

1 Julie L. To, Counsel (SBN 219482)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013
5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6916
7 julie.to@dre.ca.gov
8 *Counsel for Complainant*

FILED

MAR 27 2023

DEPT. OF REAL ESTATE

By



10 BEFORE THE DEPARTMENT OF REAL ESTATE

11 STATE OF CALIFORNIA

12 * * *

13 In the Matter of the Application of)

No. H-42547 LA

14 SCOTT ALLEN WEST,)

STATEMENT OF ISSUES

15 Respondent.)

Real Estate Salesperson Application

17 The Complainant, Jason Parson, a Supervising Special Investigator of the State
18 of California, makes this Statement of Issues against SCOTT ALLEN WEST (Respondent) in
19 his official capacity and alleges as follows:

20 1.

21 All references to the "Code" are to the California Business and Professions Code
22 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

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27 DRE Statement of Issues on Application: Scott Allen West, H-42547 LA

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On or about June 7, 2021, Respondent submitted a Salesperson License Application (Form RE 435, Rev. 11/20) to the Department of Real Estate (DRE or Department) of the State of California for a real estate salesperson (RES) license and included details and documents for his convictions.

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May 30, 2018: Misdemeanor Conviction in Case No. CR2017-125352-001
(Arizona Revised Statutes (A.R.S.) Sections 13-3601, 13-704, 13-1203, 13-1204, 13-3105,
13-701, 13-702, and 13-801)

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On or about May 31, 2018, the Court found Respondent guilty of violation of A.R.S. Section 13-2904(A)(a) (disorderly conduct – fighting, domestic violence) and sentenced Respondent to supervised probation for 27 months, ordered Respondent to pay court fines and fees, and reserved restitution jurisdiction.

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1 5.

2 [Aggravation]

3 **October 19, 2015: Misdemeanor Conviction in Case No. 2015065773**

4 **(A.R.S. Section 28-701.02A2)**

5 On or about October 19, 2015, in the Superior Court of Arizona, County of
6 Maricopa, in Case No. 2015065773, The State of Arizona vs. Scott Allen West, Respondent
7 pled guilty to violation of A.R.S. Section 28-701.02A2 (exceeding speed limit by 20,45 MPH),
8 a misdemeanor.

9 6.

10 On or about October 19, 2015, the Court sentenced Respondent to payment of
11 construction fees and court fines and fees.

12 7.

13 **October 28, 2008: Misdemeanor Conviction in Case No. 2008073518**

14 **(A.R.S. Sections 13-3601, 13-704, 13-1203, 13-1204, 13-3105, 13-701, 13-702, and 13-801)**

15 On or about October 28, 2008, in the Superior Court of Arizona, County of
16 Maricopa, in Case No. 2008073518, The State of Arizona vs. Scott Allen West, Respondent
17 pled guilty to violation of A.R.S. Sections 13-2904 (disorderly conduct – domestic violence), a
18 misdemeanor.

19 8.

20 On or about October 28, 2008, the Court found Respondent guilty of violation of
21 A.R.S. Section 13-2904 (disorderly conduct – domestic violence) and sentenced Respondent to
22 unsupervised probation for 36 months, ordered Respondent to serve fourteen (14) days in jail
23 and to pay court fines and fees, and ordered Respondent to complete alcohol and substance
24 abuse education and treatment.

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1 9.

2 On or about April 13, 2009, upon a finding of Respondent's probation violation,
3 the Court re-imposed Respondent's original sentence and sentenced Respondent to 60 days in
4 jail, stayed.

5 10.

6 **January 23, 2007: Misdemeanor Conviction in Case No. 06-967704-1**

7 **(A.R.S. Section 28-3473B)**

8 On or about January 23, 2007, in the Superior Court of Arizona, County of
9 Maricopa, in Case No. 06-967704-1, The State of Arizona vs. Scott Allen West, Respondent
10 pled guilty to violation of A.R.S. Section 28-3473(C) (driving while license suspended
11 (exceeding speed limit by 20,45 MPH), a misdemeanor.

12 11.

13 [Aggravation]

14 **April 11, 2002: Misdemeanor Conviction in Case No. 2001-097110**

15 **(A.R.S. Sections 28-1381(A)(1)(K), 3001, 3304, 3305, 3315, 13-707, and 802)**

16 On or about January 23, 2007, in the Superior Court of Arizona, County of
17 Maricopa, in Case No. 2001-097110, The State of Arizona vs. Scott Allen West, Respondent
18 pled guilty to violation of A.R.S. Sections 28-1381(A)(1)(K), 3001, 3304, 3305, 3315, 13-707,
19 and 802 (driving under the influence of intoxicating liquor with one prior DUI conviction
20 within 60 months), a misdemeanor.

