

MAY 19 2021

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPT. OF REAL ESTATE
By _____

In the Matter of the Accusation of:)	DRE No. H-41615 LA
)	
JAMES MUHAMMAD,)	OAH No. 2021020444
)	
Respondent.)	

DECISION

The Proposed Decision dated 04/13/2021, 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.

Pursuant to Section 11517(c)(2) of the Government Code the following corrections are made to the Proposed Decision: On Proposed Decision Face Sheet Caption "Agency Case No. H-41615" shall read "Agency Case No. H-41615 LA."

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted salesperson license is granted to Respondent.

Respondent shall, within thirty (30) days from the effective date of this Decision pay the sum of \$816 for the Commissioner's reasonable cost of the investigation and enforcement which lead to the disciplinary action against Respondent. Said payment shall be in the form of a cashier's check made payable to the Department of Real Estate, and shall be delivered to the Department of Real Estate, Flag Section, P.O. Box 137013, Sacramento, CA 95813-7013.

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 06/08/2021.

IT IS SO ORDERED 5.13.21

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

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

In the Matter of the Accusation against:

JAMES MUHAMMAD, Respondent

Agency Case No. H-41615

OAH No. 2021020444

PROPOSED DECISION

Julie Cabos Owen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 17, 2021. Maria Suarez (Complainant) was represented by Laurence D. Haveson, Counsel for the Department of Real Estate (Department). James Muhammad (Respondent) represented himself.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on March 17, 2021.

FACTUAL FINDINGS

Jurisdictional Matters

1. On July 6, 2020, Complainant filed the Accusation while acting in her official capacity as a Supervising Special Investigator of the State of California.

2. Respondent filed a Notice of Defense requesting a hearing.

Respondent's License History

3. Respondent previously held a real estate salesperson license, originally issued on January 1, 2008. The license expired on May 18, 2020.

4. Prior to his licensure, Respondent applied twice to the Department for a license and was denied in 1999 (Case No. H-27842LA) and in 2003 (Case No. H-29750).

Criminal Conviction

5. On April 16, 2019, in the Superior Court of the State of California (Super. Ct. Los Angeles, 2019, No. 0CA11560), Respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code section 10851, subdivision (a) (taking or driving a vehicle without owner's consent), a misdemeanor. Respondent was placed on probation for 36 months and ordered to pay fines and to serve two days in jail.

- 6A. The circumstances giving rise to Respondent's conviction arose in 2010.

- 6B. On April 25, 2010, police stopped Respondent for driving a vehicle reported stolen from Avis Rent-a-Car (Avis). Respondent rented the vehicle from Avis but did not return it by the March 30, 2010 due date.

- 6C. A criminal complaint was filed against Respondent in May 2010 alleging several crimes relating to the Avis vehicle, including violation of Vehicle Code section 10851, subdivision (a). On August 24, 2010, Respondent was arraigned and placed on informal diversion on terms including restitution to Avis. If Respondent complied with the terms of his informal diversion, the court would dismiss the case. On November 29,

2010, Respondent failed to make a required court appearance, his informal diversion was terminated, and a bench warrant was issued.

6D. On August 1, 2018, Respondent was arrested pursuant to the bench warrant issued on November 29, 2010. On August 9, 2018, the bench warrant was recalled. On August 24, 2018, Respondent pleaded not guilty to all charges in the criminal complaint. On April 16, 2019, Respondent withdrew his not guilty plea and pleaded nolo contendere to a violation of Vehicle Code section 10851, subdivision (a).

7. At the administrative hearing, Respondent's explanation of his 2019 criminal conviction differed from the documentary evidence. Respondent denied the issuance of the 2010 bench warrant. He insisted the 2010 criminal case was dismissed after he returned the overdue rental car in 2010 and paid all rental fees. Respondent explained that, in 2019, he was again delinquent in returning a rented vehicle, and the Deputy District Attorney "wanted to combine the two [cases to] help the 2019 case," and "wanted to make her case stronger to cause [him] more grievance or agony." This explanation was not persuasive and did not sufficiently contradict the court docket history (i.e., that in 2010, Respondent committed a crime and a bench warrant issued, but the criminal conviction was delayed until 2019).

Failure to Report Criminal Conviction

8. Respondent was required to report his criminal conviction to the Department within 30 days of the conviction. (See Legal Conclusion 4.) However, Respondent failed to do so.

9. At the administrative hearing, Respondent testified his failure to report his criminal conviction was not "done in a misleading way" or with any intent to deceive. He insisted he and his broker at the time "did not understand that [he]

needed to make [the Department] aware" of his criminal conviction. Respondent thought he only needed to report the occurrence of "criminal activity or DUI or bodily harm." Respondent characterized his crime as a "personal matter."

10. Respondent opined this proceeding against him is unfair and discipline is unwarranted. He does "not want to be penalized after [many] years of being in good standing" simply because he was unaware of his duty to report his criminal conviction.

Respondent's Testimony Regarding Mitigation/Rehabilitation

11. Respondent insisted that his real estate license history has "no blemishes." This is somewhat inaccurate, since Respondent's license was initially denied twice. He explained the denials arose from his prior unlawful activity which he described as being "pulled over with two driver's licenses" and subsequent suspension of his driver's license. Once he obtained licensure from the Department, Respondent "vowed not to do anything to jeopardize his real estate license." Respondent has not been disciplined since obtaining his real estate salesperson license.

12. In 2019, Respondent moved his employment to Remax Vision, under his current employing broker, Yolanda Andrade. Ms. Andrade is aware of Respondent's criminal conviction.

