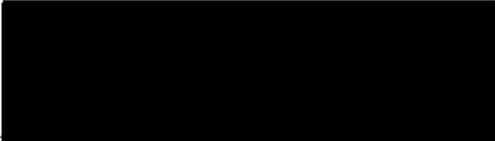


The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on SEP 26 2025.

IT IS SO ORDERED 8/27/2025

Chika Sunquist
REAL ESTATE COMMISSIONER


By: Marcus L. McCarther
Chief Deputy Real Estate Commissioner

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

In the Matter of the Accusation Against:

DAVID HAIM COHEN,

License No. 01887173

Respondent.

Agency Case No. H-42991 LA

OAH No. 2024120904

PROPOSED DECISION

Sandy Yu, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 7, 2025.

Kevin H. Sun, Counsel, represented complainant Jason Parson, Supervising Special Investigator, Department of Real Estate (Department), State of California.

Frank Buda, Attorney at Law, represented respondent David Haim Cohen, who was present.

The ALJ received testimony and documentary evidence.

The record was held open for respondent to submit a copy of his community labor referral form by May 9, 2025; for complainant to submit written objections to respondent's additional document by May 14, 2025; and for the parties to submit closing briefs by May 21, 2025.

On May 8, 2025, respondent filed his community labor referral form, marked for identification as Exhibit U. On May 14, 2025, complainant objected to Exhibit U because it contained hearsay and because it was not produced during discovery. Complainant's objections were overruled. Exhibit U was admitted into evidence as administrative hearsay, pursuant to Government Code section 11513, subdivision (d).

On May 21, 2025, complainant filed a nine-page closing brief, marked for identification as Exhibit 13, and respondent filed a 16-page closing brief, marked for identification as Exhibit V.

The record closed and the matter was submitted for decision on May 21, 2025.

During a review of the evidence, the ALJ redacted dates of birth and driver's license numbers from Exhibits 3, 4, J, M, N, and O for confidentiality purposes.

SUMMARY

Complainant seeks to discipline respondent's real estate salesperson's license based upon his 2023 criminal conviction for driving under the influence (DUI) causing injury. Complainant proved cause to discipline respondent's license. Respondent presented sufficient evidence of rehabilitation to warrant issuance of a restricted salesperson's license for a period of three years. The restricted license will adequately protect public safety and the integrity of the real estate profession.

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 12, 2018, the Department issued respondent real estate salesperson's license number 01887173. The license is scheduled to expire on April 11, 2026.
2. On October 30, 2024, complainant, in his official capacity, filed the Accusation in this matter.
3. On November 6, 2024, respondent timely filed a Notice of Defense, requesting a hearing.
4. All jurisdictional requirements have been satisfied.

June 16, 2023 Criminal Conviction

5. On June 16, 2023, in the Superior Court of California, County of Los Angeles, case number PA098518, respondent was convicted upon his plea of guilty of violating Vehicle Code section 23153, subdivision (a), DUI causing injury, a felony. Respondent further admitted as true a special allegation pursuant to Penal Code section 12022.7, subdivision (a), that he personally inflicted great bodily injury on a person. Pursuant to respondent's plea agreement with the Los Angeles County District Attorney's Office, the court dismissed one felony count of murder, one felony count of gross vehicular manslaughter while intoxicated, and one felony count of child endangerment.
6. The court suspended the imposition of sentence and placed respondent on formal probation for five years under certain terms and conditions, including

paying fines and fees; completing one year of home confinement including electronic and alcohol monitoring, an 18-month second-time DUI offender alcohol education program, and the hospital and morgue program; and performing 40 days of community labor.

7. The facts and circumstances underlying respondent's criminal conviction occurred on June 9, 2022, when respondent drove his vehicle while under the influence of alcohol and with his two children, wife, and stepdaughter in the vehicle. While on the freeway, respondent drove past two Los Angeles Police Department (LAPD) officers, who were in the High-Occupancy Vehicle lane. Soon after, respondent fell asleep at the wheel, causing the vehicle to veer off the freeway and to flip over multiple times. The vehicle then caught on fire. After the collision, respondent took his four-month-old child out of the vehicle. The two LAPD officers assisted in removing respondent's four-year-old child out of her car seat and his nine-year-old stepdaughter out of the vehicle. Due to the intensity of the fire, the LAPD officers were unable to remove respondent's wife from the burning vehicle, and respondent's wife died at the scene.

