

**FILED**

**SEP 27 2023**

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE  
By           *RJ dew*          

\* \* \*

In the Matter of the Accusation of:	)	DRE No. H-3443 FR
	)	
ALICIA CASTRO RAMIREZ,	)	OAH No. 2023020683
	)	
Respondent.	)	

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DECISION

The Proposed Decision dated July 25, 2023, 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 salesperson 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.

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.

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This Decision shall become effective at 12 o'clock noon on OCT 18 2023.

IT IS SO ORDERED 9.19.23

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER

[REDACTED]

**FILED**

SEP 07 2023

DEPARTMENT OF REAL ESTATE

By By dea

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

**In the Matter of the Accusation Against:**

**ALICIA CASTRO RAMIREZ, Respondent**

**Agency Case No. H-3443-FR**

**OAH Case No. 2023020683**

**PROPOSED DECISION**

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on July 17, 2023, by videoconference from Sacramento, California.

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

Alicia Castro Ramirez (respondent) represented herself.

Evidence was received. On the record at hearing, the accusation was amended without objection on page two, line 12, to change "section 50140" to "section 50141." On July 17, 2023, the record was closed and the matter submitted for decision.

## **FACTUAL FINDINGS**

### **Jurisdiction**

1. On August 8, 1995, the Department issued respondent Real Estate Salesperson License No. S/01199863 (RE license). The RE license will expire on January 26, 2026, unless renewed.

2. On September 23, 2022, complainant, in her official capacity, signed and later filed an accusation in Case No. H-3443-FR (Accusation) against respondent. Complainant alleges cause to discipline respondent's RE license based on respondent's discipline by another licensing agency and her failure to report that discipline to the Department. Complainant seeks revocation of respondent's RE license, as well as recovery of reasonable investigation and enforcement costs.

3. Respondent timely filed a Notice of Defense. Thereafter, the matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq. This hearing followed.

### **Discipline by Other Licensing Agency**

4. On March 29, 2021, in Case No. 256226, the Department of Financial Protection and Innovation (DFPI) filed an accusation against respondent's Mortgage Loan Originator (MLO) license. The DFPI accusation sought to revoke the MLO license on grounds that respondent knowingly misrepresented information on a loan application and lacks financial responsibility, character, and general fitness sufficient to meet the California MLO licensing standards. More specifically, it alleged that respondent:

(a) arranged for a gift to falsely demonstrate that the loan applicant had sufficient funds to close.

(b) failed to accurately disclose the relationship with the loan applicant's gift donor.

(c) knew and failed to disclose that the loan applicant received an unusually large pay raise less than a month before requesting loan approval.

(d) knew and failed to disclose that the loan applicant's annual bonus was unusually large and was awarded five months early specifically to bolster the loan application.

(e) knew and failed to disclose that the loan applicant and respondent's broker and escrow agent were both employed by the same entity, thereby creating a clear conflict of interest due to their financial incentive to misrepresent the loan applicant's personal finances, and resulting in the actual manipulation of the loan applicant's finances in an attempt secure loan approval.

5. On September 1, 2021, respondent entered into a settlement agreement with the DFPI wherein she admitted that there were sufficient grounds to revoke her MLO license and agreed to surrender her MLO license. The license surrender became effective on September 22, 2021.

### **Failure to Disclose DFPI Discipline**

6. The Department's records do not indicate that respondent notified the Department of her MLO license surrender to the DFPI within 30 days.

## **Respondent's Evidence**

### **RESPONDENT'S TESTIMONY**

7. Respondent was born and raised in Fresno, California, as the oldest of four siblings. Her father worked in a factory and her mother was a homemaker. She often took care of her younger siblings and recalls having a very good childhood.

8. Respondent graduated from high school in 1982 and married her current husband in 1985. She completed a few semesters of classes at California State University, Fresno and Fresno City College. She was unable to finish her academic studies because she and her husband started a family and she had to take care of their three children.

9. In 2007, respondent's husband became disabled by a stroke, knee issues, and Post-Traumatic Stress Disorder. Since then, respondent has been his physical caregiver and the household's sole financial provider. Through the present, she also continues to financially support one of her three adult children.

