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BUREAU OF REAL ESTATE

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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	No. H-04778 SD
)	
SHOAIB AZIZI,)	
)	
Respondent.)	
_____)	

ORDER STAYING EFFECTIVE DATE


On December 02, 2016, a Decision was rendered in the above-entitled matter to become effective December 28, 2016.

On December 22, 2016, Respondent filed a Petition for Monetary Penalty In Lieu of Suspension.

IT IS HEREBY ORDERED that the effective date of the Decision of December 02, 2016, is stayed for a period of 30 days. The Decision of December 02, 2016, shall become effective at 12 o'clock noon on January 27, 2017.

IT IS SO ORDERED on December 22, 2016.

WAYNE S. BELL
REAL ESTATE COMMISSIONER



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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By *Daniel J. Sandri*

* * *

In the Matter of the Accusation of SHOAI B AZIZZI, Respondent.))))	CalBRE No. H-04778 SD OAH No. 2016040524
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DECISION

The Proposed Decision dated November 9, 2016, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau'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.

This Decision shall become effective at 12 o'clock noon on DEC 21 2016.

IT IS SO ORDERED 12/2/16

WAYNE S. BELL
REAL ESTATE COMMISSIONER

Daniel J. Sandri

By: DANIEL J. SANDRI
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended
Accusation Against:

SHOAIB AZIZI,

Respondent.

Case No. H 04778 SD

OAH No. 2016040524

PROPOSED DECISION

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on October 11, 2016.

Steve Chu, Counsel, Bureau of Real Estate, State of California represented complainant, Veronica Kilpatrick, Supervising Special Investigator, Bureau of Real Estate, Department of Consumer Affairs, State of California.

David Bright, Attorney, White and Bright, LLP, represented respondent Shoaib Azizzi, aka Shuaib Mohammad Azizi,¹ who was present throughout the hearing.

The matter was submitted on October 11, 2016.

FACTUAL FINDINGS

Jurisdictional Matters

1. On March 28, 2000, the bureau issued a real estate salesperson license to respondent. The license terminated on February 8, 2007. On February 9, 2007, the bureau issued a real estate broker license to respondent. Respondent's broker license will expire on February 8, 2017, unless revoked or renewed. The main office, mailing office and mailing addresses for respondent's broker license changed several times between February 9, 2007 and April 2016.

¹ On April 27, 2016, respondent changed his "personal name" on his license from Shuaib Mohammad Azizi to Shoaib Azizzi.

2. On September 23, 2016, complainant signed the first amended accusation in her official capacity. The first amended accusation sought suspension or revocation of respondent's broker license. The first amended accusation alleged that respondent was convicted of petty theft (Penal Code section 484/488), a crime that is substantially related to the qualifications, functions or duties of a real estate licensee. The first amended accusation also alleged that respondent failed to disclose he had criminal charges pending against him when he signed his Broker Renewal Application on January 28, 2015. The first amended accusation further alleged that, until April 27, 2016, respondent reported as his main office an address where he did not maintain an office. Complainant sought recovery of the costs incurred for the investigation and prosecution of the case.

3. Respondent timely filed a Notice of Defense and this hearing followed.

Respondent's Background

4. Respondent is 54 years old; he was born in Kabul, Afghanistan in 1962. In 1987, at the age of 25 years, he left Afghanistan, along with many others, when Russia invaded Afghanistan. Respondent's brother was killed in the invasion. Respondent obtained legal custody of his brother's two orphaned children, who were then about 4 and 5 years old, and he raised them. Those children have grown; both are married and are out of the home. Respondent is married and has three biological children ages 14, 9 and 5. He is a naturalized citizen of the United States. He is the sole financial support for his family.

5. Prior to entering the real estate field, respondent was licensed for ten years as a respiratory therapist. He does not have a history of discipline against his respiratory therapist license.

6. While he was working as a respiratory therapist, respondent found he had a passion for real estate. He began attending seminars and real estate auctions, and he purchased some properties.

Respondent's Rental of a Home to his Sister and Brother-In-Law

7. Respondent has a sister, Najeeba, who has been mentally disabled since she was a teenager. She married a man named Mohammad Sharifi. Mr. and Mrs. Sharifi (Najeeba) lived in Section 8 housing for many years.