8. California Highway Patrol (CHP) officers also responded to the vehicle collision to conduct an investigation. CHP officers observed respondent smelled of alcohol and had bloodshot, watery eyes. Respondent admitted drinking a glass of wine at his niece's graduation dinner that evening. Based on respondent's admission, their observations of respondent, and the collision resulting in the death of respondent's wife, CHP officers arrested respondent for murder, gross vehicular manslaughter and DUI causing injury. As measured by a breath test, respondent's blood alcohol content was 0.106. (Exh. 4, p. A123.)

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Respondent's Failure to Report his June 16, 2023 Criminal Conviction

9. Respondent did not notify the Department of a change in his background information within 30 days of the filing of his felony criminal complaint on June 14, 2022, or within 30 days of his 2023 criminal conviction. Based on a search of Department records, Heather DeYoung, Staff Services Manager I, concluded respondent did not submit within 30 days a record or written notice of either event. (Exh. 6, p. A138.)

10. On October 16, 2023, respondent submitted an Interview Information Statement and two Conviction Detail Reports, notifying the Department of his June 16, 2023 criminal conviction and his September 16, 2010 criminal conviction, discussed below. In his Conviction Detail Report regarding the 2023 criminal conviction, respondent admitted he did not report the criminal conviction because he was overwhelmed with the loss of his wife and the possibility of losing custody of his children based upon his DUI conviction.

Factor in Aggravation – Respondent's 2010 Criminal Conviction

11. On September 16, 2010, in the Superior Court of California, County of Los Angeles, respondent was convicted of violating Vehicle Code section 23152, subdivision (a), DUI, a misdemeanor. Although complainant did not submit certified court records related to respondent's 2010 criminal conviction, respondent admitted he suffered the above criminal conviction, which is alleged in the Accusation as an aggravating factor for discipline consideration.

12. According to respondent's testimony, the facts and circumstances underlying this criminal conviction occurred in 2009, when respondent was driving

while under the influence of marijuana. Neither party submitted police reports regarding this incident.

Rehabilitation and Mitigation Evidence

13. Respondent is 34 years old. Since becoming a licensed real estate salesperson in April 2018, he has received several awards as a real estate licensee for his accomplishments, including a 2019 award recognizing him internationally as a Keller Williams "Top Agent" in commercial real estate. (Exh. B, p. B10.) Respondent currently works at Real Estate Brokerage Technologies, where he specializes in commercial real estate transactions and mentors many other real estate agents. He has no prior license discipline.

14. Respondent expressed genuine remorse for his 2022 criminal misconduct and testified credibly about his subsequent sobriety. He has not consumed alcohol since June 9, 2022, the date of the DUI offense. After his wife's death, he has no interest in drinking alcohol. He has no subsequent arrests or criminal convictions.

15. After his 2022 DUI offense, respondent began attending services at a local synagogue, the Shul. He attends prayers at the Shul three times daily and observes the Sabbath weekly. Respondent also leads classes at the Shul, where he speaks to over 20 young teens about his story, including his mistakes and the steps he has taken to overcome his mistakes. In a letter dated April 17, 2025, Rabbi Yossi Malka stated respondent "is a stand up individual, has extreme remorse for his actions, and it is extremely clear to see that not only does he pose no threat to anyone, but instead is a role model." (Exh. P, B62.)

16. Respondent has complied with most of the terms and conditions of his criminal probation. He completed the 18-month alcohol education program, one-year

of home confinement with electronic monitoring and alcohol monitoring, and the hospital and morgue program. Respondent testified that his probation officer excused him from the morgue portion of the hospital and morgue program because of his religious beliefs. Respondent paid all fines and fees, totaling approximately \$2,053. However, respondent has not yet completed 40 days of community labor. Respondent stated his probation officer wanted him to complete the 18-month alcohol education program before completing his community labor. On April 7, 2025, he received a referral from his probation officer to begin completing his community labor hours.

17. Following his 2022 DUI offense, respondent's two children were removed from his care, and the dependency court opened two cases regarding the children. Respondent complied with the dependency court's requirements to complete alcohol testing through Soberlink, a breathalyzer system; attend Alcoholics Anonymous meetings; and participate in counseling. On June 6, 2023, respondent regained custody of his two children. Respondent's current priority is raising his children as a single parent.