10. Although respondent obtained her RE license in 1995, she never actually worked as a real estate salesperson. Her entire career has been in the mortgage loan industry. Between 1995 and 2010, respondent worked as an MLO without the need for a license. In 2010, she was required to, and did, obtain an MLO license from a predecessor agency of what is currently the DFPI. Until mid-2020, she had an entirely unblemished career in the mortgage loan industry.

11. Respondent admits the Accusation's allegations and charges and accepts full responsibility for her misconduct in 2020. A real estate contact had referred one of his employees, the loan applicant, to respondent to obtain a home mortgage loan. The

loan applicant was also related to respondent by marriage. Respondent acknowledges having engaged in misrepresentation and fraud to help the loan applicant obtain a loan, including by having her own daughters complete fraudulent gift letters to the loan applicant. At the time, respondent was "frazzled" and under a lot of pressure from the realtors. As her household's sole financial provider, she also acknowledges that she had a personal financial incentive to get the loan done.

12. When respondent's employer discovered the fraud, respondent resigned. She cooperated fully with the DFPI's investigation and agreed to surrender her MLO license. Respondent admits that she failed to report the DFPI discipline to the Department within 30 days as required by applicable law. At the time, she was distraught and upset over losing her MLO license. She had completely forgotten about the RE license, which she never used. It was an unintentional oversight and she had no intent to hide anything from the Department.

13. Respondent is "100 percent" remorseful for her misconduct. She understands that she breached the trust of her former employer, the Department, and the public. She also lost her good reputation, which meant a lot to her. However, it has also been a great learning experience. In future, she plans to avoid working with relatives and any conflicts of interest. She would never again take any "shortcuts."

14. Since October 2021, respondent has worked as a loan processor for California Home Loans, a position that does not require a license from the Department. Her income is less than half of what she made as an MLO, which has placed significant strain on their household's finances. Outside of work and caring for her husband, she performs volunteer work for her church.

15. Respondent has no criminal convictions or pending criminal charges. She has no record of prior discipline by the Department. Respondent has applied for an MLO endorsement from the Department, but that application remains pending until resolution of this matter. Respondent is willing to comply with any conditions of a restricted license the Department deems appropriate. If permitted to have a restricted license and an MLO endorsement, she intends to work as an MLO for first-time, Spanish-speaking homebuyers, an underserved community.

### **CHARACTER WITNESSES**

16. Three of respondent's former colleagues (Valerie Houseworth, Linda Babshoff, and Maria Daddino) and respondent's niece and former colleague, Rebecca Jacinto, testified at hearing. All witnesses professed general awareness of respondent's past fraud and surrender of her MLO license, although they did not know significant details. They nonetheless uniformly believe that she is an honest and trustworthy person and that her actions in 2020 were an outlier. They have also seen how remorseful she is and feel confident that she would never repeat such misconduct.

17. Maria Pacheco, the mayor of the City of Kerman, also authored a character letter in support of respondent. Ms. Pacheco lauds respondent's knowledge, approachable nature, genuine empathy, and past efforts in assisting "countless Kerman residents" with financial literacy and "achieving their American dream of homeownership." Ms. Pacheco is aware of respondent's misconduct and surrender of her MLO license. However, she believes that respondent has learned a valuable lesson from her mistake, which she will not repeat. Respondent's skills in the mortgage loan industry are needed and deeply missed in the local community.



## **Costs**

18. In prosecuting this matter, the Department incurred \$1,109.50 in investigation costs, supported by a Certified Statement of Investigation Costs, and \$672 in enforcement costs, supported by a Certified Statement of Costs by Adriana Z. Badilas. The total costs sought is \$1,781.50. The certified statements are accompanied by documents describing the general tasks performed, the time spent on each task, and the method of calculating the costs.

## **LEGAL CONCLUSIONS**

### **Burden and Standard of Proof**

1. Complainant bears the burden of proving by clear and convincing evidence that respondent's license should be disciplined. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) "Clear and convincing evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind." (*In re David C.* (1984) 152 Cal.App.3d 1189, 1208.)

