

FILED

MAY 22 2024

DEPARTMENT OF REAL ESTATE
By B. McArthur

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:)	DRE No. H-3524 FR
)	
DAVID WILSON KOPS,)	OAH No. 2023120656
)	
Respondent.)	

DECISION

The Proposed Decision dated April 18, 2024, 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 (the Department) 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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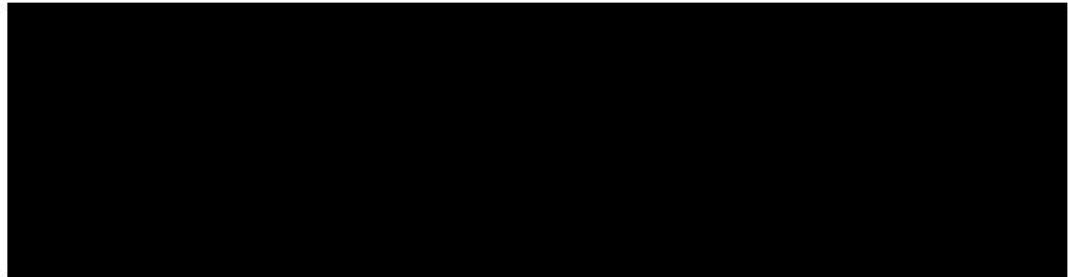
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The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on JUN 12 2024

IT IS SO ORDERED 5/17/2024

Chika Sunquist
REAL ESTATE COMMISSIONER



FILED

MAY 16 2024

DEPARTMENT OF REAL ESTATE
By B. McWhirter

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

In the Matter of the Accusation Against:

DAVID WILSON KOPS, Respondent

Agency Case No. H-3524 FR

OAH Case No. 2023120656

PROPOSED DECISION

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on March 25, 2024, by videoconference and telephone from Sacramento, California.

Truly Sughrue, Counsel, represented Ruben Coronado (complainant), Supervising Special Investigator, Department of Real Estate (Department), State of California.

David Wilson Kops (respondent) represented himself.

Evidence was received and the record left open until April 8, 2024, to allow respondent to submit supplemental evidence and complainant to respond to such supplemental evidence. On April 2, 2024, complainant's counsel, as a courtesy only, filed respondent's supplemental evidence, which consisted of character letters by Andy Thomas (marked as Exhibit A), Fletcher Allen (marked as Exhibit B), and Jamie Cohan

(marked as Exhibit C). Complainant's counsel also filed a response to the supplemental evidence, marked as Exhibit 8, indicating that complainant had no objection to admission of Exhibits A, B, or C as administrative hearsay.

On April 8, 2024, Exhibit 8 was admitted as argument; Exhibits A, B, and C were admitted as administrative hearsay; the record was closed; and the matter was submitted for decision.

FACTUAL FINDINGS

Jurisdiction

1. On April 2, 2001, the Department issued respondent Real Estate Salesperson License No. S/01306418 (license). The license will expire on March 22, 2027, unless renewed.

2. On November 15, 2023, complainant, in his official capacity, signed and later filed an Accusation in Case No. H-3524 FR (Accusation) against respondent. Complainant alleges cause to discipline respondent's license based on respondent's criminal conviction and his failure to report that conviction to the Department. Complainant seeks revocation of respondent's 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.

Criminal Conviction

4. On April 27, 2023, in the Superior Court of California, County of Monterey, Case No. 22CR010143, respondent was convicted on a no-contest plea of violating Penal Code section 245, subdivision (a)(1) (assault with a deadly weapon or instrument other than a firearm), a misdemeanor. The court ordered respondent to serve one year of conditional probation. Probation conditions included serving 30 days in county jail or a work alternative program, completing a driver's safety course, attending 12 anger management counseling classes, and paying fees and fines.

5. The April 2023 conviction arose from the following events: on October 31, 2022, respondent was involved in a road rage incident with another driver (complaining party) in Seaside, California. In the course of that incident, respondent rear-ended and thereafter threw a plastic soda bottle at the complaining party's car. When the complaining party exited his car and started recording the events with his cell phone, respondent sped away in his car, nearly hitting the complaining party. The complaining party reported the incident to the Seaside Police Department, which later arrested respondent.

Failure to Disclose Criminal Conviction

6. The Department's records do not indicate that respondent reported the criminal conviction to the Department in writing within 30 days.

Respondent's Evidence

7. Respondent has been a real estate salesperson for well over 20 years, living and working in the Seaside area for the past 10 years. He loves the work, and it

is his passion and identity. The only other work experience he has is as a bartender and waiter. In his spare time, he likes to attend and volunteer at his church.

8. Respondent acknowledges his April 2023 conviction and concedes that cause for discipline exists. On October 31, 2022, he was stressed and driving to a job interview. He stopped at a red traffic light behind two cars, with the complaining party directly in front of respondent's car. When the traffic light turned green, the car in the front did not proceed through the intersection. After respondent honked his horn a few times, he lost his patience and drove around the two cars through the intersection. Thereafter, the complaining party sped up, passed and pulled in front of respondent, and slammed on his brakes. Respondent then rear-ended the complaining party's car. Respondent admits that he "lost [his] cool" and threw a plastic soda bottle at the complaining party's car. When the complaining party got out of his car and started walking towards respondent "with something in his hand," respondent became afraid that it was a weapon and drove away as quickly as possible. Only later did he realize that the complaining party had a cell phone in his hand.

