

SOAH Docket No. 329-23-01716.REC/TREC Hearing No. 224725

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| Texas Real Estate Commission ("Commission") or ("Petitioner") | § § § § § § § § | Before the Texas Real Estate Commission |
| v. | | |
| Courtney Burns ("Respondent") | | Sitting in Austin, Travis County, Texas |

Final Order

The Commission considered the above case on May 16, 2023.

After proper notice was given, the case was heard at the State Office of Administrative Hearings ("SOAH") by an Administrative Law Judge ("ALJ") on January 10, 2023 via Zoom videoconference. On February 13, 2023, the ALJ filed a Proposal for Decision ("PFD") containing Findings of Fact and Conclusions of Law. The PFD was properly served on each party and each party was given an opportunity to file exceptions and replies as part of the administrative record.

On February 28, 2023, Commission staff filed Petitioner's Exceptions to Proposal for Decision. On March 17, 2023, the Administrative Law Judge filed a Response to the Petitioner's Exceptions to PFD.

The Commission, after review and consideration of the PFD, (attached as Exhibit A), Petitioner's Exceptions to PFD, (attached as Exhibit B), and the ALJ's Response to the Exceptions to PFD, (attached as Exhibit C), adopts the Findings of Fact and Conclusions of Law of the ALJ contained in the PFD and incorporates those findings and conclusions into this Final Order as if these were fully set out and separately stated in this Final Order, with changes to the sanctions as described below.

Changes to Recommended Sanctions

The Commission has the authority under The Real Estate License Act (Chapter 1101, Occupations Code) and Commission rules to impose disciplinary action against its license holders.¹ In this case, the Commission may suspend or take other disciplinary action against Respondent's license, because she pled guilty to a felony (which is also for an offense directly related to Respondent's licensed occupation) and because she failed to notify the Commission of that guilty plea within 30 days.² This authority includes the ability to probate any suspension.³ Administrative penalties may also be imposed in accordance with the Commission's schedule of penalties.⁴

Section 1101.657, Occupations Code, provides that if the Commission proposes to suspend a

¹ See Conclusion of Laws (COL) 1.

² COL 5-8; Tex. Occ. Code §§ 53.021, 53.023, and 1101.652(a)(1) & (7); 22 Tex. Admin. Code § 541.1

³ COL 6; Tex. Occ. Code § 1101.656

⁴ COL 10; Tex. Occ. Code § 1101.701; 22 Tex. Admin. Code § 535.191

person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearing. Additionally, Section 2003.042(a)(6), Government Code, empowers an ALJ to issue a proposal for decision following a hearing referred to SOAH. However, while neither Code expressly prohibits the ALJ from recommending a sanction in a proposal for decision, there is no express authority for them to do so either. Finally, while the Commission is governed by section 2001.058(e), Government Code, in its authority to modify a finding of fact or conclusion of law, this does not extend to a sanction recommendation. As a result, the Commission is authorized to change an ALJ's sanction recommendation and does so because the ALJ's recommended sanctions are: (i) not consistent with other sanctions imposed in cases with similar facts; and (ii) too lenient to be effective.

A Texas real estate license holder must meet certain statutory requirements to maintain his or her license. These requirements are in place to protect the consumer.

In this case, Respondent has a conviction for third-degree felony of driving while intoxicated third offense, which is an offense the Commission has determined directly relates to the duties and responsibilities of the real estate profession. Respondent also failed to notify the Commission of this conviction within thirty days of entering her guilty plea, which is a violation of Texas Occupations Code §1101.652(a)(7). Additionally, Respondent has prior disciplinary history with the Commission for unlicensed activity, which is a consideration for an enhanced penalty under Texas Occupations Code §1101.702(b)(2).

The ALJ's recommendation of a probated suspension of one year or until Respondent is released from community supervision for her felony DWI, whichever comes first, and an assessment of the minimum penalty amount associated with her failure to timely report her guilty plea are inconsistent with prior decisions of the Commission with similar facts and too lenient to be effective. A sanction of a five-year suspension, which is fully probated for five years, and an enhanced administrative penalty of \$3,000 is consistent with prior decisions of the Commission with similar facts and serves as an effective deterrent from future violations.

All proposed Findings of Fact and Conclusions of Law submitted by any party that are not specifically adopted in this Final Order are denied.

In accordance with the Commission's schedule of administrative penalties and as a result of the above:

IT IS THEREFORE ORDERED that effective June 20, 2023 the Respondent's Texas real estate broker license is suspended for five years.

IT IS FURTHER ORDERED that beginning on June 20, 2023, the suspension is fully probated for a period of five years, subject to the following terms:

1. Respondent must comply with Chapter 1101 of the Texas Occupations Code and with the Rules of the Commission.
2. Respondent must comply with all terms and conditions of the community supervision ordered by the court in Cause Number 164941901010. A violation of the terms and conditions of community supervision automatically revokes probation and Respondent's real estate broker license is revoked, starting on the effective date of the revocation of probation.

3. Not later than the 14th day after the date of a violation or change in the terms or conditions of the community supervision ordered by the court in Cause Number 164941901010, Respondent must submit to the Commission's Enforcement Division a copy of the violation or change. A violation of this term automatically revokes probation and Respondent's real estate broker license is revoked, starting on the effective date of the revocation of probation.
4. Respondent may not be convicted of, or enter a plea of guilty or nolo contendere to, any additional criminal offense (other than a Class C misdemeanor). A violation of this term automatically revokes probation and Respondent's real estate broker license is revoked, starting on the effective date of the conviction or plea.

IT IS FURTHER ORDERED by the Commission that Respondent is assessed an administrative penalty of \$3,000. Failure to timely pay automatically suspends Respondent's Texas real estate broker license until the administrative penalty is paid in full.