21 12.

22 On or about June 12, 2002, the Court found Respondent guilty of violation of
23 A.R.S. Sections 28-1381(A)(1)(K), 3001, 3304, 3305, 3315, 13-707, and 802 (driving under
24 the influence of intoxicating liquor with one prior DUI conviction within 60 months) and
25

1 sentenced Respondent to probation for three (3) years, 30 days in jail to begin on June 12, 2002,
2 60 days in jail to begin on June 10, 2003, and ordered Respondent to pay court fines and fees.

3 **LICENSE REVOCATION IN ARIZONA**

4 13.

5 On February 13, 2013, the Arizona Department of Real Estate (ADRE) issued a
6 RES license to Respondent, license number SA106355000.

7 14.

8 On January 15, 2019, the ADRE issued a Notice of Hearing and Complaint, No.
9 19F-002-REL-RES against Respondent that contained allegations regarding Respondent's
10 violation of the Arizona real estate laws based on his failure to timely disclose to the ADRE the
11 conviction described above in Paragraphs 3 and 4 and his failure to notify the ADRE of a
12 change in his personal information, which are a violation of Arizona Administrative Code
13 (A.C.C.) Section R4-28-303(D)(1), the violation of which is a violation of A.R.S. Section 32-
14 2153(A)(3).

15 15.

16 A hearing was held on February 21, 2019 before the Office of Administrative
17 Hearings (OAH) in Phoenix, Arizona wherein the Assistant Attorney General appeared on
18 behalf of the ADRE, and wherein Respondent did not appear.

19 16.

20 On March 13, 2019, the OAH issued its Administrative Law Judge Decision
21 (Decision) to recommend revocation of Respondent's RES license number SA106355000.

22 17.

23 On March 18, 2019, the ADRE Commissioner adopted the OAH Decision of
24 March 13, 2019 to revoke Respondent's RES license number SA106355000.

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1 (1) The applicant has been convicted of a crime within the preceding
2 seven years from the date of application that is substantially related to the
3 qualifications, functions, or duties of the business or profession for which the
4 application is made, regardless of whether the applicant was incarcerated for that
5 crime, or the applicant has been convicted of a crime that is substantially related
6 to the qualifications, functions, or duties of the business or profession for which
7 the application is made and for which the applicant is presently incarcerated or
8 for which the applicant was released from incarceration within the preceding
9 seven years from the date of application. However, the preceding seven-year
10 limitation shall not apply in either of the following situations:

11 (A) The applicant was convicted of a serious felony, as defined in
12 Section 1192.7 of the Penal Code or a crime for which
13 registration is required pursuant to paragraph (2) or (3) of
14 subdivision (d) of Section 290 of the Penal Code.

15 (B) The applicant was convicted of a financial crime currently
16 classified as a felony that is directly and adversely related to the
17 fiduciary qualifications, functions, or duties of the business or
18 profession for which the application is made, pursuant to
19 regulations adopted by the board, and for which the applicant is
20 seeking licensure under any of the following:

21 (i) Chapter 1 (commencing with Section 5000) of Division 3.

22 (ii) Chapter 6 (commencing with Section 6500) of Division 3.

23 (iii) Chapter 9 (commencing with Section 7000) of Division 3.

(iv) Chapter 11.3 (commencing with Section 7512) of
Division 3.

(v) Licensure as a funeral director or cemetery manager under
Chapter 12 (commencing with Section 7600) of Division 3.

(vi) Division 4 (commencing with Section 10000).

(2) The applicant has been subjected to formal discipline by a licensing board in or outside California within the preceding seven years from the date of application based on professional misconduct that would have been cause for discipline before the board for which the present application is made and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. However, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial of a license if the basis for that disciplinary action was a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code or a comparable dismissal or expungement.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis that the person has been convicted of a crime, or on the basis of acts underlying a conviction for a crime, if that person has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to Section 482.

(c) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the

1 conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or
2 1203.425 of the Penal Code, or a comparable dismissal or expungement. An applicant who has
3 a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42
4 of the Penal Code shall provide proof of the dismissal if it is not reflected on the report
5 furnished by the Department of Justice.

6 (d) Notwithstanding any other provision of this code, a board shall not deny a
7 license on the basis of an arrest that resulted in a disposition other than a conviction, including
8 an arrest that resulted in an infraction, citation, or a juvenile adjudication.

9 (e) A board may deny a license regulated by this code on the ground that the
10 applicant knowingly made a false statement of fact that is required to be revealed in the
11 application for the license. A board shall not deny a license based solely on an applicant's
12 failure to disclose a fact that would not have been cause for denial of the license had it been
13 disclosed.

