

FILED

AUG 04 2022

DEPARTMENT OF REAL ESTATE

By J. Taggart

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:)	DRE No. H-3389 FR
)	
JAIME SANCHEZ,)	OAH No. 2021120461
)	
Respondent.)	

DECISION

The Proposed Decision dated July 1, 2022, 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 broker 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.

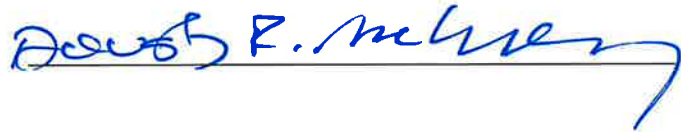
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The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached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

This Decision shall become effective at 12 o'clock noon on 'AUG 24 2022.

IT IS SO ORDERED 8.3.22

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

A handwritten signature in blue ink, reading "Douglas R. McCauley", is written over a horizontal line.

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

FILED
JUL 29 2022
DEPARTMENT OF REAL ESTATE
By *J. Taggart*

In the Matter of the Accusation Against:

JAIME SÁNCHEZ, Respondent

Agency Case No. H-3389 FR

OAH No. 2021120461

PROPOSED DECISION

Jessica Wall, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference and telephone on May 16, 2022, from Sacramento, California.

Kyle T. Jones, Counsel, represented Brenda Smith (complainant), Supervising Special Investigator, Department of Real Estate (Department), State of California.

Respondent Jaime Sánchez represented himself.

Evidence was received and the record remained open to allow respondent to submit character reference letters and the Department to respond. On May 31, 2022, respondent sent supplemental evidence to OAH, which OAH forwarded to the Department. On June 1, 2022, the Department filed an objection to respondent's supplemental evidence, asserting (1) respondent's letter to the court and certificate of program completion (Exhibits A and D) were outside the scope of evidence permitted

and the letter was not a sworn statement; (2) respondent's character reference letters (Exhibits B and C) were hearsay; and (3) respondent's book (Exhibit E) was not relevant. Respondent did not reply to the objection. Accordingly, Exhibits A and E will be excluded, and Exhibits B, C, and D will be admitted as administrative hearsay. On June 8, 2022, the record closed and the matter submitted for decision.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 5, 2000, the Department issued respondent a real estate salesperson license. On November 5, 2005, the Department issued respondent real estate broker license number B/01274282 (license). The license is in full force and effect and will expire on November 4, 2025, unless renewed or revoked.

2. On July 15, 2021, complainant, acting solely in her official capacity, filed the Accusation seeking to discipline respondent's license on grounds that he was convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee, and that he failed to report his criminal conviction to the Department within 30 days. Respondent timely filed a Notice of Defense. This hearing followed.

Criminal Conviction

3. On March 5, 2020, in Monterey County Superior Court, case number 19CR011607, respondent was convicted, on his plea of no contest, of violating Penal Code section 243, subdivision (e)(1) (domestic battery), a misdemeanor. The court suspended imposition of sentence and placed respondent on informal probation for

three years. His probation conditions included having no contact with the victim, performing eight hours of community service, completing a one-year domestic violence counseling program, and paying fines and fees.

4. The circumstances underlying respondent's conviction occurred on the evening of October 24, 2019. That night, respondent was sharing a bed with his ex-wife. When she attempted to exit the room, respondent grabbed her, wrapped his arms around her upper chest area, and squeezed her forcefully to prevent her from leaving. He eventually let go and suggested calling an ambulance for his ex-wife because she was in pain. Four days later, respondent's ex-wife visited the emergency room of a nearby hospital for the chest and back pain caused by the incident. A nurse made a domestic violence complaint about respondent to the Greenfield Police Department. When interviewed by Officer J. Santiago, respondent admitted that he "hugged" his ex-wife to keep her from leaving the room that night.

5. Respondent notified the Department about his conviction on April 27, 2020; three weeks after the 30-day notification deadline. On April 22, 2021, respondent provided the following description of his offense in the Department Interview Information Statement:

I was trying to hold my ex-wife close to me and she asked to let go [*sic*], but I tried to hug her and she tried to get away to the living room and I tried to hold her back and she said I hurt her.

I didn't mean to hurt her; I was not trying to cause her pain, I just tried to hold her close to me.