### **Cause for Discipline**

2. The Commissioner may discipline the license of a real estate licensee if the licensee:

(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.

[ . . . ]

(f) Acted or conducted themselves in a manner that would have warranted the denial of their application for a real estate license, either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked, surrendered, or suspended, or received an order of debarment, for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, surrender, suspension, or debarment by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

(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 of the same or of a different character than specified in this section, that constitutes fraud or dishonest dealing.

(Bus. & Prof. Code, § 10177, subds. (d), (f), (g), & (j).)

3. A real estate licensee must report disciplinary action taken by another state licensing entity or authority to the Department within 30 days. (Bus. & Prof. Code, § 10186.2.)

4. Here, respondent concedes that cause for discipline exists. Indeed, complainant established by clear and convincing evidence that respondent surrendered her MLO license to the DFPI as part of a disciplinary proceeding based on her fraud, misrepresentation, and incompetence involving a mortgage loan application. Such acts, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license. Additionally, complainant established by clear and convincing evidence that respondent failed to report the DFPI's disciplinary action to the Department within 30 days as required by Business and Professions Code section 10186.2. Thus, cause for discipline exists pursuant to Business and Professions Code section 10177, subdivisions (d), (f), (g), and (j).

### **Appropriate Discipline**

5. Respondent's misconduct was serious because it involved fraud and misrepresentation. Such misconduct is substantially related to licensed real estate work, which requires the discharge of fiduciary duties with honesty and integrity. (*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."].)

6. To her credit, respondent accepted full responsibility for her prior misconduct. (*Seide v. Com. of Bar Examiners of the State Bar of Cal.* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of [one's] actions is an essential step towards rehabilitation"].) Her hearing testimony was sincere and contrite, and she convincingly testified what steps she would take to avoid such misconduct in the future. With the exception of the 2020 misconduct at issue here, respondent has a lengthy and unblemished career without any prior discipline or criminal convictions.

7. Licensing proceedings are not intended to punish an individual but to protect the public, maintain the integrity and high standards of the profession, and preserve public confidence in licensure. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) Considering the record as a whole, issuance of a restricted license is more appropriate than outright license revocation. Nevertheless, given the serious nature and relative recency of respondent's misconduct, a longer monitoring period of five years is necessary to protect the public.

## **Costs**

8. The Department may recover its reasonable investigation and enforcement costs of a case. (Bus. & Prof. Code, § 10106.) Here, the Department incurred a total of \$1,781.50 in investigation and enforcement costs. Such costs are reasonable given the issues in this case.

9. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether the costs should be assessed or reduced in the particular 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 their position, whether the licensee has raised a colorable challenge to the proposed discipline, the licensee's financial ability to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

10. Here, the scope of the investigation was appropriate and the costs sought are low. Respondent did not present any evidence that she is unable to pay such a low amount of costs, especially pursuant to a reasonable payment plan. Finally, none of the other factors strongly suggest that cost reduction is warranted. Thus, the full amount of costs sought is awarded.

## **ORDER**

All licenses and licensing rights of respondent Alicia Castro Ramirez 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 license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the

right to exercise any privileges granted under this restricted license in the event of:

- (a) the conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or
- (b) the receipt of evidence 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 this restricted license.

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

3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify as follows: (a) that the employing broker has read the Decision which is the basis for the issuance of the restricted license; and (b) that the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations, or restrictions attaching to the restricted license until five years have elapsed from the date of issuance of the restricted license to respondent.

5. Pursuant to Business and Professions Code section 10106, respondent shall pay the Commissioner reasonable investigation and enforcement costs in the sum of \$1,781.50. The Commissioner may, in its sole discretion, order respondent to make payments pursuant to an approved payment plan during her probation.

6. The Commissioner may suspend respondent's license pending a hearing held in accordance with section 11500 et seq. of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

DATE: July 25, 2023

*Wim vanRooyen*

WIM VAN ROOYEN

Administrative Law Judge

Office of Administrative Hearings