13. Respondent has not renewed his license since it expired in May 2020. He seeks to first resolve this matter, and he is not currently engaging in the business of real estate sales.

14. Respondent expressed embarrassment for his criminal conviction, but he did not express sincere remorse for his crime. He downplayed the seriousness of his

crime, noting that he was "not taking any car without permission" and that he "did not storm a rent-a-car place [with a] gun or knife."

15. Respondent remains on criminal probation which is scheduled to end in April 2022. He has complied with his probation terms. He has taken no steps to have his probation terminated early and to have his criminal conviction expunged.

16. Respondent is unmarried. He has two adult offspring, ages 26 and 19, whom he raised and provided financial support. His 19-year-old son still lives with him.

17. Respondent helps coach youth sports, and he has participated in Thanksgiving food distribution for four years.

Costs

18. Complainant submitted evidence of the costs of investigation and enforcement of this matter totaling \$816. This included \$442.50 in investigation costs and \$373.50 in attorney costs. All costs are deemed reasonable.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), the Department has the authority to suspend or revoke the licensing rights of a real estate salesperson if the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of a licensed real estate salesperson.

2A. California Code of Regulations, title 10, section 2910, subdivision (a) provides a "crime or act shall be deemed to be substantially related to the

qualifications, functions or duties of a licensee . . . if it involves [¶] . . . [¶] (8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.”

2B. Respondent’s criminal conviction for taking or driving a vehicle without owner’s consent constitutes an unlawful act with the intent of conferring a financial benefit -- in this case, Respondent’s withholding of rental fees. Consequently, Respondent’s criminal conviction is substantially related to the qualifications, functions, or duties of a real estate licensee.

3. Cause exists to suspend or revoke Respondent’s real estate salesperson’s license, pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), and California Code of Regulations, title 10, section 2910, subdivision (a)(8), for his criminal conviction which is substantially related to the duties, qualifications, and functions of a real estate licensee, as set forth in Factual Findings 5 and 6 and Legal Conclusions 1 and 2.

4. Business and Professions Code section 10186.2 requires a licensee to report specified occurrences to the Department as follows:

(a)(1) A licensee shall report any of the following to the department:

(A) The bringing of a criminal complaint, information, or indictment charging a felony against the licensee.

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(C) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government.

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, the conviction, or the disciplinary action.

(b) Failure to make a report required by this section shall constitute a cause for discipline.

5. Cause exists to suspend or revoke Respondent's real estate salesperson's license, pursuant to Business and Professions Code sections 10186.2, for his failure to report his criminal conviction to the Department within 30 days, as set forth in Factual Findings 5, 6, and 8, and Legal Conclusion 4.

6A. California Code of Regulations, title 10, section 2912 lists criteria developed by the Department to evaluate the rehabilitation of a licensee following the licensee's conviction of a crime. The criteria include: (1) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee (subd. (a)); (2) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee (subd. (b)); (3) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action (subd. (c)); (4)

Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code (subd. (d)); (5) Successful completion or early discharge from probation or parole (subd. (e)); (6) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol (subd. (f)); (7) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license (subd. (g)); (8) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted (subd. (h)); (9) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question (subd. (i)); (10) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction (subd. (j)); (11) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement (subd. (k)); (12) Significant and conscientious involvement in community, church or privately sponsored programs designed to provide social benefits or to ameliorate social problems (subd. (l)); and (13) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by the absence of further criminal convictions, by the testimony of the licensee, and by evidence from family, friends, probation or parole officers, psychiatrists, or clinical psychologists (subd. (m)).

6B. Respondent has complied with a few of the Department's rehabilitation criteria. He has paid restitution and fines imposed in connection with his criminal conviction (subds. (b) and (g)), and he fulfilled his parental responsibilities and is involved in programs designed to provide social benefits (subds. (j) and (l)). However, Respondent has failed to meet other criteria for rehabilitation. Just under two years

have elapsed since his conviction. He remains on probation and has not obtained a dismissal pursuant to Penal Code section 1203.4.

6C. Additionally, while he has shown some embarrassment for his crime, Respondent has failed to fully acknowledge the seriousness of driving a rental vehicle without payment of fees. Respondent also failed to express sincere remorse for his crime. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. (See *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (See *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933; *In the Matter of Brown, supra*.)

6D. However, mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) Just under two years have elapsed since Respondent's conviction, and he is scheduled to remain on probation until April 2022. Since people have a strong incentive to obey the law while under the supervision of the criminal justice system, little weight is generally placed on the fact that a person has engaged in good behavior while on probation. (See, *In re Gossage* (2000) 23 Cal.4th 1080.) In this case, there has been no passage of time to assess Respondent's rehabilitation after release from the command of the criminal justice system. Nevertheless, Respondent's crime occurred almost 11 years ago, and he has sustained no other criminal convictions in his 12 years of licensure.

6E. Given the foregoing, Respondent has demonstrated sustained lawful conduct and sufficient progress toward rehabilitation such that, in this case, outright revocation of all licensing rights would be overly harsh discipline. A restricted license should issue and will provide adequate public protection.

7. Pursuant to Business and Professions Code section 10106, the Department may recover its reasonable costs of investigation and enforcement of this matter in the amount of \$816, as set forth in Factual Finding 18.

ORDER

All licenses and licensing rights of Respondent, James Muhammad, under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license 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.

2. 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.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

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

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

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

6. Respondent shall notify the Real Estate Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the

Department of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of Respondent's arrest, the crime for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

7. Respondent shall pay costs of \$816 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: 04/13/2021

Julie Cabos-Owen

JULIE CABOS-OWEN

Administrative Law Judge

Office of Administrative Hearings