

FILED

FEB 13 2023

DEPARTMENT OF REAL ESTATE

By By deed

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:)	DRE NO. H-3391 FR
)	
CHERYL A. SAVAGE,)	OAH NO. 2022040800
)	
Respondent.)	

ORDER STAYING EFFECTIVE DATE

On 01/06/2023, a Decision was rendered in the above-entitled matter to become effective February 15, 2023.

IT IS HEREBY ORDERED that the effective date of February 15, 2023, is stayed for a period of 30 days to consider Respondent's petition for reconsideration.

The Decision of 01/06/2023, shall become effective at 12 o' clock noon on March 17, 2023.

DATED: 2/13/23

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Stew L
for Doug McCauley

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 FEB 15 2023

IT IS SO ORDERED 1.6.23

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER



Douglas R. McCauley

FILED

DEC 12 2022

DEPARTMENT OF REAL ESTATE

By *By dew*

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

In the Matter of the Accusation Against:

CHERYL ANN SAVAGE, Respondent

Case No. H-3391 FR

OAH No. 2022040800

PROPOSED DECISION

Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 10 and 11, 2022, from Sacramento, California.

Adriana Z. Badilas, Counsel for the Department of Real Estate (DRE), represented Brenda Smith (complainant), DRE Supervising Special Investigator, State of California.

Fredrick M. Ray, Attorney at Law, Ray & Bishop PLC, represented respondent Cheryl Ann Savage,¹ also known as Cheryl Ann Sharp, who was present.

¹ Effective January 13, 2022, respondent filed a name change with the DRE, changing her name from Cheryl Ann Savage to Cheryl Ann Sharp.

Evidence was received, the record closed, and the matter submitted for decision on October 11, 2022.

FACTUAL FINDINGS

Jurisdictional Matters and Disciplinary History

1. On November 23, 1981, the DRE issued salesperson license number 00828416 to respondent. On February 17, 1993, the salesperson license was terminated because respondent obtained her broker license on the same date.

2. Effective October 28, 2013, the DRE accepted the surrender of respondent's broker license in Case No. H-02836 FR, for violations of the Real Estate Law (Bus. & Prof. Code, § 10000 et seq.) and DRE regulations. The basis for the DRE disciplinary action was respondent's May 8, 2013, criminal conviction for tax evasion related to falsification of information on her 2004 federal tax return.

3. Effective January 24, 2019, DRE granted respondent's petition for reinstatement of her broker license, provided that she satisfied prerequisite conditions. Those conditions included that respondent qualify for and pass the real estate broker license examination and apply for and pay the fee for the broker license. If she failed to meet these conditions, she could still be issued a real estate salesperson license if she qualified for and passed the real estate salesperson license examination, submitted an application, and paid the salesperson license fee within 12 months. On May 13, 2019, respondent's salesperson license was reissued. The license expires on May 12, 2023.

4. On January 28, 2022, complainant signed and thereafter filed the Accusation in her official capacity.² Complainant seeks to discipline respondent's real estate salesperson license on the grounds that respondent: acted as a real estate broker without a broker license; made a substantial misrepresentation; engaged in conduct that constitutes fraud or dishonest dealings in a licensed capacity; willfully disregarded real estate laws; was negligent; and engaged in fraudulent or dishonest dealings. In aggravation, complainant alleged respondent's voluntary surrender of her real estate broker license described above.

5. Respondent filed a Notice of Defense. The matter was set for an evidentiary hearing before an administrative law judge of the Office of Administrative Hearings pursuant to Government Code section 11500 et seq. This hearing followed.