IT IS FURTHER ORDERED that a violation of the above terms, other than those that specifically provide for automatic suspension, or automatic revocation of probation, is, after notice and hearing, grounds to revoke probation and impose the above revocation of Respondent's Texas real estate broker license in addition to any additional disciplinary action which may be warranted for a subsequent violation of the Texas Occupations Code.

If enforcement of this Final Order is restrained or enjoined by court order, this Final Order is effective upon a final determination by the court or an appellate court in favor of the Commission.

Date Issued: 5/22/2023


The Presiding Member of the
Texas Real Estate Commission

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

February 13, 2023

John Knopic, TREC Staff Attorney

VIA EFILE TEXAS

Cortney Lynn Burns, Respondent

VIA EFILE TEXAS

RE: SOAH Docket Number 329-23-01716.REC; Texas Real Estate Commission - Texas Appraiser Licensing and Certification Board No. 224725 v. Courtney Burns

Dear Parties:

Please find attached a Proposal for Decision in this case.

Exceptions and replies may be filed by any party in accordance with 1 Texas Administrative Code section 155.507(b), a SOAH rule which may be found at www.soah.texas.gov.

CC: Service List

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TEXAS REAL ESTATE COMMISSION,
PETITIONER**

V.

**COURTNEY BURNS,
RESPONDENT**

PROPOSAL FOR DECISION

Courtney Burns (Respondent) holds a real estate broker license issued by the Texas Real Estate Commission (Commission). Commission staff (Staff) seeks disciplinary action against Respondent based on her guilty plea to a felony driving while intoxicated (DWI) and her failure to notify the Commission within 30 days of the guilty plea. Having considered the evidence in the context of applicable law, the Administrative Law Judge (ALJ) recommends that the Commission impose a fully probated suspension of Respondent's license for one year or until Respondent is released from community supervision for her felony DWI, whichever comes first; and assess a \$500 administrative penalty.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No party contested notice or jurisdiction, and those matters are addressed solely in the findings of fact and conclusions of law. On January 10, 2023, a hearing on the merits convened via Zoom videoconference before ALJ Ross Henderson at the State Office of Administrative Hearings in Austin, Texas. Staff was represented by Staff Attorney John Knopic. Respondent appeared on her own behalf. The record closed on January 21, 2023, after the deadlines for Respondent to submit evidence and Petitioner to file objections had both passed.

II. DISCUSSION

A. UNDISPUTED FACTS

Respondent currently holds real estate broker license number 507040 issued by the Commission on April 10, 2012.¹

Respondent has the following criminal history:

- On October 22, 2021, in Cause No. 164941901010, in the 208th District Court, Harris County, Texas, Respondent pleaded guilty to the third-degree felony charge of DWI, third offense. The underlying offense occurred October 9, 2019.² On May 12, 2022, Respondent was convicted

¹ Staff Ex. 12.

² Staff Ex. 4.

and sentenced to ten years' confinement, which was suspended to five years' community supervision.³

- Prior to her licensure as a broker, Respondent had three previous convictions:
 - On September 7, 2006, Respondent was convicted of DWI in Cause No. 1391516, in the County Criminal Court at Law No. 11, in Harris County, Texas.
 - On March 15, 2007, Respondent was convicted of DWI in Cause No. 1440600, in the County Criminal Court at Law No. 1, in Harris County, Texas.
 - On November 8, 2007, Respondent was convicted of DWI in Cause No. 1133940, in the 230th District Court, Harris County, Texas.⁴

On or about January 28, 2022, Respondent submitted a renewal application for her broker license which disclosed, in writing, her guilty plea in Cause No. 164941901010.⁵

Regarding her licensure history, Respondent was formally reprimanded by the Commission on April 13, 2020, and assessed a \$3,500 penalty, for performing real estate brokerage activities when her license was on inactive status (for failure to fulfill continuing education requirements of the Commission).⁶

³ Staff Ex. 1

⁴ Staff Ex. 4.

⁵ Staff Ex. 2.

⁶ Staff Ex. 11.

B. APPLICABLE LAW

Pursuant to the Texas Real Estate License Act (Act),⁷ the Commission is empowered to establish and enforce standards of conduct and ethics for the persons it licenses.⁸ To be eligible for licensure, the applicant must “satisfy the [C]ommission as to the applicant’s honesty, trustworthiness, and integrity.”⁹ Under the Commission’s rule at 22 Texas Administrative Code (Commission Rule) § 535.52:

(a) The Commission may deny a license to an applicant who fails to satisfy the Commission as to an individual applicant’s honesty, trustworthiness, or integrity under the Act, Texas Occupations Code Chapter 1102, and the rules of the Commission.

(b) Conduct that tends to demonstrate that an applicant does not possess the requisite honesty, trustworthiness[,], or integrity includes, but is not limited to:

(1) a plea of guilty or nolo contendere to or a conviction of any offense listed in § 541.1 of this title (relating to Criminal Offense Guidelines); . . .

(6) violating any provision of the Act; [and]

(7) violating any provision of the rules of the Commission[.]

⁷ Tex. Occ. Code chapter 1101 *et seq.*

⁸ Tex. Occ. Code § 1101.151(b).

⁹ Tex. Occ. Code § 1101.354(2).

Further, by statute, the Commission may also suspend or revoke a license issued, or take other disciplinary action authorized Chapter 1101 or Chapter 1102 if the license holder:

(1) enters a plea of guilty or nolo contendere to or is convicted of a felony or a criminal offense involving fraud, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, without regard to an order granting community supervision that suspends the imposition of the sentence; [or . . .]