Respondent's Evidence

6. Respondent is 57 years old. He takes responsibility for and regrets the actions underlying his conviction. In October 2019, respondent and his ex-wife were attempting to reconcile after their divorce. The evening of the incident, the pair began to argue, and respondent held his ex-wife to prevent her from leaving the room. Respondent had not intended to harm her but acknowledged that "maybe [he] used excessive force" when holding her. He understands that his ex-wife felt hurt by his actions, and he "respect[s] her feelings."

7. Respondent has complied with the terms of his criminal probation, which is set to end in March 2023. He completed the court-ordered domestic violence classes, paid the fine, and performed community service. In the domestic violence course, he learned about "toxic violence" and how to prevent disputes from escalating. He now understands he "cannot control other people" and it is "not up to [him] to punish" others. Respondent no longer has any contact with his ex-wife, who has full custody of their 15-year-old daughter. He has seen his daughter a few times since his conviction and described her as one of his priorities.

8. Currently, respondent works as a Broker Associate at Century 21 Showcase Monterey. His recent work has focused on providing market analysis appraisals. The COVID-19 pandemic caused his income to decline, so he worked as an Uber driver and authored a book to support himself during this period. His book is selling well, and he sold a property in Mexico to provide financial support for his ex-wife. In the future, respondent plans to do "prospecting," in which he would find new contacts and turn them into leads to grow his real estate business. Additionally, in February 2020, he completed a 120-hour program in home inspections for professional real estate agents so he can offer additional skills to his clients.

9. In his "journey to self-healing," respondent joined a group that focuses on the spiritual power of fire and praying in a sweat lodge. Respondent aspires to become a "healer" with the group so that he can help others. His friend, Martin Herrera, a retired Native American chaplain, is a "firekeeper" with the group. Mr. Herrera wrote a letter supporting respondent's character. Similarly, respondent's friend of twenty years, Manuel Ruelas, wrote a letter supporting respondent, who he described as hardworking and family-oriented.

10. Respondent earned about \$12,000 in income in 2021. He is in debt and has not paid many of his bills "in a long time." He is committed to "doing whatever it takes" to "be a better person." He does not believe that the Department should discipline his real estate license because "[he] did everything" required of him. He does not dispute that he missed the deadline in which to report his conviction to the Department. He explained that he was extremely depressed after his conviction, which led to the delay. No matter what the Department decides, respondent is committed to respecting that decision and will earn back his unencumbered license in the future.

Analysis

11. The Department has adopted criteria to evaluate the rehabilitation of a licensee convicted of crimes. The criteria relevant to this matter include: the time that has elapsed since commission of the acts or offenses; restitution to the victims; payment of court fines; new and different social and business relationships from those which existed at the time of the acts or offenses; significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; and a change in attitude from that which existed at the time of the conduct in question. (Cal. Code Regs., tit. 10, § 2912, subs. (a), (b), (g), (i), (l), & (m).)

12. Over two years ago, respondent was convicted of domestic battery. Respondent's crime was serious and involved physical harm to the victim. Nevertheless, respondent has accepted responsibility for his actions, paid court fees, and provided financial support to the victim. Respondent gained insight into his past behavior and tools to prevent future harm through the court-ordered domestic violence classes. He has no other criminal history or license discipline. He will remain on probation until March 2023. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [little weight is given to person's good behavior while on probation because such conduct is expected].) Through his testimony, respondent showed a change in attitude from the time of his misconduct.

13. With respect to the allegation of failure to disclose, respondent reported his conviction three weeks late to the Department. Although respondent's failure to comply with Business and Professions Code section 10186.2 can be explained, it cannot be excused. Nevertheless, respondent's disclosure of his criminal conviction demonstrates the absence of any intent to deceive. Respondent also displayed candor and sincerity in his testimony at the hearing.

14. The purpose of a disciplinary matter is to protect the public and not to punish the licensee. (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) When all the evidence is considered, cause exists to discipline respondent's license based on his conviction and untimely disclosure of that conviction to the Department. Nevertheless, respondent has shown sufficient progress toward rehabilitation such that outright revocation of all licensing rights would be unduly punitive. Instead, a period of monitoring through a restricted license is sufficient to address any concerns about respondent's misconduct.

Costs

15. Under Business and Professions Code section 10106, subdivision (a), the Department may seek to recover reasonable costs of the investigation and enforcement of a case. Complainant submitted a Certified Statement of Investigation Costs of \$1,465 for 18.1 hours of investigation time. Attached to the certification is a printout detailing the investigative tasks performed and the time spent on those tasks. Complainant also submitted an unsigned Certified Statement of Enforcement Costs, which indicates the Department incurred \$195.80 in costs for 2.2 hours of Mr. Jones's time enforcing this matter. Respondent did not object to the reasonableness of complainant's request. Cost recovery is addressed in the Legal Conclusions below.

