

FILED

JAN 31 2022

DEPT. OF REAL ESTATE

By _____

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

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

DECISION AFTER REJECTION

This matter came on for hearing before Administrative Law Judge Deena R. Ghaly ("ALJ Ghaly") of the Office of Administrative Hearings ("OAH"), in Los Angeles, California, on January 10, 2018. Laurence D. Haveson, Counsel, represented the Complainant, Veronica Kilpatrick, Supervising Special Investigator for the State of California Department of Real Estate ("Department"). Respondent Jon Thomas Coultrup ("Respondent") appeared in person, and represented himself. Oral and documentary evidence were received. The matter was submitted on August 18, 2021.

On September 14, 2021, ALJ Ghaly issued a Proposed Decision that proposed revoking Respondent's broker license, and issuing him a restricted broker license pursuant to certain terms and conditions, including, but not limited, submitting an application and application fee for the restricted broker license and Respondent not being eligible for the

removal of any of the conditions, limitations, or restrictions of a restricted license for two (2) years.

On or about November 17, 2021, Respondent was served with notice of my determination not to adopt the Proposed Decision of ALJ Ghaly along with a copy of said Proposed Decision pursuant to California Government Code section 11517(c). Respondent was notified that the case would be decided by me upon the record, the transcript of proceedings held on August 18, 2021, and upon any written arguments offered by Respondent and Complainant. On or about December 1, 2021, Respondent filed a written argument with the Department. On or about December 20, 2021, Complainant filed Complainant's Argument After Rejection of Proposed Decision.

I have given careful consideration to the record in this case, including, but not limited to, the transcript of the proceedings of August 18, 2021 and the written arguments submitted by Respondent and Complainant.

The following shall constitute the Decision of the Real Estate Commissioner in this proceeding.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Complainant Veronica Kilpatrick, Supervising Special Investigator with the Department, filed the Accusation on or about April 5, 2021 and First Amended Accusation in this matter in her official capacity on or about April 23, 2021.

2. Respondent is licensed by the Department as a real estate broker. Respondent was first licensed as a real estate broker (license no. 00757571) on May 25, 1981, which was set to expire on January 3, 2022.

3. On or about April 23, 2021, Respondent filed a Notice of Defense to request a hearing. All jurisdictional requirements have been met.

1 *Respondent's Criminal Conviction*

2 4. On November 1, 2019, in the Superior Court of California, County of
3 Santa Barbara, case no. 19CR04701, Respondent was convicted of violating California Penal
4 Code section 243(e)(1) (domestic battery), a misdemeanor. The conviction was based on
5 Respondent's plea of guilty.

6 5. The court suspended imposition of sentence, and placed Respondent on
7 supervised probation for three (3) years with various terms and conditions, including, but not
8 limited to, serving four (4) days in jail, undergoing batterer's treatment and counseling, having
9 no contact with the victim, and paying various fines and fees.

10 6. According to the police report, on April 22, 2019 at approximately 3:25
11 p.m., the police were dispatched to a domestic disturbance on a highway after witnesses
12 reported that a "male threw a female out of the vehicle" and then left. When police arrived, the
13 victim was being treated by paramedics and moved onto a gurney and into an ambulance. The
14 police interviewed two (2) witnesses. Later, the police interviewed the victim at the hospital,
15 and noted swelling and redness to the right side of her face. In addition, the police interviewed
16 Respondent, and noted Respondent had two (2) scratches on his right arm. Respondent also had
17 red marks on left forearm that did not appear fresh.