(7) fails to notify the [C]ommission, not later than the 30th day after the date of a final conviction or the entry of a plea of guilty or nolo contendere, that the person has been convicted of or entered a plea of guilty or nolo contendere to a felony or a criminal offense involving fraud[.]¹⁰

Additionally, Texas Occupations Code chapter 53 provides the general framework for licensing agencies, such as the Commission, to use in evaluating licensees with criminal convictions. Under chapter 53, a licensing authority may suspend or revoke a license based on a licensee's conviction for an offense that directly relates to the duties and responsibilities of the licensed occupation.¹¹ The Commission has adopted Criminal Offense Guidelines (Guidelines), which are intended to implement the provisions of chapter 53.¹² The Guidelines specify that a felony DWI is an offense that directly relates to the duties and responsibilities of the real estate profession.¹³

¹⁰ Tex. Occ. Code § 1101.652(a).

¹¹ Tex. Occ. Code § 53.021(a)(1).

¹² 22 Tex. Admin. Code § 541.1.

¹³ 22 Tex. Admin. Code § 541.1(a)(15).

Before suspending or revoking the license of a person who has been convicted of a crime, the Commission must determine whether that person is fit to perform the duties and discharge the responsibilities of the licensed profession despite the criminal history. In making this determination, chapter 53 requires the Commission to consider certain factors.¹⁴ The licensee has the responsibility, to the extent possible, to obtain and provide any letters of recommendation or other evidence of the person's fitness for licensure.¹⁵

The Commission may suspend or revoke a license and or impose administrative penalties against licensees for a violation of the Act or a Commission rule.¹⁶ A penalty may not exceed \$5,000 per violation per day after considering specified factors.¹⁷ The Commission has also incorporated an Administrative Penalty Schedule into its rules.¹⁸ A penalty range of \$500 to \$3,000 per violation per day applies to failure to notify the Commission within 30 days of a felony conviction or guilty plea.¹⁹

¹⁴ Tex. Occ. Code § 53.023(a); *see also* 22 Tex. Admin. Code § 541.1(d)(2). The Commission's rules mirror the Chapter 53 factors.

¹⁵ Tex. Occ. Code § 53.023(b).

¹⁶ Tex. Occ. Code § 1101.701; *see also* Tex. Occ. Code § 1101.656 (providing additional disciplinary authority of Commission for violation of the Act or Commission rule).

¹⁷ Tex. Occ. Code § 1101.702.

¹⁸ 22 Tex. Admin. Code § 535.191.

¹⁹ 22 Tex. Admin. Code § 535.191(d)(1); The Commission may also assess an additional administrative penalty of up to two times, subject to the maximum penalties authorized, if a person has a history of previous violations. 22 Tex. Admin. Code § 535.191(f).

C. ALLEGATIONS

Staff seeks a five-year probated suspension of Respondent's license because Respondent pleaded guilty to a felony DWI on October 22, 2021.²⁰ Staff also seeks an administrative penalty of \$3,000 because Respondent did not notify the Commission of the guilty plea to the felony within 30 days.

D. EVIDENCE

1. Staff's Evidence

Staff offered into evidence twelve exhibits,²¹ which were admitted without objection.

Staff called as a witness Staff Attorney Aimee Cooper, who is the Team Leader for the Commission's South/Southwest Division and supervises application reviews and background checks.²² Ms. Cooper testified that the primary mission of the Commission in exercising its enforcement authority is to protect consumers of brokerage services. Ms. Cooper testified regarding the undisputed facts in this matter and generally the law applicable to Respondent's conduct. Those facts and the applicable law were outlined above.

After concluding that Respondent's criminal history is directly related to the licensure of a broker and that Respondent is subject to Commission discipline for

²⁰ Staff Ex. 4.

²¹ Staff Exs. 1-12.

²² Based on Ms. Cooper's qualifications and experience, she was accepted as an expert witness by the ALJ.

her conduct under the applicable law, Ms. Cooper also analyzed Respondent's present fitness for a license under the factors outlined in Commission Rule 541.1(c) and in Texas Occupations Code § 53.023. Ms. Cooper noted that Respondent had three prior DWI offenses, and that she was 39 years old at the time of her last offense, a felony DWI which occurred in October of 2019. Ms. Cooper stated although Respondent did not submit documentation, Respondent was likely in compliance with the terms of her community supervision because she was not presently incarcerated.²³ Ms. Cooper mentioned that Respondent had previous disciplinary history with the Commission for unlicensed brokerage activities, but she admitted that she did not look at the particulars of the previous discipline. Ms. Cooper testified that Respondent exhibited rehabilitative efforts by completing outpatient treatment. Finally, Ms. Cooper stated that Respondent submitted letters of reference.