14 (f) A board shall follow the following procedures in requesting or acting on an
15 applicant's criminal history information:

16 (1) A board issuing a license pursuant to Chapter 3 (commencing with
17 Section 5500), Chapter 3.5 (commencing with Section 5615), Chapter 10
18 (commencing with Section 7301), Chapter 20 (commencing with Section 9800),
19 or Chapter 20.3 (commencing with Section 9880), of Division 3, or Chapter 3
20 (commencing with Section 19000) or Chapter 3.1 (commencing with Section
21 19225) of Division 8 may require applicants for licensure under those chapters
22 to disclose criminal conviction history on an application for licensure.

23 (2) Except as provided in paragraph (1), a board shall not require an
24 applicant for licensure to disclose any information or documentation regarding
25

1 the applicant's criminal history. However, a board may request mitigating
2 information from an applicant regarding the applicant's criminal history for
3 purposes of determining substantial relation or demonstrating evidence of
4 rehabilitation, provided that the applicant is informed that disclosure is voluntary
5 and that the applicant's decision not to disclose any information shall not be a
6 factor in a board's decision to grant or deny an application for licensure.

7 (3) If a board decides to deny an application for licensure based solely or
8 in part on the applicant's conviction history, the board shall notify the applicant
9 in writing of all of the following:

10 (A) The denial or disqualification of licensure.

11 (B) Any existing procedure the board has for the applicant to
12 challenge the decision or to request reconsideration.

13 (C) That the applicant has the right to appeal the board's decision.

14 (D) The processes for the applicant to request a copy of the
15 applicant's complete conviction history and question the accuracy
16 or completeness of the record pursuant to Sections 11122 to
17 11127 of the Penal Code.

18 (g) (1) For a minimum of three years, each board under this code shall retain
19 application forms and other documents submitted by an applicant, any notice provided to an
20 applicant, all other communications received from and provided to an applicant, and criminal
21 history reports of an applicant.

22 (2) Each board under this code shall retain the number of applications
23 received for each license and the number of applications requiring inquiries regarding criminal
24 history. In addition, each licensing authority shall retain all of the following information:

1 (A) The number of applicants with a criminal record who
2 received notice of denial or disqualification of licensure.

3 (B) The number of applicants with a criminal record who
4 provided evidence of mitigation or rehabilitation.

5 (C) The number of applicants with a criminal record who
6 appealed any denial or disqualification of licensure.

7 (D) The final disposition and demographic information,
8 consisting of voluntarily provided information on race or gender,
9 of any applicant described in subparagraph (A), (B), or (C).

10 (3) (A) Each board under this code shall annually make available to the
11 public through the board's internet website and through a report submitted to the appropriate
12 policy committees of the Legislature identified information collected pursuant to this
13 subdivision. Each board shall ensure confidentiality of the individual applicants.

14 (B) A report pursuant to subparagraph (A) shall be submitted in
15 compliance with Section 9795 of the Government Code.

16 (h) "Conviction" as used in this section shall have the same meaning as defined
17 in Section 7.5.

18 (i) This section does not in any way modify or otherwise affect the existing
19 authority of the following entities in regard to licensure:

20 (1) The State Athletic Commission.

21 (2) The Bureau for Private Postsecondary Education.

22 (3) The California Horse Racing Board.

23 (j) This section shall become operative on July 1, 2020."

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Further Grounds for Disciplinary Action

(Code Section 10177, selected portions)

Pursuant to Code Section 10177 *Further Grounds for Disciplinary Action*:

“The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation’s stock has done any of the following:

(a) Procured, or attempted to procure, a real estate license or license renewal, for themselves or a salesperson, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

(b) (1) Entered a plea of guilty or no contest to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw that licensee’s plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

1 (2) Notwithstanding paragraph (1), and with the recognition that
2 sentencing may not occur for months or years following the entry
3 of a guilty plea, the commissioner may suspend the license of a
4 real estate licensee upon the entry by the licensee of a guilty plea
5 to any of the crimes described in paragraph (1). If the guilty plea
6 is withdrawn, the suspension shall be rescinded and the license
7 reinstated to its status prior to the suspension. The department
8 shall notify a person whose license is subject to suspension
9 pursuant to this paragraph of that person's right to have the issue
10 of the suspension heard in accordance with Section 10100.