18 Respondent told the police the following: He and the victim had been in a dating
19 relationship for approximately 6.5 years. The victim had been drinking, and started being
20 aggressive toward Respondent while Respondent was driving. The victim opened the door with
21 one hand and got herself out. Then Respondent stated, "Did I give her a little push? Did I give
22 her a little shove? In the heat of the moment . . . I was helping her out because she was insane."
23 (Exhibit 4)

24 7. Respondent testified at hearing to the following: Respondent knew the
25 victim was an alcoholic, but decided to take her to Solvang for wine tasting. Respondent and
26 the victim visited a couple of wineries where Respondent drank water and "sipped a few glasses
27

1 of wine,” and the victim had a few alcoholic drinks. In the car with Respondent driving, the
2 victim started “smacking [Respondent] in the heard, scratching [Respondent], gouging the nails
3 in, [and] beating [Respondent].” Respondent pulled over, grabbed the victim’s wrists, and
4 asked her to calm down, but she did not, so Respondent pulled the car over and made contact
5 with the victim as he reached over her lap to open the door for her. The victim was so drunk
6 that she stumbled out of the vehicle. Respondent saw other people were walking up, so he
7 figured the victim was safe, and drove away. Respondent denied culpability by stating, “I never
8 started anything. I never aggravated anything . . . I didn’t promote an argument. I didn’t
9 promote a fight. I’m just getting beat up by an alcoholic who lost her mind again.” Respondent
10 also attempted to diminish the statements of witnesses who had pulled over by stating, “It’s like
11 a movie where they think they saw something, but they didn’t.” Respondent completed the
12 court-ordered counseling and paid the fines and fees.

13 8. Respondent did not report in writing within thirty (30) days to the
14 Department that he had pled nolo contendere or of his misdemeanor conviction, described
15 above. The Department discovered the plea and conviction, and contacted Respondent about
16 the incident.

17 9. The Department has incurred costs of investigation and enforcement in
18 the total amount of \$1,003.75, which are reasonable.

19 20 LEGAL CONCLUSIONS

21 1. Complainant has the burden of proving the alleged grounds for discipline
22 in the Accusation. *Small v. Smith*, 16 Cal. App. 3d 450, 457 (1971). The standard of proof to
23 be applied is clear and convincing evidence to a reasonable certainty. *The Grubb Co., Inc. v.*
24 *Dept. of Real Estate*, 194 Cal. App. 4th 1494, 1505 (2011); see also *Realty Projects, Inc. v.*
25 *Smith*, 32 Cal. App. 3d 204, 212 (1973). “‘Clear and convincing evidence’ requires a finding of
26 high probability. The evidence must be so clear as to leave no substantial doubt. It must be
27

1 sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.]”
2 *In re David C.*, 152 Cal. App. 3d 1189, 1208 (1984).

3
4 *Respondent’s Conviction Is Cause for Discipline*

5 2. The Real Estate Commissioner may suspend or revoke the license of a
6 person who has been convicted of a crime that is “substantially related to the qualifications,
7 functions or duties” of a real estate licensee. California Business and Professions Code sections
8 490(a) and 10177(b). The conviction can be based on a plea of nolo contendere. California
9 Business and Professions Code section 490(c) and 10177(b). The conviction need not occur as
10 part of the licensee’s practice of the licensed profession. See *Griffiths v. Superior Court*, 96
11 Cal. App. 4th 757, 772 (2002). A crime is deemed “substantially related” to a real estate
12 licensee’s qualifications, functions, or duties if it involves, among other things, the “[d]oing of
13 any unlawful act . . . with the intent or threat of doing substantial injury to the person or
14 property of another.” California Code of Regulations, title 10, section 2910(a)(8).

15 3. There is cause to suspend or revoke Respondent’s real estate license for
16 conviction of crimes that are substantially related to the qualifications, functions, or duties of a
17 real estate licensee. California Business and Professions Code sections 490(a) and 10177(b).
18 Complainant presented clear and convincing evidence of Respondent’s battery conviction, as
19 described in Factual Findings, above. California Penal Code section 242 provides, “A battery is
20 any willful and unlawful use of force upon the person of another.” The police noted the victim
21 had the victim had swelling and redness to the right side of her face. As a result, Respondent’s
22 crime is “substantially related” pursuant to California Code of Regulations, title 10, section
23 2910(a)(8).