Complainant's Evidence

DRE COMPLAINT

6. On January 17, 2020, DRE received a written complaint from Dennis Barwick. Mr. Barwick is licensed by the DRE as a real estate broker doing business as (dba) Pasadera Realty Group (PRG). Mr. Barwick was respondent's employing broker from June 24 through December 31, 2019. Mr. Barwick explained that respondent

² At hearing, complainant moved to dismiss Count 1 of the Accusation, consisting of paragraphs 7 through 16. In addition, complainant moved to amend paragraph 29 to state: "Each and every allegation made in Paragraphs 1 through 6, and 17 through 28, inclusive, excluding Paragraphs 7 through 16, will be incorporated by reference as if fully set forth herein." Respondent did not object. Count 1 was dismissed, and paragraph 29 was amended as requested.

contacted him in June 2019, expressing her interest in working for him as a licensed real estate salesperson. They agreed to form a partnership "based on a split of all commissions that were earned by both parties." (50-50 Agreement.) They also agreed on the name "Pasadera Realty Group" (PRG) for the fictitious business name under Mr. Barwick's broker license. Shortly thereafter, according to Mr. Barwick, they also agreed to form a corporation under the name "Pasadera Realty Group Corp" (PRGC).

7. After three to four escrows closed between July and September 2019, respondent decided she wanted to retain all of the commissions rather than having to split them with Mr. Barwick in accordance with their 50-50 Agreement. They decided to keep their agreement in place until the end of 2019, then "reassess the future relationship at that time." On December 26, 2019, respondent left PRG for PRGC, to work as a licensed real estate salesperson under licensed real estate broker Richard Kostkas.

8. On January 3, 2020, Mr. Barwick discovered respondent had taken his business name, PRG, and without his involvement, started PRGC, naming herself as Chief Executive Officer. Respondent did not designate Mr. Barwick as an officer of the corporation. Instead, respondent designated her husband, Michael Sharp, as secretary, chief financial officer, and director, and Richard Kostkas, a licensed real estate broker, as a director. Mr. Barwick asserted that respondent recruited a broker "in name only" to "establish her legitimacy." Respondent opened an office at 100 Clock Tower Place, Carmel, California, adjacent to Mr. Barwick's office and began operating PRGC "with essentially the same name in the same location[,] creating a confusing and misleading real estate environment." Mr. Barwick's office was located at 200 Clock Tower Place in Carmel.

PINTO LANE TRANSACTION

9. On November 18, 2019, Jason Skerik, a licensed real estate salesperson working for PRG, completed a Residential Purchase Agreement and Joint Escrow Instructions (purchase agreement) on behalf of the buyer for the purchase of 2595 Pinto Lane, Paso Robles, California (Pinto Lane). The buyer's brokerage firm was identified as PRG, located at 200 Clocktower Place in Carmel. The seller's brokerage firm was identified as Country Real Estate, Inc., with Carolynne Potts as the licensed real estate salesperson. The escrow holder was identified as First American Title. On November 22, 2019, the selling broker, Kandi Frederich of Country Real Estate, Inc., submitted a broker demand containing instructions to pay commission in the amount of \$10,183.50 to PRG. The broker demand stated in pertinent part:

This is an IRREVOCABLE COMMISSION ORDER and cannot be amended or revoked, insofar as it relates to payment of commission, without the prior written consent of the Broker(s) named herein, who shall be deemed a party to the escrow for the sole and exclusive purpose of receiving said commission.

10. While the Pinto Lane transaction was in escrow, Mr. Skerik left PRG to join respondent to work under Mr. Kostkas's broker license at PRGC. He did not prepare an agency disclosure agreement changing the agency relationship between himself and Mr. Barwick, and Mr. Barwick did not sign a release of the Pinto Lane transaction. Wanting to take the Pinto Lane transaction with him to PRGC, Mr. Skerik prepared an Addendum No. 2, signed by the buyer and seller which stated:

Buyer and seller Agree [buyer's] broker of record will be Richard Kostkas DRE 02106506 with Pasadera Realty Group Corporation thus removing Dennis Michael Barwick 01482899 as the [buyer's] broker.

There is no indication on Addendum No. 2 that it was approved or signed by Mr. Barwick. Thus, the Pinto Lane transaction remained with Mr. Barwick at PRG. Mr. Skerik acknowledged at hearing that Addendum No. 2 "was not brought to fruition."

11. Mr. Barwick's relationship with respondent and Mr. Skerik became strained after they both moved to PRGC. On January 10, 2020, without a release of the Pinto Lane transaction from Mr. Barwick, respondent prepared and submitted a broker demand instructing First American Title to send the \$10,183.50 commission to PRGC, with commission checks made payable to PRGC in the amount of \$2,315.50, Mr. Skerik in the amount of \$7,418, and Maria Berrelleza (PRGC's documents preparer) in the amount of \$450. Respondent's instructions stated, in pertinent part:

Under **NO CIRCUMSTANCES** shall any commission other than as shown here be disbursed from this transaction, unless the **undersigned has electronically or hand-signed** and issued a corrected demand.

