a Notice of Defense requesting a hearing.

Respondent's Criminal Conviction

3. On November 1, 2019, in the Superior Court of California, County of Santa Barbara, Case Number 19CR04701, Respondent pled no contest and was convicted of violating Penal Code section 243, subdivision (e)(1) (domestic battery), a misdemeanor. On November 21, 2019, the court suspended imposition of sentence and placed Respondent on supervised probation for three years, with terms and

conditions including serving four days in jail with credit for four days served, paying restitution, fees and fines totaling \$715 and \$100 to Shelter Services for Women, performing 20 hours of work pursuant to the direction of the County Work Coordinator, undergoing batterer's treatment and counseling, and having no contact with the victim associated with Respondent's case.

4. The circumstances leading to Respondent's arrest and conviction are that, on April 22, 2019, Respondent was driving with his girlfriend. The couple was vacationing in the Santa Barbara area and returning from an outing at a winery where they had started to argue. The altercation continued as they drove away. Respondent, who was driving, pulled over to the side of the road and ultimately left the girlfriend there and drove off. What transpired just prior to the girlfriend exiting the vehicle is in dispute. Respondent's statements regarding the incident, the only direct evidence presented at the hearing, are set out in Factual Finding 7 below.

5. Respondent is in compliance with the terms and conditions of his probation, which is scheduled to terminate in November 2022.

Respondent's Failure to Report the Criminal Charges and Conviction

6. Respondent did not report in writing within 30 days to the Department that he had pled nolo contendere to a misdemeanor on April 2, 2019. The Department learned of the plea and conviction and contacted Respondent to interview him about the incident.

Respondent's Evidence

7. A. Respondent's sole evidence presented at the hearing was his testimony.

B. Respondent stated that, after a lengthy marriage, he became romantically involved with his girlfriend and had been dating her and living with her on and off for a period of about six years before the time of the incident leading to his criminal conviction.

C. Respondent described his girlfriend as mercurial and combative, as well as prone to depression and anxiety, particularly when she is inebriated. According to Respondent, she frequently physically assaulted him; however, he never retaliated and, as a rule, would never hit a woman.

D. On the day of the incident, Respondent maintained his girlfriend was out all night alone, presumably "bar hopping," before returning to their hotel early the next morning. They then went to a winery, where she continued to drink and became increasingly belligerent, culminating in her throwing a glass in Respondent's direction. Fed up, Respondent insisted on abandoning their plans for the rest of the outing and driving home. Once on the road, the girlfriend continued to attack him. Fearing that she would cause an accident, Respondent pulled over to the side of the road. Respondent stated he does not remember how the girlfriend came to exit the vehicle. He does recall driving off and leaving her, a decision he stated he deeply regretted.

E. Respondent stated he chose to accept a plea deal to avoid the possibility of being convicted of a much more serious crime and also because, despite her attacks, Respondent feels protective of his girlfriend and believed a criminal trial where she would have had to testify would be more than her sensitive mental state could tolerate.

8. Regarding his failure to report the criminal conviction, Respondent stated he was unaware that he was required to.

Discussion

9. Respondent's testimony does not inspire confidence in his judgment or maturity. According to Respondent, he knew his girlfriend to be irresponsible and unstable when under the influence of alcohol. Nevertheless, he chose to accompany her to a winery, where --predictably by his description of her habits --she continued to drink excessively and became querulous and aggressive. Respondent then chose to leave her in this highly compromised state by the side of a road. Further, Respondent's stated gap in memory regarding the one period he may have assaulted her, namely, whatever occurred that resulted in her exiting the vehicle, is not credible.

10. Further concerning is the complete absence of any evidence such as testimony, affidavits, or character reference letters which may have buttressed an opposite conclusion regarding his character or addressed his professional reputation and practices.

11. Respondent stated that he and his girlfriend remain in an intimate relationship though they do not live together. Nothing in the record indicates whether they have taken any steps to assure that their personal difficulties do not escalate again though some three years have passed without further police involvement.

Costs

12. The Department incurred investigation costs in the amount of \$667.75 and enforcement costs in the amount of \$336.00, a total of \$1003.75. The costs are reasonable.

LEGAL CONCLUSIONS

1. The real estate commissioner "has full power to regulate and control the issuance and revocation . . . of all licenses" (Bus. & Prof. Code, § 10071.) "Protection of the public shall be the highest priority for the Department of Real Estate in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (Bus. & Prof. Code, § 10050.1.)

2. Complainant bears the burden of proof. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99; *Pipkin v. Bd. of Supervisors* (1978) 82 Cal.App.3d 652.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence means evidence "so clear as to leave no substantial doubt" and "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).)