24 4. Although Respondent’s attempted to impeach his conviction,
25 Respondent’s conviction cannot be impeached or re-litigated. *Arneson v. Fox*, 28 Cal. 3d 440,
26 445-52 (1980); *Richards v. Gordon*, 254 Cal. App. 2d 735, 738-39 (1967). Respondent’s guilty

1 plea serves as an admission of each element of the crime charged. *Arnstein v. California State*
2 *Board of Pharmacy*, 265 Cal. App. 2d 179 (1968); *In re Duggan*, 17 Cal.3d 416, 423 (1976).

3 *Respondent's Rehabilitation*

4 5. The Department has adopted criteria to evaluate the rehabilitation of a
5 licensee who is subject to an administrative revocation or suspension proceeding on account of
6 committing a crime. California Code of Regulations, title 10, section 2912, provides, in
7 relevant part:

- 8 (a) The time that has elapsed since commission of the act(s) or offense(s):
9 (1) The passage of less than two years after the most recent criminal
10 conviction or act of the licensee that is a cause of action in the
11 Bureau's Accusation against the licensee is inadequate to
12 demonstrate rehabilitation.
13 (2) Notwithstanding subdivision (a)(1), above, the two year period
14 may be increased based upon consideration of the following:
15 (A) The nature and severity of the crime(s) and/or act(s)
16 committed by the licensee.
17 (B) The licensee's history of criminal convictions and/or
18 license discipline that are "substantially related" to the
19 qualifications, functions, or duties of a real estate licensee.
20 ...
21 (c) Expungement of the conviction(s) which culminated in the administrative
22 proceeding to take disciplinary action.
23 ...
24 (e) Successful completion or early discharge from probation or parole.
25 (f) Abstinance from the use of controlled substances and/or alcohol for not
26 less than two years if the criminal conviction was attributable in part to
27 the use of a controlled substance and/or alcohol.
28 (g) Payment of any fine imposed in connection with the criminal conviction
29 that is the basis for revocation or suspension of the license.
30 ...
31 (m) Change in attitude from that which existed at the time of the commission
32 of the criminal acts in question as evidenced by any or all of the
33 following:
34 (1) Testimony and/or other evidence of rehabilitation submitted by
35 the licensee.
36 ...
37 (5) Absence of subsequent felony convictions, or misdemeanor
38 convictions, or other conduct that provides grounds to discipline a
39 real estate licensee, which reflect an inability to conform to
40 societal rules when considered in light of the conduct in question.

1 6. Respondent's conviction was just over two (2) years ago. Respondent's
2 conviction has not been expunged. Respondent remains on probation. It is unclear whether
3 Respondent has been abstinent from alcohol for two (2) years. Respondent admitted he drank
4 on April 22, 2019, which is when the underlying facts of the criminal conviction occurred, but
5 did not provide any evidence as to the last time he drank. Respondent has not had a change in
6 attitude as shown by his failure to take responsibility for his actions that resulted in his criminal
7 conviction. At hearing, Respondent placed blame on the victim, and denied any actions on his
8 part that would constitute a battery charge despite Respondent being convicted for domestic
9 battery in 2019, which cannot be impeached. Respondent has not incurred any other
10 convictions since his 2019 conviction, described above.

11 7. California Business and Professions Code section 10186.2 provides, in
12 pertinent part, a licensee shall report pleading guilty to or a conviction of any felony or
13 misdemeanor within thirty (30) days of the conviction to the Department, and failure to do so
14 constitutes cause for discipline. Respondent did not report in writing within thirty (30) days to
15 the Department that he had pled nolo contendere or of his misdemeanor conviction, described
16 above. The Department discovered the plea and conviction, and contacted Respondent about
17 the incident.

18
19 *Cost Recovery*

20 8. The Department's \$1,003.75 in investigation and enforcement costs are
21 reasonable and consistent with the criteria set forth in *Zuckerman v. State Board of Chiropractic*
22 *Examiners*, 29 Cal.4th 32 (2002).

23 ///

24 //

25 ///

26 ///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

2. If and when Respondent makes an application or petition for a real estate license, Respondent shall pay the \$1,003.75 for the Department's investigation and enforcement costs prior to the issuance of any real estate license.

IT IS SO ORDERED 1.21.22

David E. Marley