

1 with notice of the Real Estate Commissioner's determination not to adopt the Proposed
2 Decision, along with a copy of the Proposed Decision. Respondents were notified that the case
3 would be decided by the Real Estate Commissioner based on the record, the transcript of the
4 proceeding, and the written argument offered by Respondents and Complainant.

5 Respondents did not submit a written argument. Complainant submitted written
6 argument on April 22, 2020.

7 The following constitutes the Decision of the Real Estate Commissioner in this
8 proceeding:

9 FACTUAL FINDINGS

10 The Factual Findings of the Proposed Decision are adopted as part of this
11 Decision.

12 LEGAL CONCLUSIONS

13 The Legal Conclusions of the Proposed Decision are adopted as part of this
14 Decision.

15 ORDER

16 1. All licenses and licensing rights of respondent Barajas are SUSPENDED
17 until respondent submits evidence demonstrating to the satisfaction of the Department or its
18 designee that he is in full compliance with the Real Estate Law and related regulations at issue in
19 this matter. The suspension shall be lifted at such time the Department or its designee accepts
20 Respondent's evidence of compliance with the Real Estate Law and regulations.

21 2. Pursuant to and consistent with the Order of suspension in Order No. 1, all
22 licenses and licensing rights of respondent eVision's Corporate License No. 01973672 are
23 SUSPENDED until such time that Respondent Barajas or a successor Designated Officer, acting
24 on behalf of eVision, submits evidence demonstrating to the satisfaction of the Department or its
25 designee that eVision is in full compliance with the Real Estate Law and related regulations.

26 3. Pursuant to and consistent with the Order of suspension in Order No. 1, all
27 licenses and licensing rights of respondent Jomoros's Corporate License No. 02014830 are

1 SUSPENDED until such time that Respondent Barajas or a successor Designated Officer, acting
2 on behalf of Jomoros, submits evidence demonstrating to the satisfaction of the Department or its
3 designee that Jomoros is in full compliance with the Real Estate Law and related regulations.

4 4. Respondents Barajas, eVision, and Jomoros are jointly and severally
5 ordered to reimburse the Department the sum of \$1,620.70 for costs incurred while investigating
6 and enforcing this matter. All licenses and licensing rights of Respondents are indefinitely
7 suspended unless or until Respondents pay the costs to the Department.

8 This Decision shall become effective at 12 o'clock noon on JUN 24 2020.

9 IT IS SO ORDERED 5-28-20

10 DOUGLAS R. McCAULEY
11 REAL ESTATE COMMISSIONER

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13 Douglas R. McCauley
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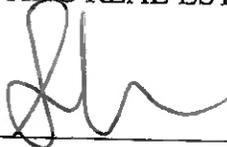
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Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Wednesday, January 15, 2020, at the Sacramento office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of complainant to be considered by me must be submitted within 15 days after receipt of the argument of respondent at the Sacramento Office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED: 2/19/20

SANDRA KNAU
ACTING REAL ESTATE COMMISSIONER



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

In the Matter of the Accusation against:

**EVISION REAL ESTATE, JOMOROS REALTY, INC., MARTIN
GARCIA BARAJAS, Respondents.**

Agency Case No. H-3220 FR

OAH No. 2019080992

PROPOSED DECISION

Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on January 15, 2020, in Sacramento, California.

Truly Sughrue, Counsel, represented Brenda Smith (complainant), Supervising Special Investigator, Department of Real Estate (Department).

Martin Garcia Barajas (respondent or respondent Barajas) appeared and represented himself, eVision Real Estate (eVision), and Jomoros Realty, Inc. (Jomoros), collectively "respondents."

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on January 15, 2020.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 20, 2015, the Department issued Corporation License No. 01973672 to eVision, with respondent Barajas listed as the Designated Officer. The corporation license expired on February 19, 2019.¹
2. On September 1, 2016, the Department issued Corporation License No. 02014830 to Jomoros, with respondent Barajas listed as the Designated Officer. The corporation license will expire on August 31, 2020, unless renewed or revoked.
3. On December 16, 2002, the Department issued Broker License No. 01224490 to respondent Barajas. Respondent's broker license expired on December 15, 2018.²
4. On December 27, 2018, complainant filed the accusation in this matter seeking to discipline respondents' licenses based on allegations that respondents (1) failed to maintain a definite place of business within the state, and (2) failed to notify

¹ Business and Professions Code section 10103 states that "[t]he lapsing or suspension of a license . . . shall not deprive the department of jurisdiction to proceed with any . . . disciplinary proceeding against such license, or to render a decision suspending or revoking such license."