16. In 2021, respondent earned less than the Federal Poverty Guidelines for a single-individual household. He is in debt and provides financial support for his ex-wife and their 15-year-old daughter. Nevertheless, respondent is willing to repay the Department's costs pursuant to a payment plan.

LEGAL CONCLUSIONS

Burden of Proof

1. Complainant has the burden to prove the matters alleged in the Accusation by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855–856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt and sufficiently strong as to command the unhesitating assent of every reasonable mind. (*In re Michael G.* (1998) 63 Cal.App.4th 700, 709, fn. 6.)

2. Rehabilitation is akin to an affirmative defense, and the burden of proof to establish rehabilitation is on the respondent. (*Whetstone v. Bd. of Dental Examiners* (1927) 87 Cal.App. 156, 164; Evid. Code, § 500.) The burden of proof is a preponderance of the evidence (Evid. Code, § 115), which means "more likely than not." (*Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1388.)

Applicable Laws and Regulations

3. The Real Estate Commissioner may discipline a professional license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 490 & 10177, subd. (b).) In California Code of Regulations, title 10, section 2910, the Department has determined a substantially related crime includes: "Doing any unlawful act with the intent or threat of doing substantial injury to the person or property of another." (*Id.* at subd. (a)(8).)

4. The Department may discipline a professional license if the licensee willfully disregarded or violated the Real Estate Law. (Bus. & Prof. Code, § 10177, subd. (d).) A real estate licensee who has been indicted for a felony or convicted of a felony or misdemeanor shall report such indictment or conviction to the Department in writing, within 30 days. (Bus & Prof. Code, § 10186.2, subd. (a)(1)(A) & (B), & (2).)

Cause for Discipline

5. Respondent's conviction for domestic battery is substantially related to the qualifications, functions, or duties of a real estate licensee because it involved an unlawful act that threatened to cause substantial injury to another person. Cause therefore exists to discipline respondent's license under Business and Professions Code sections 490 and 10177, subdivision (b).

6. As articulated in Factual Findings 5 and 10, respondent did not report his conviction to the Department within 30 days, in violation of Business & Professions Code section 10186.2, subdivision (a)(1)(B), and (2). Therefore, complainant established cause to discipline respondent's license pursuant to Business and Professions Code section 10177, subdivision (d).

7. As discussed in Factual Findings 11 through 14, respondent has shown sufficient rehabilitation such that it would not be contrary to the public interest to allow respondent to transact business as a real estate broker, with appropriate restrictions and conditions.

Costs

8. The Department may request that a licensee found to have committed violations of the Real Estate Law be ordered to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code, § 10106, subd. (a).) In *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether the costs should be assessed in the circumstances of each case. 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 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 to the alleged misconduct.

9. Under Business and Professions Code section 10106, subdivision (c), complainant must submit "A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the commissioner or the

commissioner's designated representative" to establish "prima facie evidence of reasonable costs of investigation and prosecution of the case."

10. Complainant requests \$1,465 in investigation costs and \$195.80 in enforcement costs. Although respondent did not object to the reasonableness of these costs, complainant's Certified Statement of Enforcement Costs is unsigned. Thus, it does not cannot qualify as prima facie evidence of reasonable costs. Enforcement costs cannot be awarded.

11. Considering the factors set forth in *Zuckerman*, complainant's request for investigation costs is reasonable. Therefore, respondent must reimburse the Department its investigation costs of \$1,465 as set forth in the order below.

ORDER

1. All licenses and licensing rights of respondent Jaime Sánchez under the Real Estate Law are revoked; provided, however, a restricted real estate broker 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 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 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:

The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate 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.

The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate 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 Real Estate Commissioner or conditions attaching to the restricted license.

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 two years have elapsed from the effective date of this Decision.

Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate 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.

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 187000, Sacramento, CA 95818-7000. 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.

2. Respondent shall pay costs of \$1,465 to the Real Estate Commissioner in the form of a cashier's check or certified check within 30 days of the effective date of this Decision, or on a payment plan by agreement with the Commissioner

DATE: July 1, 2022

Jessica Wall
Jessica Wall (Jul 1, 2022 11:18 PDT)

JESSICA WALL

Administrative Law Judge

Office of Administrative Hearings