

FILED

NOV - 6 2018

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPT. OF REAL ESTATE

By 

In the Matter of the Accusation of:)	DRE No. H-40882 LA
)	
ALEJANDRO T. PEREZ-MUNOZ)	OAH No. 2018060024
)	
)	
<u>Respondent</u>)	

DECISION

The Proposed Decision dated September 20, 2018, 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.

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 November 26, 2018.

IT IS SO ORDERED October 25, 2018

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the First Amended
Accusation of:

ALEJANDRO T. PEREZ-MUNOZ.

Respondent.

Case No. H-40882 LA

OAH No. 2018060024

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles on August 21, 2018.

Steve Chu, Staff Counsel, represented Complainant Veronica Kilpatrick, Supervising Special Investigator of the State of California.

Attorney John Bishop represented Respondent Alejandro T. Perez-Munoz.

Oral and documentary evidence was received at the hearing, and the matter was submitted on August 21, 2018.

Complainant brings this First Amended Accusation to revoke Respondent's real estate salesperson license. Respondent has multiple convictions for driving under the influence of alcohol, but he has shown considerable rehabilitation and established a history of sobriety. Therefore his license is revoked, but a restricted license is granted.

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant issued the First Amended Accusation solely in her official capacity.
2. On October 19, 2004, The Department of Real Estate (Department) issued real estate salesperson license number 01451501. (The Department was called the Bureau of Real Estate between July 1, 2013, and July 1, 2018.) The license was last renewed October 19, 2016, and bears an expiration date of October 18, 2020. Complainant brought

an Accusation to discipline the license on December 8, 2017, and brought this First Amended Accusation on February 6, 2018. Respondent timely requested a hearing.

Criminal Convictions

3. On November 4, 2015, in the Superior Court of California, Riverside County, case number INF1500849, Respondent was convicted on his guilty plea of driving with a blood alcohol content of .08 percent or greater (Veh. Code, § 23152, subd. (b)) after being convicted of three other drunk-driving offenses within the previous 10 years (Veh. Code, § 23550),¹ a felony, with an enhancement for having a blood alcohol content of .15 percent or greater. (Veh. Code, § 23578.) He registered a .16 percent alcohol level in two breath tests after running a red light and forcing a police car to brake to avoid being hit. Respondent was sentenced to 180 days of electronically monitored house arrest, assessed fines and fees of \$3,125, and placed on three years of formal probation, conditions of which included completing an 18-month multiple-offender alcohol program.

4. On June 24, 2016, in the Superior Court of California, Los Angeles County, case number SA091721, Respondent was convicted on his guilty plea of driving under the influence of alcohol (Veh. Code, § 23152, subd (a)) after being convicted of three other drunk-driving offenses within the previous 10 years (Veh. Code, § 23550), a felony. He was arrested November 2, 2015 (two days before his 2015 drunk-driving conviction), after he was seen in his car in a West Los Angeles shopping center parking lot, slumped over the steering wheel with the engine running. He woke up briefly, backed the car into a parking space, and got out. Witnesses called the paramedics, who determined that there was no medical emergency and called the police. Respondent was unable to stand on his own and refused to take a breath test. He was sentenced to 61 days in jail with credit for 61 days, assessed fines and fees in an amount not discernible from the record, and placed on five years of formal probation, conditions of which included attending a 30-month alcohol education program. The court found that Respondent presented a traffic safety or public safety risk, and revoked his driver license for four years.

Mitigation, Aggravation and Rehabilitation

5. Respondent had three misdemeanor convictions for driving under the influence of alcohol between 2007 and 2009 in Riverside County Superior Court:

a. He was convicted of violating Vehicle Code section 23152, subdivision (a), on June 6, 2007, in case numbers INM171311 and INM175508.

¹ The First Amended Accusation does not mention Vehicle Code section 23550, presumably because the Felony Complaint (ex. 4) does not specifically allege a violation of that section number. But both counts of the Felony Complaint allege that Respondent had convictions for “three and [sic] more separate” violations of sections 23152, 23153 or 23103, which under section 23550 made the 2015 offense a felony.

b. He was convicted of violating Vehicle Code section 23152, subdivision (b), on October 14, 2009, in case number INM197164. He was sentenced to 122 days in jail with credit for two days, to be served on consecutive weekends, assessed fines and fees of \$2,807.97, and placed on five years of informal probation, conditions of which included completing an 18-month multiple-offender alcohol and drug program and a six-month Secure Continuous Remote Alcohol Monitor program.