(Emphasis in original.)

Respondent's name and contact information, and that of PRGC, were identified at the bottom of the broker demand. There was no indication that Mr. Barwick signed off on the broker demand or was otherwise identified on the broker demand as the broker of record.

12. Mr. Barwick stated in his complaint to the DRE that once he learned Mr. Skerik was transferring his Pinto Lane escrow to PRGC, he immediately notified First American Title of the situation. First American Title notified all the parties that escrow was suspended until the conflicting broker demands were "sorted out." On January 14, 2020, respondent sent an email to First American Title requesting they continue with the escrow, and she would "back off on [her] position," meaning that she was withdrawing her broker demand. Mr. Barwick requested the DRE investigate "the serious misleading and confusing information coming out of [respondent's] firm, as well as [respondent] signing documents in [his] stead without [his] permission, and finally the breach of agreement and conversion of funds for the final escrow for [the Pinto Lane] property."

DRE INVESTIGATION

13. Yolanda Chapman, a DRE Special Investigator since 2013, testified about her investigation of this matter. Her primary job duty is to investigate complaints made to the DRE. Investigator Chapman has a bachelor's degree in criminology from California State University, Fresno. She has 20 years of experience in the investigation field, having worked as a probation officer, parole agent, and correctional officer. Upon receiving a complaint, Investigator Chapman reviews the file and the supporting documents that come with the file, conducts interviews of the parties involved in the complaint, obtains further documentation, and determines whether the Real Estate Law has been violated. She prepares a report of her investigation. Although Investigator Chapman's report was not offered in evidence, Investigator Chapman testified about the investigation and interviews she conducted, documents obtained, and her findings. She wrote a Memo of Interview dated June 17, 2020, memorializing her June 15, 2020 interview of respondent, and testified consistently with its contents.

14. Investigator Chapman obtained and reviewed the purchase agreement for the Pinto Lane property, the November 22, 2019 broker demand submitted to First American Title by the seller's broker, respondent's January 10, 2020 broker demand to First American Title, First American Title's January 14, 2020 email informing the parties of suspension of escrow for the Pinto Lane property, and respondent's January 14, 2020 email to First American Title withdrawing her broker demand. Investigator Chapman did not find any documents showing that Mr. Barwick released his interest as broker of record for the Pinto Lane transaction, or that he released the buyer to move to a new brokerage firm. Furthermore, there were no documents showing that the buyer signed a new agency agreement with PRGC.

15. Investigator Chapman interviewed respondent on June 15, 2020. Respondent confirmed that she and Mr. Barwick were partners, he was her employing broker, and the fictitious business name PRG was added under Mr. Barwick's broker's license. Respondent worked for Mr. Barwick "for a short time," and "it was not a good fit." Under Mr. Barwick's direction, respondent prepared all commission demand letters and sent them to escrow on Mr. Barwick's behalf. Mr. Barwick "was no longer ok with this when [respondent] informed Barwick that she was leaving his brokerage."

16. Respondent admitted that she completed and submitted to First American Title a broker demand for the Pinto Lane transaction, with commissions payable to PRGC, not PRG. She did so because completing broker demands was one of her job duties while working for Mr. Barwick. She added that she was "just attempting to leave the brokerage with no concerns or issues," was not receiving any commission, and was "just looking out for [Mr.] Skerik to ensure he got his commission." Respondent claimed that Mr. Barwick was aware of her completing the broker demand

for the Pinto Lane transaction. Respondent added that to date, Mr. Barwick has not paid Mr. Skerik his commission for the Pinto Lane transaction.

17. Investigator Chapman completed her investigation on April 28, 2021. She prepared a final report containing her findings. Her final report was submitted to two supervisors for review. Based on her findings, Accusation No. H-3391 FR followed.