18. Respondent submitted a Soberlink report showing he had 1,052 compliant tests with no positive results from July 2022 through April 2025. Respondent had 15 missed tests, which were consistent with his Sabbath observance from Friday through Saturday.

19. From July 30, 2022, through April 17, 2023, respondent participated in weekly therapy sessions with a licensed social worker, Regina Perlmutter. In a letter dated April 17, 2025, Ms. Perlmutter stated "respondent was cooperative, motivated and followed through on many of [her] recommendations at the time. He appears to be doing well at the present time and is fortunately receiving much support from family and community." (Exh. K, B41.) Respondent also completed an 18-class

parenting course at the Richstone Family Center. In a letter dated January 24, 2023, Robert Lopez, a Richstone Family Center employee, stated respondent was "punctual, engaged, reflective, and participative during the course." (Exh. L, B42.)

20. Marty Azoulay, respondent's uncle who has been a licensed real estate salesperson for over 30 years, testified and vouched for respondent's character. Mr. Azoulay employed respondent as his assistant for more than four years before respondent became a licensed real estate salesperson. He is aware of respondent's criminal convictions. Mr. Azoulay sees respondent and his family every weekend and holiday and never witnessed respondent intoxicated. Mr. Azoulay believes respondent committed to sobriety after his 2022 DUI offense.

21. Michele Weill, respondent's aunt who is an account manager for a title insurance company, also testified and vouched for respondent's character. She is aware of respondent's criminal convictions. In a letter dated April 8, 2025, Ms. Weill described respondent as an "upstanding individual, high respected in the [r]eal estate industry, and in his faith community." (Exh. A, B3.)

22. Beginning in July 2022, Nihal Nina Makhyoun, Ph.D., MFT, provided counseling to respondent for over nine months. In a letter dated May 4, 2023, and her testimony, Dr. Makhyoun opined respondent did not meet the diagnostic criteria of Alcohol Use Disorder. Dr. Makhyoun stated respondent has many protective factors, including "strong familial relationships and support, attachment to children, connection with pet, good problem-solving skills, spiritual/religious participation, exercise and sense of importance of health, secure employment, group participation and support, which increases the probability of a favorable prognosis." (Exh. J, B.40.) Dr. Makhyoun concluded respondent's recidivism potential for any alcohol-related offense is minimal.

23. Respondent submitted five additional character letters from his mother, parents-in-law, supervisor, and family friends. Each author vouched for respondent's character and was aware of respondent's criminal convictions.

Investigation and Enforcement Costs

24. The Department seeks reimbursement of \$1,333.20 in enforcement costs and \$1,080.90 in investigation costs, totaling \$2,414.10. The enforcement costs are based on 10.10 hours incurred by an attorney. Of the investigation costs, 12.70 hours totaling \$1,003.30 were incurred by a special investigator, and 0.80 hours totaling \$77.60 were incurred by supervising special investigators. The enforcement and investigations costs are reasonable considering the nature and complexity of the case.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The standard of proof for disciplinary actions against real estate licensees is clear and convincing evidence to a reasonable certainty. (*Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204.) Clear and convincing evidence requires proof that is so clear as to leave no substantial doubt and that is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

Applicable Law

2. The Department may suspend or revoke a real estate license if the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code § 10177, subd. (b).)

3. A crime is considered substantially related to the qualifications, functions, or duties of a Department licensee if the crime involves 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 (CCR), § 2910, subd. (a)(8).)

4. A licensee must report to the Department within 30 days, in writing, "the bringing of a criminal complaint, information, or indictment charging a felony against the licensee" and "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)(A) & (a)(1)(B).) Failure to make a report shall constitute a cause for discipline. (Bus. & Prof. Code, § 10186.2, subd. (b).)

Causes for Discipline

CONVICTION OF A SUBSTANTIALLY RELATED CRIME

5. Complainant proved by clear and convincing evidence respondent's 2023 DUI criminal conviction was for a crime substantially related to qualifications, functions, and duties of a real estate licensee. DUI is an unlawful activity presenting a threat of doing substantial injury to the person or property of another. Respondent's offense resulted in a collision that caused his wife's death. Cause therefore exists to discipline respondent's real estate license pursuant to Business and Professions Code section 10177, subdivision (b), in conjunction with CCR section 2910, subdivision (a)(8).