9. Respondent accepts responsibility for his misconduct on October 31, 2022, which he strongly regrets. He is ashamed of his aggressive behavior that day and admits that he lost self-control. Although he never intended to hit the complaining party with his car, he is remorseful for inducing fear in the complaining party.

10. To date, respondent has fully complied with his criminal probation. He completed the driver's safety course, attended 12 anger management counseling classes, and paid off all fines and fees. He found the anger management counseling classes especially helpful. They taught him to "take a breath" and think before reacting. Respondent was due to start serving home confinement instead of jail time the week after the administrative hearing. He remains scheduled to complete his criminal

probation on April 27, 2024. He intends to pursue expungement of his conviction as soon as he is eligible.

11. Respondent also admits that he failed to notify the Department of his April 2023 conviction. At the time, he was overwhelmed and hoped the matter would "go away." He disclosed the conviction to his former broker, who told respondent "not to worry about it." Respondent now realizes that was a mistake and that he should have been forthcoming with the Department.

12. Upon the Accusation's filing, respondent's former broker terminated him. Since January 8, 2024, he has been affiliated with a new broker, Premier Agent Network (PAN), which is aware of the pending Accusation. However, respondent has not yet closed a real estate transaction since starting to work for PAN.

13. Respondent is currently under significant financial stress. Until recently, he worked as a waiter in a restaurant to supplement his income. However, he had to quit that job due to his upcoming home confinement. He has no present income, no savings, \$24,000 in outstanding credit card debt, and has had to borrow more money to pay his bills in the month before the administrative hearing.

14. Respondent strongly desires the opportunity to retain his license to support himself. He wants to remain a productive member of society. He is willing to comply with any license restrictions the Department deems appropriate.

15. Respondent offered three letters of support from friends and former clients. The authors laud his real estate expertise and competence, client service, commitment, and integrity.

Costs

16. In prosecuting this matter, the Department incurred \$1,498.55 in investigation costs, supported by a Certified Statement of Investigation Costs, and \$957 in enforcement costs, supported by a Certified Statement of Costs by Truly Sughrue. The total costs sought is \$2,455.55. 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 who has been convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 490, 10177, subd. (b).) A crime may be deemed to be substantially related to the qualifications, functions or duties of a real estate licensee if it involves "[d]oing of any unlawful act . . . with the intent or

threat of doing substantial injury to the person or property of another.” (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

3. Here, respondent was convicted of assault with a deadly weapon or instrument other than a firearm. Thus, respondent’s conviction is substantially related to the qualifications, functions, or duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8). Consequently, cause exists to discipline respondent’s license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b).

4. The Commissioner may also discipline the license of a real estate licensee who willfully disregarded or violated the Real Estate Law or its implementing rules and regulations. (Bus. & Prof. Code, § 10177, subd. (d).) A real estate licensee must report any conviction to the Department in writing within 30 days and failure to do so “shall constitute a cause for discipline.” (Bus. & Prof. Code, § 10186.2.)

5. Here, respondent admits that he willfully failed to report his conviction to the Department in writing within 30 days and thus violated Business and Professions Code section 10186.2. Consequently, cause exists to discipline respondent’s license pursuant to Business and Professions Code sections 10177, subdivision (d), and 10186.2.

Appropriate Discipline

6. Given the foregoing, cause exists to discipline respondent’s license and respondent concedes as much. The only remaining question is the appropriate degree of discipline.

7. Respondent's conviction was serious. It demonstrated an inability to exercise good judgment and self-control, and presented a substantial risk of harm to the complaining party and others on the road. Additionally, respondent remains on criminal probation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099 (when a person is on criminal probation, rehabilitation efforts are accorded less weight, "[s]ince persons under the direct supervision of correctional authorities are required to behave in exemplary fashion").)

8. Nevertheless, respondent at hearing accepted responsibility for his 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."].) His sincere testimony demonstrated genuine remorse and a change in attitude from when he committed his crime. He has been fully compliant with his criminal probation and benefited from the anger management classes. He volunteers through his church. Significantly, he has worked in the real estate industry for many years without incident. Friends and former clients laud his competence and integrity.

9. 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. However, given the recency of respondent's conviction and that his rehabilitation is still in its infancy, a longer monitoring period of five years is necessary to protect the public interest.

Costs

10. The Department may recover its reasonable investigation and enforcement costs of a case. (Bus. & Prof. Code, § 10106.) Here, the Department incurred a total of \$2,455.55 in investigation and enforcement costs. Such costs are reasonable given the issues in this case.

11. 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.

12. Here, the scope of the investigation was appropriate to the alleged misconduct. Respondent was not successful in getting charges dismissed or reduced and conceded that cause for discipline exists. Nevertheless, he raised a colorable challenge to the proposed discipline of revocation. Moreover, respondent presented persuasive evidence of his inability to pay the full amount of costs given his current unemployment and financial difficulties. After considering the record as a whole, it is appropriate to reduce cost recovery to \$1,500.

ORDER

All licenses and licensing rights of respondent David Wilson Kops 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 \$1,500. The Commissioner may, in its sole discretion, order respondent to make payments pursuant to an approved payment plan during his probation.

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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: April 18, 2024

Wim vanRooyen

WIM VAN ROOYEN

Administrative Law Judge

Office of Administrative Hearings