MATTER IN AGGRAVATION

18. On May 8, 2013, in the United States District Court, Northern District of California, Case No. CR-11-00728-001 LHK, respondent was convicted after pleading guilty to violating Title 26 United States Code section 7201 (attempt to evade or defeat tax), a felony. Respondent was sentenced to federal prison for 14 months and ordered to pay criminal monetary penalties of \$133,563, including \$123,463 in restitution. Upon release, respondent was placed on supervised probation for three years with standard conditions.

19. Respondent subsequently surrendered her real estate broker's license, effective October 28, 2013, in DRE Case No. H-2836 FR, as indicated above. About five years later, respondent filed a petition for reinstatement of her broker's license, which DRE granted based on her rehabilitation evidence. Respondent chose to pursue reissuance of a real estate salesperson license, rather than a broker license. By granting her petition, the DRE considered respondent to have demonstrated sufficient rehabilitation from her criminal conviction. Thus, her conviction will not be considered as a matter in aggravation in the present case.

Respondent's Evidence

RESPONDENT'S TESTIMONY

20. In May 2019, respondent began working as a real estate salesperson for Steinbeck Real Estate, Inc., where her daughter was the "designated officer" of the corporation, a position that respondent previously held prior to the surrender of her broker license. Shortly thereafter, respondent and her daughter had a disagreement and respondent left Steinbeck Real Estate, Inc. She then began working for Mr. Barwick in June 2019.

21. Respondent confirmed that she and Mr. Barwick agreed to do business as PRG under Mr. Barwick's broker's license. They agreed that respondent would "set up the office," and Mr. Barwick would set up the website, business cards, and any other advertising means. PRG would pay its salespersons 80 percent of the commissions, and Mr. Barwick would retain 20 percent of the commissions, splitting half with respondent. Problems arose when Mr. Barwick did not follow up with his agreed upon duties. Respondent took on Mr. Barwick's work, which became "burdensome" to respondent. She stated that Mr. Barwick was "not a partner the way I envisioned a partner to be."

22. On or about September 25, 2019, respondent and Mr. Barwick met over lunch. She told Mr. Barwick that their arrangement was not working out, and she wanted to move on with PRGC under a different broker. Mr. Barwick became "very aggressive" and "belligerent." Respondent ended the conversation and left. She asserted that Mr. Barwick began harassing her with emails and text messages.

23. Respondent confirmed that the Pinto Lane transaction was handled by Mr. Skerik. When Mr. Skerik informed Mr. Barwick that he was leaving PRG to work for

PRGC, Mr. Barwick became "belligerent." Respondent claimed that Mr. Barwick asked her to prepare a broker demand for the commission. She did so, instructing First American Title to disburse the commission checks to PRGC, Mr. Skerik and Ms. Berrelleza. Ms. Berrelleza was an independent contractor who "put the documents together and ensured the disclosures were there." Respondent explained that the agreements for the Pinto Lane transaction were "under one brokerage," and the "licensees were under another brokerage." She conceded that the Pinto Lane transaction originated under PRG. However, she felt it was her duty to complete the transaction, and she did so under the new corporation, PRGC. Respondent claimed it was not her intention to steal commission, rather to ensure Mr. Skerik received the commission due to him as the buyer's agent.

JASON SKERIK'S TESTIMONY

24. Mr. Skerik confirmed he worked as a real estate salesperson for Mr. Barwick at PRG in late 2019 and early 2020. He represented the buyer in the Pinto Lane transaction as a real estate salesperson licensee. During that transaction, he switched brokers, leaving PRG to work for PRGC. Mr. Skerik confirmed that he prepared Addendum No. 2, signed by the buyer and seller, so that he could bring the Pinto Lane transaction with him to PRGC.