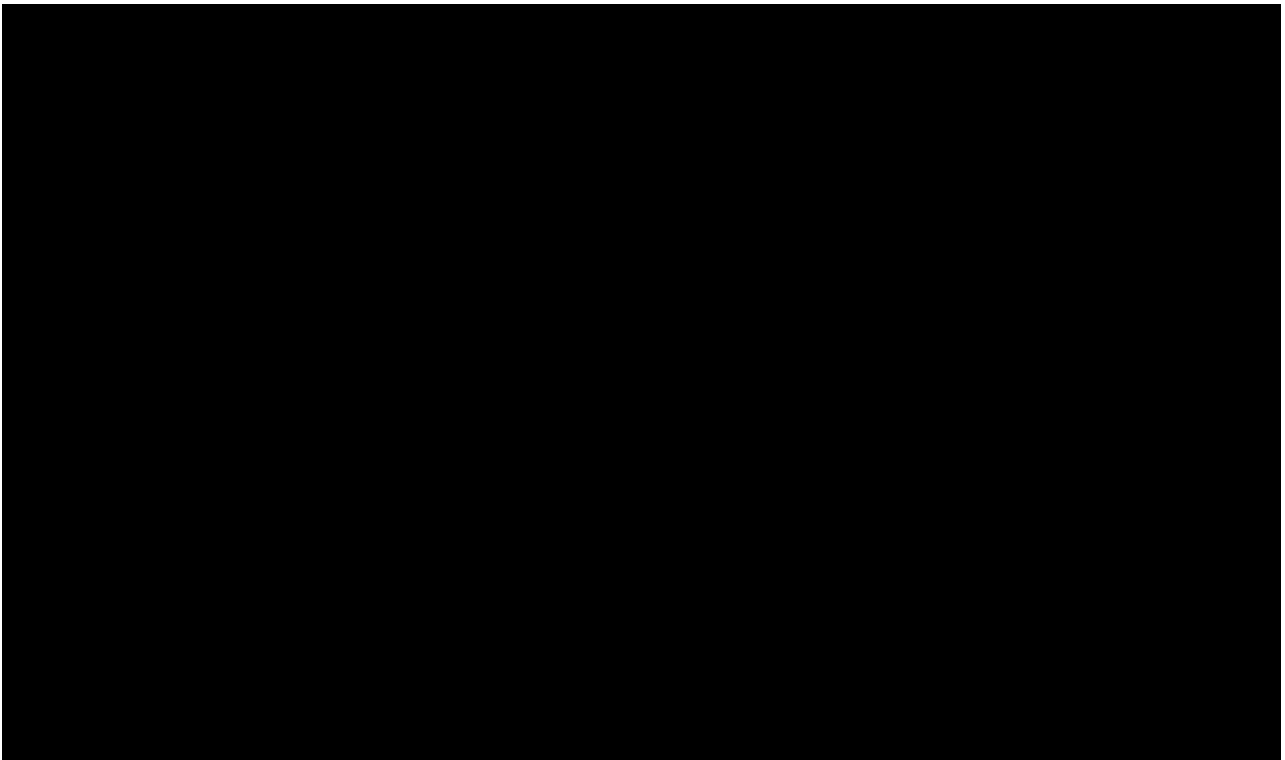
Ms. Cooper opined that, based on the violations, and pursuant to Texas Occupations Code § 1101.656, Respondent should receive a probated suspension of five years. Ms. Cooper stated that this punishment is consistent with past decisions of the Commission in felony DWI cases. She said that, in such cases, suspension typically coincides with the licensee's community supervision. Ms. Cooper also noted that the Commission may also add additional time to the suspension if there is another violation (such as failing to notify the Commission of a plea or conviction within 30 days). Based on the violations she believed were established, Ms. Cooper advocated that a \$3,000 administrative penalty should be imposed.

²³ Staff Ex. 7.

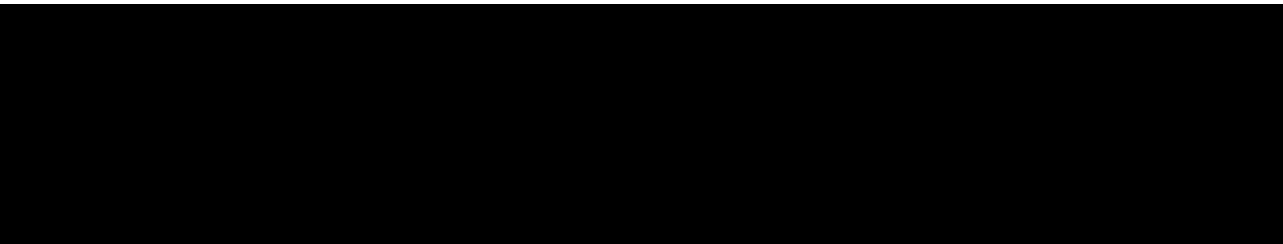
2. Respondent's Evidence

Respondent testified on her own behalf at the hearing. Respondent did not call any other witnesses and did not offer any exhibits, but her reference letters were provided in Staff's exhibits.²⁴

Respondent did not deny that she was arrested and indicted for DWI in October 2019, that she entered a guilty plea on October 22, 2021, or that she was convicted of felony DWI on May 12, 2022. However, she asked that the circumstances surrounding her arrest and her decision to enter a guilty plea be considered. She also disputed that she withheld the information regarding her guilty plea from the Commission.



²⁴ On February 6, 2023, Respondent submitted an exhibit. The exhibit was submitted after the record closed on January 31, 2023, and good cause was not provided for its untimeliness. The exhibit is not admitted.



Regarding disclosing her plea to the Commission, Respondent testified that she spoke with Dee Denali at the Commission on December 27, 2021, and she was told by Ms. Denali that the Commission could not advise her what to do regarding the DWI guilty plea. She claims she was not told she needed to make a written disclosure regarding the plea at that time. Respondent disclosed the plea in writing in January 2022, when she submitted her renewal application, but the plea was not accepted and she was not convicted until months later.

Regarding her previous Commission discipline, Respondent explained that she provided unlicensed brokerage services for a short time by accident. Respondent's license lapsed after she failed to complete a broker responsibility course. Respondent states she did not know how it happened, because the courses typically come in a package, and after she purchased such a package and completed the coursework, she thought she had completed all of her requirements. Respondent was surprised that the unlicensed activity resulted in discipline.

Respondent believes that her DWI conviction has made her a target for unscrupulous former colleagues who will make it difficult for her to complete the terms of her probation and the Commission's discipline by making false accusations against her. She stated that she has completed all the terms of her community supervision including paying all fines and court costs and completing

all required courses and therapy. Respondent testified that she has stopped drinking altogether. However, she asserts that the disgruntled colleagues have specifically told her that they will take actions to get her into trouble to jeopardize her brokerage license. Respondent alleges that they have already falsely told county officials that she had violated her community supervision by leaving the county and that she was forced to prove that she had not.