8. In 2004, respondent purchased a newly constructed, four bedroom house on Farr Avenue in Escondido. Respondent intended to hold onto the property only until he could put it back on the market for a profit. Mr. and Mrs. Sharifi were living in a Section 8 property that was in a noisy area. Because of the noise, Mrs. Sharifi was unable to sleep, and she and Mr. Sharifi asked respondent if they could rent the property on Farr Avenue. Although he wanted to sell the property, respondent agreed to allow Mr. and Mrs. Sharifi to

live in the property for one year at approximately \$300 to \$600 per month below market rent to help his sister.

9. Mr. and Mrs. Sharifi completed an application for Section 8 rent assistance for the Farr Avenue property and submitted it to the San Diego County Housing Authority (Housing Authority). Respondent completed the landlord portion of the application and returned the application to Mr. Sharifi. At the bottom of one page, the application asks, "Is the owner a relative of the tenant family?" In response to this question, someone marked the box next to "No." Respondent does not recall who marked the box on the form. He stated that he did not intend to mislead the Housing Authority by submitting the application, and he did not know why the "No" box was checked. When the forms were completed, respondent was a real estate salesperson; he was not a broker until 2007.

10. Despite having agreed to rent the Farr Avenue property to Mr. and Mrs. Sharifi for only one year, respondent allowed them to continue to rent the property, at the below market rate, until 2012. Neither he, Mrs. Sharifi, nor Mr. Sharifi were contacted by the Housing Authority with any questions or concerns about the Section 8 application.

11. In 2012, the Housing Authority requested a new application for Section 8 rent assistance to update its records, and respondent was required to complete the landlord portion of another application. This time, respondent recalls the question on the application that asked if he was a relative of the prospective tenants, and he checked the box for "Yes." That application was dated July 7, 2012.

12. A week after submitting the new application, the Housing Authority questioned Mr. Sharifi and his son about their relationship to respondent. It was then that they and respondent learned they could not receive Section 8 rent assistance if they were renting from a relative and that their prior application indicated they were not related to respondent.

13. The Housing Authority contacted respondent and advised him that he had unlawfully obtained over \$80,000 in rent for the past eight years because he had not disclosed his familial relationship to Mr. and Mrs. Sharifi. Although respondent did not recall checking the wrong box on the 2004 application, he felt responsible and accepted responsibility for what had happened.

14. On May 14, 2013, respondent entered into an agreement with the Housing Authority to repay one half of the alleged unlawfully obtained rent (\$41,835.50) through monthly payments of \$2,300. He satisfied this debt on January 5, 2015.

15. On September 18, 2013, after respondent had begun making payments to the Housing Authority, the San Diego District Attorney filed a criminal complaint against respondent based upon the 2004 Section 8 application and his alleged receipt of unlawfully

obtained rents. At 7:00 a.m. a few days later, respondent was arrested at his home and taken to jail.

Conviction

16. On September 18, 2013, the San Diego District Attorney filed felony criminal complaint, case number CD250820, against respondent in the San Diego County Superior Court, alleging grand theft (Penal Code section 487, subdivision (a)) and offering false or forged instruments for filing (Penal Code section 115, subdivision (a)). The charges stemmed from the section 8 application and rents respondent received under it, as described above.

17. On March 11, 2014, both counts of the criminal complaint against respondent were dismissed after a preliminary hearing. The court records show the complaint was dismissed "for insufficiency of the evidence."

18. On June 6, 2014, the District Attorney refiled the complaint, case number 256524, and alleged the same Penal Code violations.

19. On November 14, 2014, the court denied respondent's motion to dismiss the refiled criminal complaint, but granted the District Attorney's motion to dismiss Count Two (offering false or forged instruments for filing) for insufficiency of the evidence.