25. Mr. Skerik knew respondent filed the broker demand directing First American Title to forward the commission checks to PRGC, explaining that Mr. Barwick was angry and "was communicating through rage" when he learned Mr. Skerik was leaving and taking the Pinto Lane files with him to PRGC. He believed respondent submitted the broker demand because she felt bad she had "sucked [Mr. Skerik] into this." The Pinto Lane transaction was Mr. Skerik's "only deal of the year and money was tight." Mr. Skerik and respondent believed that Mr. Barwick was going to keep the

entire commission. After respondent withdrew the broker demand to allow the Pinto Lane transaction to close escrow, Mr. Barwick received the commission, and did not pay Mr. Skerik the \$1,700 commission owed to him. Mr. Skerik stated, "to this day he has never paid me." Mr. Skerik later acknowledged that Mr. Barwick previously pre-paid commission owed to Mr. Skerik "through e-commissions," with the exception of the remaining \$1,700. Mr. Skerik did not provide the specific amount of commission pre-paid to him through e-commissions.

MICHAEL SHARP'S TESTIMONY AND LETTER

26. Mr. Sharp is respondent's husband. He has known respondent for 30 years. They married in 2020. Mr. Sharp is general manager of a produce company. He confirmed that respondent worked as a real estate salesperson under Mr. Barwick. Over time, respondent informed Mr. Sharp that she was fielding calls from Mr. Barwick's clients and was unable to contact Mr. Barwick. Frustrated, respondent decided that she could no longer work for Mr. Barwick. When she informed Mr. Barwick of her decision to leave, he became very aggressive and made respondent feel uncomfortable.

27. Mr. Sharp asserted that formation of PRGC was "not a secret" and Mr. Barwick was very aware of it. Respondent remained working under Mr. Barwick at PRG while she registered PRGC with the Secretary of State and the DRE. She left PRG in December 2019. Mr. Sharp also wrote a letter of support on respondent's behalf and testified consistent with its contents. In his letter, he wrote how respondent acted as his broker when he sold or purchased property. Mr. Sharp described respondent as an "honest and ethical person" who "works relentlessly to improve her knowledge and understanding."

LETTERS OF SUPPORT

28. Mr. Kostkas, PRGC's broker of record, wrote in his August 22, 2022 letter that he has known respondent for over two years, since she set up PRGC. He described respondent as a professional and person of integrity. He was introduced to respondent by her husband, who is a Chief Executive Officer of a company that Mr. Kostkas did not identify.

29. Ashley Bennett-Stoddard and Nurten Atila of the Carmel Sunset Rotary Club also submitted letters in support of respondent. Their letters described respondent's fundraising efforts for various community organizations in 2019 and 2020.

30. Bettye J. Saxon, Ed.D., AT&T External Affairs, wrote in her August 31, 2022 letter that she met respondent over 15 years ago, and over the past few years, she observed respondent work "tirelessly on various boards in our community," such as the Carmel Rotary, AIM Youth Mental Health, California Film Commission, and Carmel Valley Chamber of Commerce. As a realtor, respondent encouraged and helped Ms. Saxon purchase her first home. Ms. Saxon described respondent as a friend and strong leader in the community.

31. Maria Berrelleza, a licensed real estate transaction coordinator, wrote in her August 31, 2022 letter that she has managed respondent's real estate files since the reissuance of her license by the DRE. She described respondent as a person who takes an active role in real estate transactions, collaborates with clients, and seeks their best interests.

COURSE COMPLETION

32. On August 24, 2022, respondent completed a three-hour continuing education course in Ethics, Professional Conduct, and Legal Aspects of Real Estate. The course is part of respondent's licensure requirements.

33. On October 28, 2019, respondent completed an online course titled, "Seniors Real Estate Specialist." The completion certificate does not indicate the number of hours for the course. Respondent testified that she is a "baby boomer" and intends to "work with people that are aging" out of their family homes. She believes she has a better understanding than most real estate salespersons of the emotions family members go through when transitioning their parents into appropriate housing, but did not provide any further explanation.

Analysis

34. The evidence established that respondent acted as a real estate broker without proper licensure when she completed and submitted the broker demand to First American Title, instructing them to send the \$10,183.50 commission to PRGC rather than PRG. Her assertion that doing so was one of her job duties, and Mr. Barwick "never completed the broker demand form" does not justify or excuse her actions. Moreover, respondent demonstrated negligence or incompetence in acting as a real estate broker without proper licensure by submitting a broker demand not approved by Mr. Barwick.