FAILURE TO TIMELY REPORT

6. Complainant proved by clear and convincing evidence respondent failed to timely report his June 14, 2022 felony complaint and his June 16, 2023 criminal conviction. Respondent admitted he failed to notify the Department within 30 days of

his June 14, 2022 felony complaint and June 16, 2023 criminal conviction. Cause therefore exists to discipline respondent's real estate license pursuant to Business and Professions Code section 10186.2, subdivision (b).

Disposition

7. Determining the appropriate discipline of respondent's license requires consideration of respondent's rehabilitation. The Department's regulations set forth rehabilitation criteria including the following: (1) the time that has elapsed since commission of the offense; (2) restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee; (3) expungement of the conviction which culminated in the administrative proceeding to take disciplinary action; (4) successful completion or early discharge from probation or parole; (5) payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license; (6) correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted; (7) 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 in question; (8) stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction; (9) significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; and (10) change in attitude from that which existed at the time of the commission of the criminal acts in question. (CCR, § 2912, subds. (a)–(m).)

8. Considering the Department's rehabilitation criteria, respondent did not prove he is fully rehabilitated, but he presented significant evidence of rehabilitation. Less than two years have elapsed since respondent's 2023 criminal conviction. He

remains on formal criminal probation until June 2028. However, he has not consumed alcohol since his June 9, 2022 DUI offense, as corroborated by over 1,000 negative alcohol tests since 2022. He paid all the fines and fees associated with his 2023 criminal conviction. Respondent is actively involved with his synagogue, the Shul. He speaks to young teens at the Shul about his experience and mentors many real estate agents at work. After his 2022 DUI offense, respondent became a single father and demonstrated his current priority is raising his children. He complied with all dependency court requirements to regain custody of his children. He has a stable family life with his two children, his mother, his parents-in-law, Mr. Azoulay, and Ms. Weill. He has demonstrated a change in attitude in that he not only complied with his criminal probation terms, but he became sober after his 2022 DUI offense and speaks to others about the dangers of DUI. Respondent expressed genuine remorse for his DUI offenses. Given respondent's 2010 DUI conviction occurred more than 14 years ago and respondent has been sober since 2022, it carries little weight as an aggravating factor for discipline in this matter. He has no subsequent arrests or criminal convictions. Based on the factors above, respondent is unlikely to reoffend.

9. The task in disciplinary cases is preventative, protective, and remedial, not punitive. (*In re Kelley* (1990) 52 Cal.3d 487.) Respondent's 2022 DUI offense was serious, resulting in a collision that caused his wife's death. However, given respondent's significant evidence of subsequent rehabilitation and respondent has no prior license discipline, he does not pose a risk to public safety if he is issued a restricted license. Therefore, it is appropriate to place restrictions on respondent's license for a three-year probationary period, based on the seriousness of his 2022 DUI offense and length of his criminal probation. These restrictions will adequately protect public safety and the integrity of the real estate profession.

Cost Recovery

10. Complainant is entitled to recover the reasonable costs of prosecution and enforcement of this matter. (Bus. & Prof. Code, § 10106.) In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 (*Zuckerman*), the Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought. These factors include: 1) the licentiate's success in getting the charges dismissed or the severity of the discipline imposed reduced; 2) the licentiate's subjective good faith belief in the merits of his; 3) whether the licentiate raised a colorable challenge to the proposed discipline; 4) the licentiate's financial ability to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Zuckerman, supra*, 29 Cal.4th at p. 45.)

11. Complainant requests reimbursement of \$2,414.10 in enforcement and investigation costs. The costs should be reduced under the *Zuckerman* factors. Respondent raised a colorable challenge to the proposed discipline of license revocation and successfully reduced the severity of the discipline. It is therefore appropriate to reduce the costs by half to \$1,207.05.

ORDER

All licenses and licensing rights of respondent David Haim Cohen under 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 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 (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 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 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 three 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 prosecutive 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; or

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(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 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 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.

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7. Respondent shall pay the Department the sum of \$1,207.05, at such time and in such manner as the Department, in its discretion, may direct.

DATE: **06/13/2025**



SANDY YU
Administrative Law Judge
Office of Administrative Hearings