C. ANALYSIS

Staff has the burden of proof on this matter. Staff has shown, by a preponderance of the evidence that Respondent committed two violations.

1. Felony DWI

The uncontested evidence shows that on October 22, 2021, Respondent pleaded guilty to the third-degree felony charge of driving while intoxicated—third offense, after an arrest which occurred October 9, 2019.²⁵ On May 12, 2022, Respondent was sentenced to ten years' confinement, which was suspended to five years' community supervision.²⁶

Respondent provided credible testimony that she was drugged and raped. Her assertion that she would not have knowingly driven drunk and under the influence of narcotics but for the actions of her assailants is plausible. Her assailants' actions and her subsequent criminal liability are unfair. Notwithstanding, Respondent's decision to plead guilty to, and her subsequent

²⁵ Staff Ex. 4.

²⁶ Staff Ex. 1

conviction for, felony DWI constitute a violation under Texas Occupations Code § 1101.652(a)(1). Accordingly, under the Act and the Commission's rules, the Commission may deny, suspend, or revoke her license and or impose administrative penalties.²⁷

Further, under Texas Occupations Code Chapter 53, a licensing authority may suspend or revoke a license based on a licensee's conviction for an offense that directly relates to the duties and responsibilities of the licensed occupation.²⁸ Per the Commission's Guidelines, a felony DWI is an offense that directly relates to the duties and responsibilities of the real estate profession.²⁹

Although it was determined above that the Commission *may* revoke or suspend Respondent's license, or impose some lesser sanction(s), the issue is whether it *should* do so.³⁰ Accordingly, the Commission must determine whether Respondent is fit to perform the duties and discharge the responsibilities of the licensed profession, despite the criminal history, by examining the factors in Texas Occupations Code Chapter 53 and the Commission's rules.³¹

²⁷ Tex. Occ. Code § 1101.701; *see also* Tex. Occ. Code § 1101.652 (providing authority to deny a license for conduct that tends to demonstrate that an applicant does not possess the requisite honesty, trustworthiness, or integrity) *and* Tex. Occ. Code § 1101.656 (providing additional disciplinary authority of Commission for violation of the Act or Commission rule).

²⁸ Tex. Occ. Code § 53.021(a)(1).

²⁹ 22 Tex. Admin. Code § 541.1(a)(15).

³⁰ Tex. Occ. Code § 53.023(a).

³¹ Tex. Occ. Code § 53.023(a); *see also* 22 Tex. Admin. Code § 541.1(d). The Commission's rules mirror the Chapter 53 factors.

The factors show the following:

- Respondent had a serious problem with DWIs from 2006 to 2007. She had no additional offenses for about 12 years, until her October 2019 arrest and charge of felony DWI—third offense. Respondent has no recollection of the October 2019 incident, but the evidence was un rebutted that she had Rohypnol present in her system and her acquaintances were initially charged with assaulting her. The charges against her assailants were dropped for lack of evidence—namely, the lack of any recollection from Respondent;³²
- Respondent was 39 years old at the time of her last offense and over three years have passed without additional criminal activity;³³
- Respondent has maintained steady employment as a broker for many years;³⁴
- Respondent had previous disciplinary history with the Commission for unlicensed brokerage activities, when she mistakenly failed to complete all coursework necessary for renewal of her license;³⁵
- Respondent exhibited rehabilitative efforts by completing outpatient treatment and by quitting alcohol;³⁶
- Respondent is in compliance with the terms of her community supervision;³⁷ and
- Respondent submitted four letters of reference.³⁸

³² Tex. Occ. Code § 53.023(a)(1).

³³ Tex. Occ. Code §§ 53.023(a)(2), (3).

³⁴ Tex. Occ. Code § 53.023(a)(4).

³⁵ Tex. Occ. Code § 53.023(a)(4).

³⁶ Tex. Occ. Code § 53.023(a)(5).

³⁷ Tex. Occ. Code § 53.023(a)(6).

³⁸ Tex. Occ. Code § 53.023(a)(7).

Consistent with previous Commission decisions, Staff seeks a five-year suspension of Respondent's license to match the terms of her community supervision. Staff also asks to probate the suspension pursuant to Texas Occupations Code § 1101.656(b). Respondent states that she understands her guilty plea probably cannot go completely unpunished by the Commission, but she believes that she has done everything she can to make amends and that suspension of her license (even if probated) is unnecessary because her license is automatically revoked by operation of law if she is imprisoned for violating the terms of her community supervision.

Taking the totality of the factors into account, particularly the unique circumstances of Respondent's DWI offense, the ALJ finds that it would be unjust to assess the same penalty against Respondent that the Commission assesses against the typical licensee with a felony DWI conviction. Respondent took responsibility for conduct which, evidence suggests, may have included causes beyond her control. She has sought outpatient therapy and has chosen sobriety. Accordingly, the ALJ recommends that the Commission impose a fully-probated suspension of her license for one year or until Respondent is released from community supervision for her felony DWI, whichever comes first. This recommendation balances the disquieting facts surrounding her most recent offense and the facts that: a significant time elapsed between Respondent's prior DWIs and her most recent offense; three years have passed since her last offense without further criminal activity; and Respondent has maintained the terms of her community supervision already for over a year. A probated suspension will allow Respondent to continue to prove her October 2019 DWI accident was, in fact, an

unjust aberration and not a relapse of her long-dormant, but alarming, criminal history. Staff did not seek an administrative penalty for this violation.