² *Ante*, footnote 1.

the Department of their respective principal places of business. Respondents timely filed a notice of defense, and this hearing followed.

Complainant's Evidence

5. On January 13, 2015, respondent Barajas submitted to the Department the eVision corporate license application, with his signature, on which he listed the main office and mailing address of eVision as 615 13th St., Ste. A, Modesto. Respondents did not provide notice to the Department at any time relevant to this matter that the office and mailing address of eVision changed from the address listed on the corporate license application.

6. On August 10, 2016, respondent Barajas submitted to the Department the Jomoros corporate license application, with his signature, on which he listed the main office and mailing address as 615 13th St., Ste. B, Modesto. Respondents did not provide notice to the Department at any time relevant to this matter that the office and mailing address of Jomoros changed from the address listed on the corporate license application.

7. On May 6, 2018, respondent Barajas submitted to the Department a Broker Change Application by which he provided notice that the address for his Broker License No. 01224490 was 615 13th St., Ste. B, Modesto. On August 20, 2018, respondent Barajas submitted to the Department a Broker Change Application by which he notified the Department that the address for Broker License No. 01224490 had changed to "123 No Address Modesto."

8. Ernie Ruiz was employed as a special investigator for the Department from 2006 to October 2018, and is now retired. On July 17, 2018, Investigator Ruiz went to 615 13th Street, Suites A and B, in Modesto to verify whether respondents

occupied either suite. He found other businesses were occupying both suites, as indicated by signs on the doors. Specifically, Suite A was occupied by a law firm. Suite B was occupied upstairs by an engineering firm and a private investigator, and downstairs by psychotherapy offices and a law office. There was no sign on any of the office doors indicating that respondents occupied either suite. Investigator Ruiz does not recall whether he spoke with the landlord to determine whether respondents occupied either of the suites.

9. J. David Meade is employed by the Department as a special investigator. On March 14, 2019, Investigator Meade went to 615 13th Street, Suites A and B, in Modesto and found the same door signage as did Investigator Ruiz previously. Also, investigator Meade did a search for "123 No Address" in Modesto, and found that no such address exists.

10. On April 9, 2019, Investigator Meade spoke by telephone with Edmund Morad, the owner of the building located at 615 13th Street, Modesto, and the occupant of Suite B.³ Mr. Morad told Investigator Meade that respondent Barajas had been a tenant at 615 13th Street for approximately four years, spending approximately three years in Suite A followed by approximately one year in Suite B. Mr. Morad said respondent Barajas vacated Suite A and moved into Suite B on approximately May 1, 2016. Respondent Barajas has not conducted business at 915 13th Street for approximately two years. Mr. Morad agreed to let respondent Barajas use the address for mail only, though respondent has not picked up his mail for approximately two

³ Mr. Morad's statements to Investigator Meade were admitted into evidence as administrative hearsay, pursuant to Government Code, section 11513, subdivision (d).

years. Mr. Morad continues to receive mail addressed to respondent, which Mr. Morad now resubmits to the U.S. Postal Service marked "return to sender."

Respondents' Evidence

11. Respondents' evidence consists solely of respondent Barajas's testimony. Respondent met once with Investigator Ruiz at the Department offices in Fresno in May 2018. Respondent told Investigator Ruiz he wanted to relinquish his broker's license. Respondent testified that Investigator Ruiz told him he could effectively relinquish his license if he did not have an address of record for his broker's license. This is why on August 20, 2018, respondent submitted to the Department a Broker Change Application by which he notified the Department that the address for Broker License No. 01224490 had changed to "123 No Address Modesto." Respondent did not notice the instruction to "ENTER MAIN ADDRESS OR 'NO BUSINESS ADDRESS'" directly above his entry of "123 No Address."

12. Respondent occupied 615 13th Street, Suite A, Modesto, prior to April 2016, at which time respondent moved to Suite B, as a tenant for approximately one year in the Morad Engineering office. Respondent obtained permission from Edmund Morad to use Suite B as a mailing address for himself and Jomoros, and to use the conference room to meet with clients. Respondent and Jomoros continue to receive office mail at Suite B, but he no longer meets with clients there because he has not been involved in the real estate business for approximately 18 months. EVision is inactive and does not receive mail at 615 13th Street. Respondent did not at any time display his broker's license in Suite B.