35. The evidence further established that respondent and Mr. Skerik knew that the Pinto Lane transaction remained with Mr. Barwick and PRG, even after they both left to work for PRGC under Mr. Kostkas' broker's license. Addendum No. 2 was not signed nor acknowledged by Mr. Barwick, and it was an attempt by respondent to

move the Pinto Lane transaction to PRGC without Mr. Barwick's knowledge. Respondent substantially misrepresented to First American Title that commissions were owed to PRGC, and in doing so, she committed an act of dishonesty.

36. Respondent claimed she had no intent to defraud; rather, she felt bad that Mr. Skerik would lose the remainder of his commission by moving from PRG to PRGC. However, she took matters into her own hands by preparing the broker demand. The evidence established that Mr. Barwick did not know about respondent's broker demand, and that respondent intentionally submitted the broker demand to leave Mr. Barwick out of the transaction. Respondent's characterization of Mr. Barwick as an angry and aggressive person does not justify or excuse respondent's dishonest conduct.

37. The DRE has developed guidelines for evaluating the rehabilitation of a licensee who has been convicted of a crime. (Cal. Code Regs., tit. 10, § 2912.) Here, the grounds for discipline do not include conviction of a crime. However, the guidelines are helpful in determining rehabilitation. Relevant criteria include: change in attitude from that which existed at the time of the conduct in question, evidenced by rehabilitation evidence, evidence from family members, friends, and other persons familiar with the licensee's previous conduct and subsequent attitudes.

38. The evidence does not demonstrate that respondent's attitude has changed from that which existed at the time of the conduct in question. She failed to recognize that her actions were in violation of the Real Estate Law and claimed that she acted solely so that Mr. Skerik could get paid. Respondent's lack of insight about her dishonesty demonstrates that she has not undergone the requisite change of attitude. (See *Harrington v. Dept. of Real Estate* (1989) 214 Cal.App.3d 394, 402 ["Honesty and truthfulness are two qualities deemed by the Legislature to bear on

one's fitness and qualification to be a real estate licensee."]) Her actions did not show that she appreciates the privilege of holding a real estate license, or sincere ownership of her actions. The authors of respondent's letters of support describe respondent generally as a competent and ethical real estate professional, but none of them expressed knowledge of respondent's wrongdoing.

39. Respondent must make a compelling showing of rehabilitation from her wrongful conduct. Other than respondent's own words, and the biased testimony of Mr. Skerik and Mr. Sharp, she presented little supporting rehabilitation evidence. Additionally, her failure to accept responsibility for her dishonest conduct is further evidence of a lack of rehabilitation. (*Seide v. Com. of Bar Examiners of the State Bar of California*, 49 Cal.2d 933, 940 ["Fully acknowledging the wrongfulness of [her] actions is an essential step towards rehabilitation"]). Respondent failed to meet her burden of showing rehabilitation. Based on the foregoing considerations, it would be contrary to the public interest to allow respondent to continue holding a real estate salesperson license at this time.

Costs

40. Complainant has requested reimbursement for costs incurred by the DRE in connection with enforcement and investigation of this matter, which total \$10,691.65 (\$8,603.65 for investigation and \$2,088 for enforcement). The costs were certified in a manner provided by Business and Professions Code section 10106. At hearing, complainant withdrew the First Cause for Discipline in the Accusation. Investigator Chapman testified that she investigated matters that led to the First and Second Causes of Action as a whole. She did not break down her time dedicated to each cause. The time spent on the investigation appears to be reasonable, and the

activities claimed were necessary to the development and presentation of the case. Complainant's request for costs is addressed further in the Legal Conclusions below.

LEGAL CONCLUSIONS

Burden of Proof

1. Complainant has the burden of proving the grounds for discipline alleged in the Accusation by clear and convincing evidence to a reasonable certainty. (*Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) Clear and convincing evidence is evidence that leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

Applicable Law

2. Business and Professions Code section 10130 provides, in pertinent part:

It is unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson within this state without first obtaining a real estate license from the department.

3. Business and Professions Code section 10176 provides, in pertinent part:

The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the

business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

(a) Making any substantial misrepresentation.

[¶] ... [¶]

(i) Any other conduct, whether of the same or of a different character than specified in this section, which constitutes fraud or dishonest dealing.