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13 (f) Acted or conducted themselves in a manner that would have warranted
14 the denial of their application for a real estate license, either had a license
15 denied or had a license issued by another agency of this state, another
16 state, or the federal government revoked, surrendered, or suspended, or
17 received an order of debarment, for acts that, if done by a real estate
18 licensee, would be grounds for the suspension or revocation of a
19 California real estate license, if the action of denial, revocation,
20 surrender, suspension, or debarment by the other agency or entity was
21 taken only after giving the licensee or applicant fair notice of the charges,
22 an opportunity for a hearing, and other due process protections
23 comparable to the Administrative Procedure Act (Chapter 3.5
24 (commencing with Section 11340), Chapter 4 (commencing with Section
25 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of

1 Division 3 of Title 2 of the Government Code), and only upon an express
2 finding of a violation of law by the agency or entity...”

3 21.

4 Criteria of Substantial Relationship

5 (Regulation 2910)

6 Pursuant to Regulation 2910 *Criteria of Substantial Relationship*:

7 “(a) When considering whether a license should be denied, suspended or
8 revoked on the basis of the conviction of a crime, or on the basis of an act described in Section
9 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related
10 to the qualifications, functions or duties of a licensee of the Bureau within the meaning of
11 Sections 480 and 490 of the Code if it involves:

12 (1) The fraudulent taking, obtaining, appropriating or retaining of funds
13 or property belonging to another person.

14 (2) Counterfeiting, forging or altering of an instrument or the uttering of
15 a false statement.

16 (3) Willfully attempting to derive a personal financial benefit through the
17 nonpayment or underpayment of taxes, assessments or levies duly
18 imposed upon the licensee or applicant by federal, state, or local
19 government.

20 (4) The employment of bribery, fraud, deceit, falsehood or
21 misrepresentation to achieve an end.

22 (5) Sexually related conduct affecting a person who is an observer or
23 non-consenting participant in the conduct or convictions which require
24 registration pursuant to the provisions of Section 290 of the Penal Code.

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1 (6) Willfully violating or failing to comply with a provision of Division 4
2 of the Business and Professions Code of the State of California.

3 (7) Willfully violating or failing to comply with a statutory requirement
4 that a license, permit or other entitlement be obtained from a duly
5 constituted public authority before engaging in a business or course of
6 conduct.

7 (8) Doing of any unlawful act with the intent of conferring a financial or
8 economic benefit upon the perpetrator or with the intent or threat of
9 doing substantial injury to the person or property of another.

10 (9) Contempt of court or willful failure to comply with a court order.

11 (10) Conduct which demonstrates a pattern of repeated and willful
12 disregard of law.

13 (11) Two or more convictions involving the consumption or use of
14 alcohol or drugs when at least one of the convictions involve driving and
15 the use or consumption of alcohol or drugs.

16 (b) The conviction of a crime constituting an attempt, solicitation or conspiracy
17 to commit any of the above enumerated acts or omissions is also deemed to be substantially
18 related to the qualifications, functions or duties of a licensee of the department.

19 (c) If the crime or act is substantially related to the qualifications, functions or
20 duties of a licensee of the department, the context in which the crime or acts were committed
21 shall go only to the question of the weight to be accorded to the crime or acts in considering the
22 action to be taken with respect to the applicant or licensee.”

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22.

The crimes of which Respondent was convicted, as described above in Paragraphs 3, 4, 7, 8, 9 and 10, by their facts and circumstances, bear a substantial relationship to the qualifications, functions or duties of a real estate licensee pursuant to Section 2910, Title 10, Chapter 6, California Code of Regulations.

First Cause for Denial: Substantially Related Crimes

The crimes of which Respondent was convicted, as described above in Paragraphs 3, 4, 7, 8, 9 and 10, constitute cause for denial of Respondent's application for a real estate salesperson license pursuant to **California Business and Professions Code Sections 475(a)(2), 480(a)(1), and 10177(b)**.

Second Cause for Denial: License Discipline By Another Governmental Agency

The revocation of Respondent's RES license by the Arizona Department of Real Estate, as described above in Paragraphs 13 through 17, constitutes cause for denial of Respondent's application for a real estate salesperson license pursuant to **Business and Professions Code Section 10177(f)**.

These proceedings are brought under the provisions of Section 10100, Division 4 of the Business and Professions Code of the State of California and Sections 11500 through 11528 of the California Government Code.

///

1 WHEREFORE, the Complainant prays that the above-entitled matter be set for
2 hearing and, upon proof of the charges contained herein, that the Commissioner refuse to
3 authorize the issuance of, and deny the issuance of, a real estate salesperson license to
4 Respondent, SCOTT ALLEN WEST, and for such other and further relief as may be proper
5 under other applicable provisions of law.

6 Dated at Los Angeles, California: March 27, 2023.

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Jason Parson
Supervising Special Investigator

cc: Scott Allen West
The Saywitz Company
J. Parson
Sacto.