2. Failure to Notify the Commission

Regarding the second allegation, Commission Staff has shown that Respondent entered a guilty plea for her felony DWI on October 22, 2021. Staff argues that Respondent did not disclose the plea to the Commission until she submitted her broker license renewal application on January 28, 2022 (more than 90 days after her plea). Staff contends that Respondent's failure to notify the Commission within 30 days of entering her guilty plea is a violation under Texas Occupations Code § 1101.652(a)(7).

Respondent insists that she did not intentionally withhold the information from the Commission. Respondent's testimony was credible that she called the Commission on December 27, 2021, to disclose the plea and to ask what action she should take. At that time, Respondent was not told she needed to immediately disclose the plea in writing to the Commission. Nevertheless, her call to the Commission was still in fact a violation of Texas Occupations Code § 1101.652(a)(7) because it occurred outside of 30 days (over 60 days) following her guilty plea. The Commission's rules do not require a showing of intent to withhold, only the fact that the plea was not disclosed within 30 days. Staff seeks an administrative penalty of \$3,000 for the violation.

The Commission has published an Administrative Penalty Schedule at Commission Rule 535.191. A penalty range of \$500 to \$3,000 applies to failure to

notify the Commission within 30 days of a felony conviction or guilty plea.³⁹ The penalties set forth in the Administrative Penalty Schedule, however, are not mandatory; the facts of each case must be taken into account. The relevant factors here support a minimum fine of \$500 for the violation.⁴⁰ Respondent has one previous Commission violation from April 2020 for unlicensed brokerage activity after she inadvertently failed to complete one required course to maintain her license. However, this recommendation takes into consideration that Respondent did not intend to withhold the information from the Commission of her guilty plea in October 2021, she was genuinely unsure how to proceed because, although she had made a guilty plea, the decision of the Court was not final. Although she was technically in violation, she voluntarily contacted the Commission in December 2021 to remedy the violation, just over 60 days after her plea, and she included the information about the plea in writing again in her renewal application about 30 days later. The ALJ finds a higher penalty would be unnecessarily punitive, rather than sufficient to deter future violations.

Consistent with this analysis, the ALJ proposes the following Findings of Fact and Conclusions of Law.

III. FINDINGS OF FACT

1. Courtney Burns (Respondent) holds real estate broker license number 507040 issued by the Texas Real Estate Commission (Commission) on April 10, 2012.

³⁹ 22 Tex. Admin. Code § 535.191(d)(1).

⁴⁰ Tex. Occ. Code § 1101.702(b); 22 Tex. Admin. Code § 535.191(d)(1).

2. Respondent was formally reprimanded by the Commission on April 13, 2020, and assessed a \$3,500 penalty for performing unlicensed real estate brokerage activities when her license was on inactive status for failure to fulfill all continuing education requirements of the Commission.

Criminal History

3. On September 7, 2006, Respondent was convicted of driving while intoxicated (DWI) in Cause No. 1391516, in the County Criminal Court at Law No. 11, in Harris County, Texas.
4. On March 15, 2007, Respondent was convicted of DWI in Cause No. 1440600, in the County Criminal Court at Law No. 1, in Harris County, Texas.
5. On November 8, 2007, Respondent was convicted of DWI in Cause No. 1133940, in the 230th District Court, Harris County, Texas.
6. On October 22, 2021, in Cause No. 164941901010, in the 208th District Court, Harris County, Texas, Respondent pleaded guilty to the third-degree felony charge of DWI—third offense. The underlying offense occurred October 9, 2019, over 12 years from her previous three DWIs. On May 12, 2022, Respondent was sentenced to ten years' confinement, which was suspended to five years' community supervision.
7. Respondent has no recollection of the events leading up to the accident on October 9, 2019.
8. Respondent learned over a year after the accident that she had Rohypnol present in her blood on the night of the accident.
9. Respondent's date on the night of her accident and an accomplice were charged with assault for allegedly drugging and raping Respondent that night. The charges against her assailants were dismissed for lack of evidence—namely, that Respondent had no recollection of the events.
10. Respondent was 39 years old at the time of her last offense, a felony DWI which occurred in October of 2019.

11. Respondent has no criminal history since October 2019.
12. Respondent has been in community supervision for over a year and has maintained compliance.
13. Respondent completed outpatient therapy and has chosen sobriety.
14. Respondent submitted four letters of reference. Respondent's references speak highly of her.
15. A fully-probated suspension would allow Respondent to continue to work as a real estate broker, but would allow the Commission to maintain an additional degree of oversight over her.

Disclosure of Respondent's Guilty Plea

16. On or about December 27, 2021, Respondent called and spoke with a representative of the Commission, in which she disclosed her October 22, 2021 felony DWI guilty plea in Cause No. 164941901010 and sought advice from the Commission on how to proceed. The representative told Respondent that the Commission could not advise her regarding the felony DWI guilty plea.
17. On or about January 28, 2022, Respondent submitted a renewal application for her broker license which disclosed in writing her guilty plea in Cause No. 164941901010.
18. Respondent informed the Commission she pleaded guilty to the felony DWI after over 30 days had passed.

Procedural History, Notice, and Jurisdiction

19. Commission staff (Staff) mailed Respondent a Notice of Alleged Violation, and Respondent requested a hearing.
20. On October 12, 2022, Staff sent Respondent a notice of the hearing to be held at the State Office of Administrative Hearings (SOAH). It contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a

reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.

21. On January 10, 2023, a hearing on the merits convened via Zoom videoconference before ALJ Ross Henderson at the State Office of Administrative Hearings in Austin, Texas. Staff was represented by Staff Attorney John Knopic. Respondent appeared on her own behalf. The record closed on January 21, 2023.