4. Business and Professions Code section 10177, provides, in pertinent part:

The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

[¶] ... [¶]

(d) Willfully disregarded or violated this part or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of this part and Chapter 1 (commencing with Section 11000) of Part 2.

[¶] ... [¶]

(g) Demonstrated negligence or incompetence in performing an act for which the officer, director, or person is required to hold a license.

[¶] ... [¶]

(j) Engaged in any other conduct, whether the same or of a different character than specified in this section, that constitutes fraud or dishonest dealing.

5. "Honesty is not considered as an isolated or transient behavioral act; it is more of a continuing trait of character." (*Gee v. California State Personnel Bd.* (1970) 5 Cal.App.3d 713, 719.) As set forth in the Factual Findings as a whole, respondent acted as a real estate broker without a proper license when she: (1) prepared and submitted the broker demand to First American Title; (2) did so without Mr. Barwick's knowledge or approval; (3) knew that the Pinto Lane transaction remained with Mr. Barwick and PRG; and (4) directed that the commission be disbursed to Mr. Skerik, Ms. Berrelleza, and her corporation, PRGC. Respondent's conduct demonstrated continued acts of dishonesty.

Cause for Discipline

6. Cause exists to discipline respondent's license pursuant to Business and Professions Code section 10130, in that respondent acted as a real estate broker without a proper license, as set forth in Factual Finding 35.

7. Cause exists to discipline respondent's license pursuant to Business and Professions Code section 10176, subdivision (a), in that respondent made a substantial misrepresentation, as set forth in Factual Findings 35 and 36.

8. Cause exists to discipline respondent's license pursuant to Business and Professions Code section 10176, subdivision (i), in that respondent engaged in fraud or dishonest dealing in a licensed capacity, as set forth in Factual Findings 35 through 37.

9. Cause exists to discipline respondent's license pursuant to Business and Professions Code section 10177, subdivision (d), in that respondent willfully disregarded or violated the Real Estate Law, as set forth in Factual Findings 35 through 37.

10. Cause exists to discipline respondent's license pursuant to Business and Professions Code section 10177, subdivision (g), in that respondent demonstrated negligence or incompetence in performing an act for which a person is required to hold a license, as set forth in Factual Findings 35 through 37.

11. Cause exists to discipline respondent's license pursuant to Business and Professions Code section 10177, subdivision (j), in that respondent engaged in any other conduct, whether the same or of a different character than specified in this section, that constitutes fraud or dishonest dealing, as set forth in Factual Findings 35 through 37.

Conclusion

12. When all the evidence is considered, respondent failed to demonstrate sufficient rehabilitation since engaging in her wrongful conduct to demonstrate she is capable of performing the duties of the real estate licensee in a manner consistent with public health, safety, and welfare for the reasons discussed in Factual Finding 39. Therefore, protection of the public mandates that respondent's real estate salesperson license be revoked.

Costs

13. Business and Professions Code section 10106, subdivision (a), provides that the commissioner may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Subdivision (c), states:

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, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

14. 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 10106. 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 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. (*Zuckerman v. Board of Chiropractic Examiners, supra*, 29 Cal.4th at p. 45.)

15. As set forth in Factual Finding 40, complainant requested that respondent be ordered to pay costs of investigation and enforcement incurred in the total amount of \$10,691.65. Certified copies of actual costs of investigation and enforcement were signed by the commissioner's designated representatives and are prima facie evidence of the reasonable costs in this matter. However, the First Cause of Action in the Accusation was withdrawn. Given that the First and Second Causes of Action appear similar, when all the relevant factors set forth in *Zuckerman* are considered, a reduction of costs by half in the amount of \$5,345.81 is reasonable and appropriate.

ORDER

All licenses and licensing rights of respondent Cheryl Ann Savage, also known as Cheryl Ann Sharp, under the Real Estate Law are REVOKED. Respondent shall pay

//

//

DRE costs associated with its investigation and enforcement pursuant to Business and Professions Code section 10106 in the amount of \$5,345.81. Respondent may be permitted to pay these costs in a payment plan approved by the DRE.

DATE: November 3, 2022

Danette C. Brown

DANETTE C. BROWN

Administrative Law Judge

Office of Administrative Hearings