Discussion

13. The evidence demonstrates that respondent Barajas, acting on his own behalf and on behalf of eVision and Jomoros, failed to (1) maintain a definite place of business, (2) display his broker's license at the place of business, (3) provide a current or mailing address to the Department, and (4) inform the Department of any change of office or mailing address within 30 days of making the change. Specifically, respondents Barajas and Jomoros have not used Suite B as a place of business since early 2017, and have not picked up mail from that location for approximately two years. Respondent Barajas did not at any time display his broker's license at Suite B. In addition, respondent Barajas impermissibly provided to the Department a fictitious business address of "123 No Address." With respect to respondent eVision, respondent Barajas failed to provide any address update to the Department after respondents vacated Suite A, in 2016.

14. Respondent Barajas testified that he wishes to relinquish his broker's license, and that neither he nor corporate licensees eVision and Jomoros, are active in the real estate business. This fact does not excuse respondents from the requirements, as set forth in the Legal Conclusions, below, that they maintain a definite place of business and notify the Department of any changes in the business or mailing address.

15. Respondent Barajas also testified credibly that he thought he could effectively relinquish his broker's license by submitting fictitious address "123 No Address." As set forth in the Legal Conclusions below, respondent's belief, whether reasonable or not, does not excuse him from the requirement that he correctly inform the Department of his business address.

16. Based on the evidence as a whole, respondents are subject to discipline pursuant to the statutes and regulations set forth in the Legal Conclusions below. Complainant argued at hearing that the appropriate discipline is to suspend respondents' licenses until they correct the violations identified in this Decision. As set forth below, this is an appropriate form of discipline to ensure protection of the public.

Cost Recovery

17. Complainant requested that respondents be ordered to reimburse the Department for the reasonable costs of the investigation and enforcement in this matter. In support of its request for costs complainant submitted a declaration signed by complainant Brenda Smith, and a declaration signed by attorney Truly Sughrue, both of which include attached computer printouts summarizing the charges for time spent on specific tasks by investigative staff and Ms. Sughrue in the investigation and enforcement in this matter. The Sughrue declaration and attached computer printouts show that the charges for time spent by Ms. Sughrue total 14 hours and \$1,246. The Smith declaration shows that that the charges for time spent by investigative staffing total 5.3 hours and \$374.70. The scope of work and amounts submitted by complainant are reasonable in light of the allegations and legal issues in this matter. Complainant's cost recovery request is further addressed below.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proving, by clear and convincing evidence, that the charges in the accusation are true. (Evid. Code § 115; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and

convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.) Complainant met her burden.

Applicable Law and Regulations

2. Business and Professions Code section 10211 describes the scope of a corporate license as follows: “[i]f the licensee is a corporation, the license issued to it entitles one officer thereof, on behalf of the corporation, to engage in the business of real estate broker”

3. Business and Professions Code section 10159.2, subdivision (a), states: “[t]he officer designated by a corporate broker license pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the Corporation”

4. Business and Professions Code section 10177, subdivision (d), states that the Commissioner may suspend or revoke the license of a real estate licensee who has “[w]illfully disregarded or violated the Real Estate Law . . . or the rules and regulations of the [C]ommissioner” Proof that respondent acted “willfully” does not require evidence that respondent intended to violate the Real Estate Law or regulations in order to establish a violation.⁴

⁴ *Milner v. Fox* (1980) 102 Cal.App.3d 567, 573, note 9, states that “willfully” as used in section 10177, subdivision (d) “does not require an intent to violate the law, only an intent to engage in the act or conduct prohibited by the statute (See *Goodhew v. Industrial Acc. Com.* (1958) 157 Cal.App.2d 252, 256-257.) Respondent

5. California Code of Regulations, title 10, section 2715, provides, in relevant part:

Every real estate broker, except a broker acting in the capacity of a salesperson to another broker under written agreement, shall maintain on file with the commissioner the address of his or her principal place of business for brokerage activities, the address of each branch business office and his or her current mailing address, if different from the business address. . . . Whenever there is a change in the location or address of the principal place of business or of a branch office of a broker, that broker shall notify the Commissioner thereof not later than the next business day following the change.

6. Business and Professions Code, section 10162, subdivisions (a) through (c), provide:

(a) Every licensed real estate broker shall have and maintain a definite place of business in the State of California that serves as his or her office for the transaction of business.

This office shall be the place where his or her license is

acted voluntarily with an awareness of the nature of his conduct and therefore 'willfully.' [E]vidence of good faith does not render his act any less 'willful.' (See *People v. Clem* (1974) 39 Cal.App.3d 539, 542.)"

displayed and where personal consultations with clients are held.