6. Respondent entered Intervention 911, a residential rehabilitation facility in Palm Springs, on December 3, 2015, a month after his last drunk-driving arrest and penultimate drunk-driving conviction. He transitioned to an outpatient facility in January 2016.

7. Respondent is 42 years old and lives in one unit of a triplex he owns in Cathedral City. He earned a bachelor's degree in physiological science at UCLA in 1997. Before getting a real estate license, he worked as a massage therapist, personal trainer and "Chippendale" type dancer. He continued to dance professionally until spring of 2017, even though it was a precarious sidelight that put him around alcohol.

8. Respondent was current with all requirements of the court-ordered 30-month alcohol program as of July 25, 2018, and was expected to complete the program in September 2018. The program requires twice-weekly group counseling sessions, weekly one-on-one counseling sessions, and Alcoholics Anonymous meetings. Respondent attends more AA meetings than the court required. Respondent's AA sponsor wrote in a letter (ex. I) that Respondent had a "high level of awareness" about the harm his alcohol abuse caused.

9. Respondent has paid all the fines the courts imposed. His probation officer wrote in an August 10, 2018 letter (ex. C) that Respondent is being supervised "on a minimum level caseload." He remains on probation until 2021.

10. Respondent testified that it took him a long time to realize he was an alcoholic, despite accumulating three convictions for drunk driving in two years, which he ascribed at the time to "bad luck." He attended the alcohol programs the court required between 2007 and 2010 and "got the tools" to stay sober, but did not believe he needed them. He was relatively alcohol-free between 2009 and 2015, at which point he went through a divorce and started drinking again. He no longer craves alcohol, and in times of stress, works out at his gym. He no longer associates with his old drinking friends. Five witnesses stated in letters or testimony that they have seen him frequently in the last two years and have not seen him consume alcohol.

11. Since June 2015, Respondent has worked under the license of HomeSmart Professionals in Palm Desert. He closes eight to 10 transactions in a typical month, and had 15 of them pending at the time of the hearing. He sees his job as educating and advising clients, as well as getting them the most money for their property. He characterizes many of his clients as "low-income." He advances his own money to repair or dress a property, hiring photographers, cleaners, landscapers and contractors or handymen. Respondent and three

witnesses offered testimony or letters to the effect that Respondent will reduce his commission to get a transaction to close.

12. Respondent testified that he sponsors "interns," who are sometimes promising persons with drug or alcohol problems. One of them, now a buyers' agent at HomeSmart Professionals, stated in a letter that Respondent allowed him to stay rent-free in Respondent's home while he got back on his feet.

13. Fredy Rodriguez, a licensed real estate salesperson who works in the Coachella Valley with Fathom Realty, testified at hearing that he has worked on the other side of transactions with Respondent two or three times a year in recent years. He described Respondent as honest and "one of the best" realtors, working in the interest of his client rather than to maximize his own return. Rodriguez believed that Respondent has "six or seven" convictions for driving under the influence.

14. Gabbi Sandoval, an escrow officer for Orange Coast Title in Palm Springs, testified that she often works with Respondent, and knows him to be a hard worker who will often see that credits to clients come out of his commission. She is aware of his five drunk-driving convictions. She sees him socially every month, and has not seen him consume alcohol in the last two years. He has talked to her about his desire to stay sober.

15. Jose Elizando, a mortgage banker with Stearns Lending since 2013, testified that he is Respondent's cousin. He has worked in transactions with Respondent since 2012, and has two deals in process with Respondent now. He would not work with Respondent—family or no—if Respondent were not honest. Elizando testified that no one works harder than Respondent. Respondent has patience with clients who are not ready to buy, sometimes referring them to credit specialists. Elizando knows about Respondent's convictions and knows he is on probation. He testified that Respondent did not admit he was an alcoholic until the 2016 arrest. When Respondent was drinking, he might abstain for stretches of time and then start drinking again and "go down the rabbit hole."

16. Respondent volunteers with the Pegasus Riding Academy, which offers therapeutic horseback riding for disabled children. Witnesses stated that Respondent frequently gives food to homeless persons he encounters and joins in activities to pick up trash in homeless encampments.

17. Witnesses all described Respondent as skilled and conscientious, even during the years he was abusing alcohol.

Costs

18. Complainant introduced evidence that the Department incurred \$1,257.60 in investigation costs, consisting of 18.80 hours of Special Investigator Leah Maniss's time at \$62 per hour and 1.15 hours of Supervising Special Investigator Jason Parson's time at \$80 per hour. Complainant also introduced evidence that the Bureau incurred enforcement costs of \$979, consisting of 11 hours of attorney Steve Chu's time at \$89 per hour. All these costs,

totaling \$2,366.60, are reasonable. Respondent's testimony about the number of transactions he closes makes it clear that he can afford to pay the costs.