IV. CONCLUSIONS OF LAW

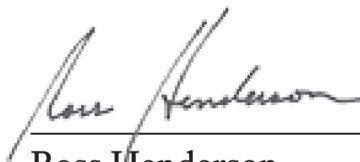
1. The Commission has authority to impose disciplinary action against its licensees, including suspending or revoking a license and/or imposing administrative penalties. Tex. Occ. Code ch. 1101; 22 Tex. Admin. Code § 535.191.
2. SOAH has jurisdiction over all matters related to conducting a hearing in this case, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Respondent received proper and timely notice of the hearing on the merits. Tex. Gov't Code §§ 2001.051-.052.
4. Staff had the burden of proof in this case. 1 Tex. Admin. Code § 155.427.
5. After considering certain factors, the Commission may deny, suspend, or revoke Respondent's license, or issue a lesser sanction, because she pleaded guilty to a felony, without regard to an order granting community supervision that suspends the imposition of the sentence, in violation of Texas Occupations Code § 1101.652(a)(1). Tex. Occ. Code §§ 1101.652, .656, .701; 22 Tex. Admin. Code § 535.52.
6. The Commission may probate a suspension. Tex. Occ. Code § 1101.656(b).

7. After considering certain factors, the Commission may also suspend or revoke a license of a person who has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation. Tex. Occ. Code §§ 53.021(a)(1), .023.
8. A felony DWI is directly related to Respondent's licensed occupation. Code § 53.022; 22 Tex. Admin. Code § 541.1(a)(15).
9. Respondent failed to notify the Commission of her plea of guilty to the DWI felony not later than 30 days after entering the plea, in violation of Texas Occupations Code § 1101.652(a)(7).
10. The Commission has published a schedule of penalties that provides a penalty range of \$500 to \$3,000 for failing to timely inform the Commission of a felony conviction or guilty plea. 22 Tex. Admin. Code § 535.191(d)(1).
11. Imposition of a penalty is not mandatory and the Commission shall consider certain factors in assessing a penalty. Tex. Occ. Code § 1101.702.

V. RECOMMENDATION

For the reasons discussed, the ALJ recommends that the Commission impose a fully-probated suspension of Respondent's license for one year or until Respondent is released from community supervision for her felony DWI, whichever comes first. The ALJ also recommends a \$500 administrative penalty for her violation of Texas Occupations Code § 1101.652(a)(7), which is within the range of the Commission's penalty schedule.

Signed February 13, 2023.



Ross Henderson

Presiding Administrative Law Judge

FILED
329-23-01716
2/28/2023 3:57 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

SOAH DOCKET No. 329-23-01716.REC

ACCEPTED
329-23-01716
2/28/2023 4:07:47 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

**TEXAS REAL ESTATE COMMISSION,
PETITIONER**

v.

**CORTNEY LYNN BURNS,
RESPONDENT**

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§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PETITIONER'S EXCEPTIONS TO PROPOSAL FOR DECISION

The Texas Real Estate Commission (the "Commission" or "Petitioner") files these exceptions, pursuant to Section 2001.062, Texas Government Code, and in accordance with 1 TEX. ADMIN. CODE Section 155.507, SOAH Rules, and 22 TEX. ADMIN. CODE Sections 533.6 and 533.7. The Commission met its burden and proved the allegations contained in its First Amended Petition, and, therefore, there is ample evidence to suspend the broker's license and assess an administrative penalty for Respondent Cortney Lynn Burns d/b/a Houston Realty Company (the "Respondent"). Accordingly, the Commission respectfully requests the proposal for decision ("PFD") be amended as requested here.

I. SUMMARY

Presiding Administrative Law Judge Ross Henderson (the "ALJ") recommended the following in the PFD: 1) the Commission impose a fully-probated suspension of Respondent's license for one year or until Respondent is released from community supervision for her felony DWI, whichever comes first; and 2) A \$500 administrative penalty be assessed to the Respondent for her violation of Texas Occupations Code § 1101.652(a)(7). The Commission's evidence supports the Prayer in the First Amended Petition, specifically:

1. Suspension of real estate broker license no. 507040 for five years with the suspension fully probated for five years;
2. Respondent be ordered to pay an administrative penalty of \$3,000;
3. Respondent be suspended until payment of the administrative penalty;

The hearing involved Respondent's conviction of the third-degree felony of driving while intoxicated third offense in Cause Number Cause Number 164941901010, in the 208th District Court, Harris County, Texas. On October 22, 2021, The Court entered a document titled, "Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession" signed by Respondent, in which Respondent waived her right to a jury trial and entered a plea of guilty without an agreed recommendation of punishment from the prosecutor. On May 12, 2022, Respondent was sentenced to 10 years TDCJ, suspended to five years community supervision.

The ALJ summarized in the PFD that the Commission has shown, by a preponderance of the evidence that Respondent committed two violations.¹ Respondent's guilty plea to the third-degree felony charge of driving while intoxicated-third offense, violated Texas Occupations Code §1101.652(a)(1). For this violation, The ALJ recommended that the Commission impose a fully-probated suspension of Respondent's license for one year or until Respondent is released from community supervision for her felony DWI, whichever comes first. However, the ALJ's decision did not take into account that the term of Respondent's Community Supervision is scheduled to end May 11, 2027. The ALJ's decision also does not take into account that Respondent committed a second violation; specifically, Respondent failed to notify the Commission within 30 days of entering her guilty plea in violation of Texas Occupations Code §1101.652(a)(7). The existence of two violations is grounds for a longer probated suspension. Furthermore, Respondent's previous violation is a factor for a higher administrative penalty under Texas Occupations Code §1101.702(b)(2).