3. The commissioner may suspend or revoke a real estate license if the licensee has pled guilty or no contest to, or been found guilty or convicted of, a crime substantially related to the qualifications, functions, or duties of a real estate licensee, regardless of whether the court granted probation, suspended imposition of sentence, or issued an order under Penal Code section 1203.4 dismissing the matter. (Bus. & Prof. Code, §§ 490, 10177, subd. (b)(1).)

4. A crime or an act is substantially related to the qualifications, functions, or duties of a real estate licensee if done "with the intent or threat of doing substantial injury to the person or property of another." (Cal. Code Regs., tit. 10, § 2910, subd. (a).)

[T]he context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee. (Cal. Code Regs., tit. 10, § 2910, subd. (c).)

5. Respondent pled nolo contendere to domestic assault, a form of battery. Battery is a willful, i.e., intentional "use of force or violence upon the person of another" (Penal Code, section 242) and is, therefore, substantially related to the qualifications, functions, or duties of a Department of Real Estate licensee.

6. 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).)

7. Cause exists to discipline Respondent's real estate broker's license under Business and Professions Code sections 490 and 10177, subdivision (b), and California Code of Regulations, title 10, section 2910, on the ground that Respondent entered a plea of nolo contendere to and was convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee, based on Factual Findings 3 through 6, and Legal Conclusions 1 through 5.

8. Cause exists to discipline Respondent's real estate broker's license under Business and Professions Code section 10186.2, subdivision (b), on the ground that he failed to notify the Department within 30 days of his plea of not guilty or nolo contendere to the misdemeanor charges against him, based on Factual Finding 6, and Legal Conclusion 6.

9. Because cause for revocation of Respondent's license was established, he bears the burden of proving mitigation or rehabilitation sufficient to warrant continued licensure. (See *Martin v. Alcoholic Beverage Control Appeals Bd.* (1950) 52 Cal.2d 259, 264-265.) The "more serious the misconduct and the bad character evidence, the stronger the applicant's showing of rehabilitation must be." (*In re Gossage* (2000) 23 Cal.4th 1080, 1096.)

10. The criteria for assessing the rehabilitation of a licensee include the time that has elapsed since the commission of the crime; expungement of the criminal conviction; successful completion of criminal probation; payment of any fines imposed in connection with the criminal conviction; successful completion of probation; new and different social and business relationships from those existing at the time of the acts that led to the conviction; stability of family life and fulfillment of parental and familial responsibilities; completion of educational courses taken for economic self-improvement; significant involvement in community programs designed to provide social benefits or ameliorate social problems; and changes in attitude demonstrated by evidence of rehabilitation submitted by the licensee and by evidence from family members, friends, or other persons familiar with the licensee's previous conduct and with subsequent attitudes or behavioral patterns. (Cal. Code Regs., tit. 10, §2912.)

11. Applying the rehabilitation criteria, in Respondent's favor are that his license has not previously been disciplined by the Department and there is no evidence that he has ever been criminally convicted or engaged in violent acts before or since the incident in question. On the other hand, only a little more than two years have passed since Respondent committed the crime and was convicted. Respondent did not directly acknowledge the nature of the criminal act leading to the conviction and expressed limited remorse. Moreover, Respondent remains on criminal probation.

12. The lack of corroborating evidence of good character is a further negative factor. Additionally, Respondent's failure to timely inform the Department of the conviction is not just a cause of discipline but a factor indicative of his ability and commitment to carry out the duties to the public required of a real estate licensee.

13. The imposition of discipline in this case requires a balancing of public protection and what is, on this record, a one-time criminal act in circumstances separate from Respondent's professional life. Based on the record in this case and a consideration of the relevant rehabilitation factors, the public would be adequately protected by allowing Respondent to continue working as a real estate broker under a restricted license.

Cost Reimbursement

14. Because Respondent violated the Real Estate Law, Complainant is entitled to recover the reasonable costs of the investigation and prosecution of this matter in the amount \$1003.75. (Bus. & Prof. Code, § 10106, subds. (a), (c), and (d).)

ORDER

1. All licenses and licensing rights of Respondent Jon Thomas Coultrup under the Real Estate Law are revoked; provided, however, a restricted real estate broker 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.

2. 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.

3. 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.

4. 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 and he has paid the costs of the Department costs of investigation and enforcement in the amount of \$1003.75.

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 he presents such evidence. The Commissioner shall afford

Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATE: Sep 14, 2021

Deena R. Ghaly
Deena R. Ghaly (Sep 14, 2021 11:35 PDT)

DEENA R. GHALY

Administrative Law Judge

Office of Administrative Hearings