(b) A real estate license does not authorize the licensee to do business except from the location stipulated in the real estate license as issued or as altered pursuant to Section 10161.8.

(c)(1) Every real estate broker and salesperson licensee shall provide to the commissioner his or her current office or mailing address, a current telephone number, and a current electronic mail address that he or she maintains or uses to perform any activity that requires a real estate license, at which the [Department] may contact the licensee.

(c)(2) Every real estate broker and salesperson licensee shall inform the commissioner of any change to his or her office or mailing address, telephone number, or electronic mail address no later than 30 days after making the change.

Causes for Discipline

7. Cause exists to discipline Barajas Broker License No. 01224490 pursuant to Business and Professions Code section 10177, subdivision (d), in that respondent Barajas willfully violated the Real Estate Law and related regulations set forth in Legal Conclusions 2 through 6, based on the evidence as a whole and Factual Findings 5 through 15.

8. Cause exists to discipline eVision Corporate License No. 01973672 pursuant to Business and Professions Code section 10177, subdivision (d), in that respondent Barajas, acting on behalf of eVision, willfully violated the Real Estate Law and related regulations set forth in Legal Conclusions 2 through 6, based on the evidence as a whole and Factual Findings 5, and 8 through 15.

9. Cause exists to discipline Jomoros Corporate License No. 02014830 pursuant to Business and Professions Code section 10177, subdivision (d), in that respondent Barajas, acting on behalf of Jomoros, willfully violated the Real Estate Law and related regulations set forth in Legal Conclusions 2 through 6, based on the evidence as a whole and Factual Findings 6, and 8 through 15.

10. The purpose of license discipline is not to punish the licensee, but to protect the public from incompetence and lack of integrity among those practicing in a licensed profession. (*Murrill v. State Board of Accountancy* (1950) 97 Cal.App.2d 709, 712.) The evidence does not, as a whole, indicate that respondent Barajas is incompetent or lacking in integrity. For this reason, the purpose of public protection will be fully served by suspending the license and licensing rights of each respondent until such time that each demonstrates compliance with the all applicable provisions of the Real Estate Law and related regulations at issue in this matter.

Cost Recovery

11. Pursuant to Business and Professions Code sections 10148, subdivision (b), and 10106, subdivision (b), a licensee found to have violated the Real Estate Law may be ordered to pay the reasonable costs of and audit, investigation, and enforcement of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in

determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct. When all the relevant factors in *Zuckerman* are considered, the investigative and enforcement costs to be paid by respondents are appropriately set at \$1,620.70.

ORDER

1. All licenses and licensing rights of respondent Barajas are revoked, provided the revocation is stayed for 180 days on the conditions that: (1) all licenses and licensing rights of respondent Barajas are immediately suspended, and (2) during the 180-day stay of revocation, respondent shall submit evidence demonstrating to the satisfaction of the Department or its designee that he is in full compliance with the Real Estate Law and related regulations at issue in this matter. The stayed revocation and suspension shall be lifted at such time that the Department or its designee accepts respondent's evidence of compliance with the Real Estate Law and regulations. In the event respondent does not, within 180 days of the effective date of this Decision, submit evidence demonstrating full compliance with the Real Estate Law and related regulations at issue in this matter, the stay shall be lifted and the revocation shall be imposed.

2. Pursuant to and consistent with the order of stayed revocation set forth in Order No. 1, all licenses and licensing rights of respondent eVision's Corporate

License No. 01973672 are SUSPENDED until such time that respondent Barajas or a successor Designated Officer, acting on behalf of eVision, submits evidence demonstrating to the satisfaction of the Department or its designee that eVision is in full compliance with the Real Estate Law and related regulations.

3. Pursuant to and consistent with the order of stayed revocation set forth in Order No. 1, all licenses and licensing rights of respondent Jomoros's Corporate License No. 02014830 are SUSPENDED until such time that respondent Barajas or a successor Designated Officer, acting on behalf of Jomoros, submits evidence demonstrating to the satisfaction of the Department or its designee that Jomoros is in full compliance with the Real Estate Law and related regulations.

4. Respondents Barajas, eVision, and Jomoros are jointly and individually ordered to reimburse the Department the sum of \$1,620.70 for costs incurred while investigating and enforcing this matter. Respondents may pay these costs according to a payment plan approved by the Department of Real Estate or its designee.

DATE: January 28, 2020

DocuSigned by:

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TIMOTHY J. ASPINWALL

Administrative Law Judge

Office of Administrative Hearings