II. SPECIFIC EXCEPTIONS

1. Findings of Fact

FINDING OF FACT NO. 6: The Commission included a copy of the documents entered by the Court on May 12, 2022 in this matter, which included a document entitled "Conditions of

¹ See PFD page 11

Community Supervision.”² as Staff Exhibit 8, bates stamped pages 0157 to 0160. The Conditions of Community Supervision states that Respondent’s “Community Supervision expires on May 11, 2027.”³ (see Staff Exhibit 8, bates page 0160). Therefore, Respondent’s release from community supervision will occur much later than the one probated suspension recommended by the ALJ.

The Commission respectfully requests Finding of Fact No. 6 be amended to include the following:

“Respondent’s “Community Supervision expires on May 11, 2027.”

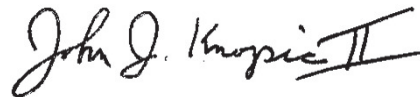
III. CONCLUSION

For the reasons stated herein, the Commission respectfully requests the Respondent’s real estate broker’s license be suspended for five years or until Respondent is released from community supervision for her felony DWI, whichever comes first; Respondent be assessed a \$3,000 administrative penalty, and her real estate broker’s license be suspended until the penalty is paid in full.

IV. PRAYER

Petitioner respectfully requests that SOAH grant Petitioner’s exceptions to the PFD and amend the PFD in accordance with these exceptions. Petitioner also prays for such other and further relief it may be justly entitled to.

Respectfully submitted,



John J. Knopic II
Staff Attorney
TREC Enforcement Division
Texas Real Estate Commission
State Bar No. 24120521
P.O. Box 12188
Austin, Texas 78711-2188

² Staff Exhibit 8, bates stamped pages 0157 to 0160.

³ *Id.* at 0160.

Telephone: (512) 936-3005
Facsimile: (512) 936-3809

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above document has been sent as follows on October 12, 2022:

Cortney Lynn Burns
Houston Realty Company

[REDACTED]

Via: regular mail

Via Email:

[REDACTED]

State Office of Administrative Hearings
Docketing Division
300 West 15th Street, Room 504
Austin, Texas 78701-1649

Via: electronic filing

Angela Youngblood
Texas Real Estate Commission
TREC Enforcement Division

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Angela Youngblood on behalf of John Knopic
Bar No. 24120521
Angela.Youngblood@trec.texas.gov
Envelope ID: 73203629
Status as of 2/28/2023 4:08 PM CST

Associated Case Party: Texas Real Estate Commission

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|-------------------|-----------|----------------------------------|----------------------|--------|
| Sherry Martinets | | sherry.martinets@trec.texas.gov | 2/28/2023 3:57:21 PM | SENT |
| John J.Knopic | | john.knopic@trec.texas.gov | 2/28/2023 3:57:21 PM | SENT |
| Angela Youngblood | | angela.youngblood@trec.texas.gov | 2/28/2023 3:57:21 PM | SENT |

Associated Case Party: CourtneyBurns

| Name | BarNumber | Email | TimestampSubmitted | Status |
|----------------|-----------|-------|----------------------|--------|
| Courtney Burns | | | 2/28/2023 3:57:21 PM | SENT |

State Office of Administrative Hearings

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329-23-01716
3/20/2023 10:15 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

Kristofer S. Monson
Chief Administrative Law Judge

March 17, 2023

ACCEPTED
329-23-01716
3/20/2023 10:15:58 am
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

John Knopic, TREC Staff Attorney

VIA EFILE TEXAS

Cortney Lynn Burns, Respondent

VIA EFILE TEXAS

**RE: Exceptions to the Proposal for Decision in Docket Number
329-23-01716.REC; *Texas Real Estate Commission v. Courtney
Burns***

Dear Parties:

On February 28, 2023, Staff (Staff) of the Texas Real Estate Commission (Commission) timely filed exceptions to the proposal for decision (PFD). Respondent, Courtney Burns, did not E-file a response within 15 days.

Staff's exceptions primarily relate to the recommended sanction, which the Administrative Law Judge (ALJ) declines to change. The ALJ explained that his recommendation was based, in part, on the highly unusual facts surrounding the offense, and the Commission may use its discretion to consider whether or not to adopt the recommendation based on those facts.

Staff also requested that Finding of Fact no. 6 be amended to include "Respondent's Community Supervision expires on May 11, 2027." Although the expiration of the community supervision may be inferred from the current Finding of Fact no. 6, which states "[on] May 12, 2022, Respondent was sentenced to ten years' confinement, which was suspended to five years' community supervision[,]" the ALJ agrees that Staff's proposed amendment will further

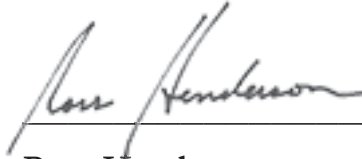
Exceptions Letter

March 17, 2023

Page 2 of 2

clarify the expiration. Therefore, ALJ recommends the PFD be adopted with the inclusion of Staff's proposed amendment to Finding of Fact no. 6.

ALJ Signature(s):

A handwritten signature in cursive script, appearing to read "Ross Henderson", written over a horizontal line.

Ross Henderson,

Presiding Administrative Law Judge

CC: Service List

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Associated Case Party: Texas Real Estate Commission

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| Sherry Martinets | | sherry.martinets@trec.texas.gov | 3/20/2023 10:15:00 AM | SENT |
| John J.Knopic | | john.knopic@trec.texas.gov | 3/20/2023 10:15:00 AM | SENT |
| Angela Youngblood | | angela.youngblood@trec.texas.gov | 3/20/2023 10:15:00 AM | SENT |

Associated Case Party: CourtneyBurns

| Name | BarNumber | Email | TimestampSubmitted | Status |
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| Courtney Burns | | | 3/20/2023 10:15:00 AM | ERROR |