LEGAL CONCLUSIONS

1. There is cause to revoke or suspend Respondent's salesperson license under Business and Professions Code sections 490 and 10177, subdivision (b),² as paragraph 9 of the First Amended Accusation alleges. Section 490, subdivision (a), allows a board or bureau to revoke a license if the licensee "has been convicted of a crime [that] is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued." Section 10177, subdivision (b), which applies specifically to the Bureau, similarly allows it to revoke a license if the licensee has been convicted of "a crime substantially related to the qualifications, functions, or duties" of a real estate licensee. Respondent's 2015 and 2016 convictions for drunk driving (Factual Findings 3 and 4) are substantially related under CCR section 2910, subdivision (a)(11), which makes "[t]wo or more 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" substantially related.

2. Complainant has shown by clear and convincing evidence that there is cause to discipline Respondent's license. Respondent therefore has the burden of showing rehabilitation and fitness to hold a license. (*Martin v. Alcoholic Beverage Appeals Control Bd. of Cal.* (1959) 52 Cal.2d 259.)

3. Respondent meets some of the criteria for rehabilitation in CCR section 2912:

a. He has abstained from drugs and alcohol for at least two years. (CCR § 2912, subd. (f); Factual Finding 10.)

b. He has shown a change in attitude since the offenses were committed (CCR § 2912, subd. (m)), embracing sobriety and understanding the nature of his alcoholism (Factual Findings 8 and 10).

c. He has new social relationships from those existing when he was driving under the influence of alcohol. He no longer associates with his old drinking friends. (CCR § 2912, subd. (i).)

d. Two years have passed since his last conviction. (Factual Findings 3 and 4; CCR § 2912, subd. (a).)

e. He has shown involvement in programs to provide social benefits or ameliorate social problems. (CCR § 2912, subd. (l); Factual Finding 16.)

² Further references to section or "§" are to the Business and Professions Code, unless preceded by "CCR," which refers to title 10 of the California Code of Regulations.

f. He has paid all fines (CCR § 2912, subd. (g); Factual Finding 9.)

4. Respondent does not meet other criteria of rehabilitation. He has not completed probation (CCR § 2912, subd. (e); Factual Finding 9), established stability of family life (CCR § 2912, subd. (j)), or had his convictions expunged (CCR § 2912, subd. (d)).

5. Respondent's unblemished record in 14 years as a working licensee is a strong mitigating factor, as are the glowing testimonials to the skill and conscientiousness he displayed even while he was drinking heavily. (Factual Findings 12-17.) Licensing statutes exist to protect the public. (*Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016.) Respondent's substance abuse created a threat that his sobriety alleviates. His license should be restricted for a substantial period, with a condition that he continue attending an alcohol program.

6. As paragraph 10 of the First Amended Accusation alleges, Complainant is entitled, under section 10106, to have Respondent pay reasonable costs of investigation and enforcement. Complainant's investigation and enforcement costs, totaling \$2,366.60, are reasonable (Factual Finding 18) and are awarded.

ORDER

Respondent Alejandro T. Perez-Munoz's license and licensing rights under the Real Estate Law³ are revoked; but a restricted real estate salesperson license shall be issued to Respondent under Business and Professions Code section 10156.5 if Respondent applies for and pays to the Bureau 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 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 shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) Conviction (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or

(b) Receipt of evidence 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 this restricted license.

³ Section 10000 et. seq.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for the removal of any of the conditions, limitations or restrictions of a restricted license until four years after this Decision's effective date.

3. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 137000, and Sacramento, CA 95818-7000. The letter shall state the arrest date, 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 be grounds to suspend or revoke that license.

4. Respondent shall submit with any application for license under a real estate employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing broker, on a form RE 552 (Rev. 4/88) approved by the Bureau of Real Estate, certifying:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the restricted licensee relating to activities for which a real estate license is required.

5. While the restricted license is in effect, Respondent shall attend meetings of an alcohol or drug dependency support group satisfactory to the Commissioner (for example, Alcoholics Anonymous) at least twice per month. At the end of each calendar quarter, Respondent shall provide the Commissioner documentation, verified by a responsible person other than Respondent, of his attendance at each meeting, as well as verification from a sponsor, or someone similarly familiar with Respondent's situation, attesting to his sobriety, in a form specified by Commissioner.

6. Respondent shall pay Complainant investigation and enforcement costs of \$2,366.60.

DATED: September 20, 2018

DocuSigned by:
Howard Posner
HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings