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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)
MICHAEL FREEMAN,)
Respondent.)

No. H-42348 LA

ORDER NUNC PRO TUNC MODIFYING DECISION

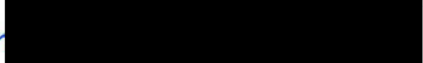
It having been called to the attention of the Real Estate Commissioner that there is an error in the Decision dated July 31, 2023, and good cause appearing therefore, Page 1, line 10 is amended nunc pro tunc to read as follows:

“The Decision suspends or revokes one or more real estate licenses, but the right to a restricted broker license is granted to Respondent.”

This Order is effective immediately.

IT IS SO ORDERED 10/16/2023

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER



By: **MARCUS McCARTHER**
Chief Deputy Real Estate Commissioner

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DEPT. OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE **By** *AC Selam*

STATE OF CALIFORNIA

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In the Matter of the Accusation of:)	DRE No. H-42348 LA
)	
MICHAEL FREEMAN,)	OAH No. 2023020080
)	
Respondent.)	

DECISION

The Proposed Decision dated May 25, 2023, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision.

Respondent's Criminal Convictions, Page 3, Paragraph 6, reads as, "...November 16, 2019..." corrected as, "...November 26, 2019..."

Page 5, Paragraph 11, reads as, "Behavior on November 16, 2019," corrected to read as, "Behavior on November 26, 2019."

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.

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 AUG 30 2023.

IT IS SO ORDERED

7.31.23

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:

MICHAEL FREEMAN,

Respondent.

Agency Case No. H-42348 LA

OAH No. 2023020080

PROPOSED DECISION

Administrative Law Judge (ALJ) Chantal M. Sampogna, Office of Administrative Hearings, State of California, heard this matter by videoconference on May 17, 2023.

Andrea Bentler, Real Estate Counsel I, represented complainant Jason Parson, Supervising Special Investigator of the State of California, Department of Real Estate (Department).

Respondent Michael Freeman, also known as Michael Conrad Freeman and Michael Hulbert, appeared and represented himself.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on May 17, 2023.

While preparing the instant decision, the ALJ found personal information (i.e., respondent's date of birth, driver's license number, and home address) in Exhibit A. The ALJ redacted the personal information contained in the exhibit to protect respondent's privacy rights.

SUMMARY

Complainant alleges respondent's real estate broker license should be disciplined based on respondent's 2021 criminal convictions related to driving under the influence of alcohol, and that respondent should be ordered to pay reasonable costs of enforcement to the Department. Respondent admitted complainant's factual allegations and offered substantial evidence of rehabilitation. Protection of the public will be served if respondent's licensing rights are revoked, and the Department issues respondent a restricted real estate broker license upon his application. Respondent is ordered to pay reasonable costs to the Department.

FACTUAL FINDINGS

Jurisdiction

1. On April 16, 1998, the Department issued respondent a real estate salesperson license.
2. On January 4, 2001, the Department issued respondent real estate broker (REB) license number 01237186. Respondent's REB license is scheduled to expire on May 22, 2025.

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3. On January 3, 2012, the Department approved respondent's individual mortgage loan originator (MLO) license endorsement.

4. On June 28, 2022, complainant, acting in his official capacity as a Supervising Special Investigator, made the Accusation against respondent. Respondent timely filed a notice of defense.

Respondent's Criminal Convictions

5. On August 30, 2021, in the Superior Court of California, County of Orange, case number 20CM01767, respondent pled guilty to and was convicted of violating Vehicle Code sections 23152, subdivision (a) (driving under the influence (DUI) of alcohol), and 20002, subdivision (a) (hit-and-run property damage), both misdemeanors. The court suspended imposition of sentence, placed respondent on informal probation for three years, and ordered him to comply with terms and conditions of probation including: complete a three-month First Offender Level 1 Alcohol Program (First Offender program); complete Victim Impact Counseling; attend eight self-help or Alcoholics Anonymous (AA) meetings per month for three months; and pay fines and fees.

6. The circumstances underlying respondent's criminal convictions occurred on November 16, 2019. Complainant did not submit the arrest report of the incident resulting in respondent's criminal convictions. At hearing, and in the Interview Information Statement he submitted to the Department, respondent admitted driving under the influence of alcohol, misjudging his turn into a parking lot, and hitting a parking sign, the property he damaged. Respondent further admitted, and his signed plea form affirmed, that at the time of his arrest respondent's blood alcohol content (BAC) was .23 percent. (Exh. 3, p. A34.)

Respondent's Evidence

7. Respondent presented candid testimony concerning his criminal behavior and his efforts toward rehabilitation, including his commitment to his family and community, and provided clear and direct responses on cross-examination. Respondent's testimony and evidence are credited.

8. Respondent expressed remorse for his criminal behavior and acknowledged his behavior posed a risk of harm to others and damaged the property of another. Respondent does not dispute the hit-and-run conviction but asserted that he did not leave the scene of the accident. Nevertheless, respondent admitted he used poor judgment and that by driving with a BAC of .23 percent he posed a risk of harm to others.

9. Respondent submitted proof of compliance with his criminal probation. Respondent submitted a Proof of Completion form signed by an administrator of the First Offender program documenting respondent voluntarily entered the program on January 4, 2021, before his August 30, 2021 conviction date, and completed the program in April 2021. (Exh. B.) Respondent also submitted a Progress Discharge Report confirming he complied with all court ordered programs, including attendance at group sessions, individual counseling, alcohol education, and self-help sessions; a certificate of completion of the Victim Impact Program; and a receipt for payment to the court of a total amount of fines and fees owed, \$2,093.31.

10. Respondent was not able to formally address his criminal matter until August 2021, almost two years after his criminal behavior, due to multiple court continuances caused by the Covid-19 pandemic. However, respondent made efforts to resolve his criminal matter as soon as possible, even enrolling in and completing the

First Offender program before his pre-trial hearing date at which he was convicted of the Vehicle Code violations.

11. Respondent's sobriety date is January 11, 2021, but he does not believe he has an alcohol or substance abuse problem. Respondent has not had previous or subsequent criminal matters or criminal matters related to the use of alcohol. He believes his behavior on November 16, 2019, was anomalous and will not happen again.

12. Respondent is married and has three children, ages 7, 8, and 12. Respondent has been an active volunteer with the American Youth Soccer Organization (AYSO) and has continued to volunteer since his criminal behavior. Respondent submitted two documents from the AYSO, a coach profile and a list of his AYSO accreditations. Respondent has been actively coaching soccer since 2016 and has completed AYSO accreditation classes such as Concussion Awareness and A Summary of the Laws of the Game. Respondent also volunteers for his children's other sports teams, including his daughter's baseball team.

13. Respondent has worked for Strategic Financial Group, Inc., since August 2005. Respondent focuses his REB and MLO work on helping new home buyers and veterans purchase homes and supporting small businesses obtain business capital. Respondent is himself a veteran. He served for nine years in the United States Army, the first four years with the Gulf War Airborne on active duty, and the remaining five years with the Army Reserve. Respondent is prepared to pay the reasonable costs requested by the Department.

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Costs

14. Pursuant to Business and Professions Code section 10106, complainant requests costs of enforcement in the amount of \$537.60. (All further statutory references are to the Business and Professions Code.) Complainant introduced a Certified Statement of Costs (Declaration), signed by Ms. Bentler, Department Counsel, on April 26, 2023, which states she reviewed the Department's computerized case time management system to determine the work she performed and the amount of time she spent working on this case. Attached to the Declaration is a Good Faith Estimate of Reasonable Costs print out, which describes work performed by Ms. Bentler through May 17, 2023, and the cost for said work, which totaled \$537.60.

LEGAL CONCLUSIONS

Authority

1. Under the Real Estate Law (§ 10000 et seq.) the Real Estate Commissioner (Commissioner) "has full power to regulate and control the issuance and revocation . . . of all licenses to be issued . . ." (§ 10071.)

2. "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." (§ 10050.1.)

Burden and Standard of Proof

3. Complainant bears the burden of proof. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113.) The standard of proof for the Department to prevail on

the Accusation is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

Cause for Discipline

4. The Commissioner 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. (§§ 490, subd. (a), 10177, subd. (b).)

5. California Code of Regulations, title 10 (Regulations), section 2910, subdivision (a), provides that when considering whether a license should be disciplined on the basis of the conviction of a crime, the crime may be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of section 490 if it involves: any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another (subdivision (a)(8)); or two or more criminal 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 (subdivision (a)(11)).

6. Complainant established by clear and convincing evidence respondent's two criminal convictions were substantially related because they involved the consumption of alcohol when at least one of the convictions involved driving and the consumption of alcohol (Regulations, § 2910, subd. (a)(11)). However, complainant failed to establish by clear and convincing evidence respondent's DUI or hit-and-run property damage constituted an unlawful act with the intent or threat of doing substantial injury to the property of another (Regulations, § 2910, subd. (a)(8)).

Complainant failed to establish respondent intended or threatened to hit the parking sign or to cause property damage. (Factual Findings 5-6.)

7. Cause exists under sections 490, subdivision (a), and 10177, subdivision (b), to discipline respondent's license. Complainant established by clear and convincing evidence respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a real estate licensee. (Factual Findings 5-6; Legal Conclusion 6.)

Assessment of Rehabilitation

REHABILITATION CRITERIA

8. The Department must consider the criteria set forth at Regulations, section 2912, for the purpose of evaluating whether a licensee who has committed a crime is rehabilitated. The criteria include, but are not limited to, the following:

(a) The time that has elapsed since commission of the act(s) or offense(s):

(1) The passage of less than two years after the most recent criminal conviction or act of the licensee that is a cause of action in the Bureau's Accusation against the licensee is inadequate to demonstrate rehabilitation. [1] . . . [1]

(c) Expungement of the conviction(s) which culminated in the administrative proceeding to take disciplinary action. [1] . . . [1]

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(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances and/or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance and/or alcohol.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license. [¶] . . . [¶]

(i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

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(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question

9. Respondent bears the burden of establishing rehabilitation sufficient to warrant his continued licensure. (*In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309.) Rehabilitation is a state of mind, and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940), but mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991; see also *In re Schwartz* (1982) 31 Cal.3d 395, 400-401, citing *In re Conflenti* (1981) 29 Cal.3d 120, 124-125 [where petitioner's criminal acts occurred just two years prior to his discipline hearing, evidence of rehabilitation was insufficient to demonstrate rehabilitation].)

10. Three and one-half years have passed since respondent committed his criminal acts, and approximately 20 months have elapsed since respondent's criminal convictions. Though a complete two years have not passed since respondent's criminal convictions, much of the delay in the finalization of respondent's criminal convictions was due to court delays caused by the Covid-19 pandemic. Under these circumstances and considering the time that has passed since respondent's criminal behavior, sufficient time has elapsed for respondent to establish his rehabilitation.

11. Respondent has complied with the terms of his criminal probation, including completion of all programs and payment of all fines and fees. However, respondent is scheduled to remain on probation until August 2024, approximately 15

months from the hearing date. He has not obtained an early discharge from probation or had either of his convictions expunged.

12. Respondent has abstained from the consumption of alcohol since January 11, 2021, for more than two years. Respondent has not completed formal or vocational training but has continued his work as an REB. Respondent focuses his work on supporting local businesses and assisting first time homeowners and veterans to obtain home loans. Respondent has maintained his commitment to helping veterans since completing his service to the Army and Army Reserve.

13. Evidence was not presented regarding respondent's social and business relationships before his criminal behavior, or any effect such relationships had on respondent or his criminal behavior. However, respondent established before and since his criminal behavior that he has been committed to his family and is significantly and conscientiously involved in his community as a volunteer coach with the AYSO.

14. Respondent expressed remorse for his criminal behavior, both because of the risk his DUI posed to others and because of the property damage he caused, and acknowledged responsibility for his irresponsible behavior and poor judgment. Respondent has not had any subsequent criminal convictions or conduct that provides grounds to discipline a real estate licensee, which reflect an inability to conform to societal rules.

ANALYSIS

15. Respondent established he has made significant progress towards his rehabilitation. Respondent has complied with the terms of his criminal probation, and has maintained his commitment to his family, his employment, and his contributions

to society. However, respondent remains on criminal probation and good behavior while on probation is given little weight in assessing rehabilitation because persons under the direct supervision of correctional authorities are required to behave in an exemplary fashion. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) In consideration of the evidence presented, respondent established protection of the public will be served if his broker license is revoked provided, however, the Department issues him a restricted real estate broker license upon his application. (Factual Findings 5-13; Legal Conclusions 6,7, & 10-14.)

Award of Costs

16. The Commissioner may request the administrative law judge to direct a licensee found to have committed a violation of Part 1 of the Real Estate Law to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. (§ 10106, subd. (a).)

17. A certified copy of the actual costs signed by the Commissioner or the Commissioner's designated representative, is prima facie evidence of reasonable costs of investigation and enforcement of the case. The costs must include the amount of investigative and enforcement costs up to the date of the hearing. (§ 10106, subd. (a).) Complainant established the total enforcement costs incurred in this matter were \$537.60. (Factual Findings 14.)

18. The Board must exercise its discretion to reduce or eliminate cost awards in order to not deter licensees with meritorious claims or defenses from exercising their right to a hearing and must not assess full costs when to do so would unfairly penalize the respondent. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) Factors to be considered in determining whether the Board must

assess the full costs sought include: the licentiate's success in getting the charges dismissed or reduced; the licentiate's subjective good faith belief in the merits of his or her position; whether the licentiate raised a colorable challenge to the proposed discipline; the licentiate's financial ability to pay; and whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Ibid.*)

19. Respondent did not assert financial hardship and agreed to pay the requested costs. However, respondent was successful in getting the charges reduced; he presented a good faith belief in the merits of his position and colorable challenges to the proposed discipline. As such, the costs are reduced by 50 percent and respondent is ordered to pay complainant's reasonable costs of \$268.80.

ORDER

All licenses and licensing rights of respondent Michael Freeman, also known as Michael Conrad Freeman and Michael Hulbert, under the Real Estate Law (Bus. & Prof. Code, section 10000 et seq.) are revoked; provided, however, a restricted real estate broker license is issued to respondent pursuant to Business and Professions Code section 10156.5 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 will 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 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 will 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 must, 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 must afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondent must 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 187000, Sacramento, CA 95818-7000. The letter must 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 will constitute an independent violation of the terms of the restricted license and will be grounds for the suspension or revocation of that license.

7. It is an express condition of the restricted license that respondent must pay the Department's reasonable costs of enforcement of this case in the amount of \$268.80 within nine months of the issuance of the restricted license.

DATE: 05/25/2023


Chantal Sampogna (May 25, 2023 13:54 PDT)

CHANTAL M. SAMPOGNA
Administrative Law Judge
Office of Administrative Hearings