20. On March 6, 2015, the criminal complaint was amended to add a misdemeanor count of petty theft in violation of Penal Code sections 484-488. Respondent pled guilty to, and was convicted of, petty theft. In his written guilty plea respondent admitted he "fraudulently obtained money by a false representation." In exchange for his plea, the remaining felony charge was dismissed. As a result of his conviction, respondent was placed on one year of informal probation with certain terms and conditions, including that he serve one day in custody with credit for one day served and pay fines and fees of approximately \$696. Respondent had already paid in full the restitution he had previously agreed to repay the Housing Authority. Respondent's probation was terminated in March 2016.

21. On June 7, 2016, respondent's Petition for Dismissal pursuant to Penal Code section 1203.4 was granted, his guilty plea was withdrawn, a plea of not guilty was entered and the criminal case was dismissed.

Failure to Disclose Conviction

22. By letter date September 8, 2014, bureau Special Investigator, Kathryn Stanbra, advised respondent that the bureau had "recently received information that may affect the status of [his] Real Estate License." Respondent was requested to complete two forms prior to an interview with Ms. Stanbra.

23. By a letter dated September 12, 2014, respondent questioned why he received the bureau's letter and why he was required to complete the forms. He stated, "I have not committed any crimes or have any convictions, etc."

24. By letter date September 15, 2014, Ms. Stanbra requested respondent's records from the San Diego Sheriff's office pertaining to his arrests on September 19, 2013 (the original criminal complaint), and June 22, 2014 (the refiled criminal complaint). By a similar letter date October 15, 2015, Ms. Stanbra requested respondent's records from the San Diego District Attorney's office.

25. On October 24, 2014, respondent sent to Ms. Stanbra by facsimile the court's March 11, 2014, dismissal of the criminal complaint. Although there is no written document in which respondent advised Ms. Stanbra the charge had been refiled, respondent testified he sent the facsimile after having a telephone conversation with her in which he advised her of the refiling, and she requested the dismissal document.

26. On January 28, 2015, respondent electronically filed and signed a Broker Renewal Application. In response to Question No. 17, which asks, "Are there criminal charges pending against you at this time . . .?," respondent checked the box "No." This was after the November 2014 court hearing when one felony count remained.

27. By letter dated March 9, 2015, Ms. Stanbra requested respondent's records from the San Diego Superior Court pertaining to the two criminal cases filed against respondent, the first having been dismissed on March 11, 2014, and the second in which respondent entered a guilty plea on March 6, 2015.

28. On June 2, 2015, Ms. Stanbra requested records pertaining to respondent from the HUD Office of the Inspector General.

29. Respondent confirmed that, on January 28, 2015, when he completed the license renewal application, he knew a criminal case against him was pending. He testified that his license was due to expire in just a few days when he completed the renewal application, and he had been very busy at work. He stated he was in a hurry, was interrupted by work responsibilities, and inadvertently checked the wrong box in answer to question no. 17.

Respondent offered that the bureau, through Ms. Stanbra, knew there was a criminal case pending against him and, therefore, he had no motive to intentionally fail to disclose the case in the renewal application. He attributed his mistake to rushing and failing to read the questions carefully. He stated that no one from the bureau contacted him after they received the renewal application, even though they were aware of the pending charges.

Reporting of Main Office and Mailing Addresses

30. In March 2000, respondent advised the bureau that his mailing address was P.O. Box 261522, San Diego, CA 92126. This remained his mailing address until May 2005.

From July 2000 until February 2004, respondent reported the address for his employing broker as 9988 Hibert Street, #300, San Diego, CA 92131.

In May 2005, respondent's employing broker changed to Coldwell Banker Residential Brokerage Company, 27271 Las Ramblas, Mission Viejo 92691.

In February 2007, respondent obtained his broker's license. His main office address was listed as 12036 Scripps Highland Drive, San Diego, CA 92131. He gave his residence address as his mailing address.

In April 2007, respondent changed his main office address to his residence address, and a branch license was issued at the Hibert Street address, which respondent stated was a Coldwell Bank branch office.

A May 9, 2007, respondent filed a Fictitious Business Name Statement with the San Diego County Clerk. The Fictitious Business Name Statement provided a fictitious business name of "First American Realty and Mortgage," located at respondent's residence address.

In August 2007, respondent's main office address changed to the Scripps Highland Drive address and the mailing address was changed to P.O. Box 501413, San Diego, CA 92150. Respondent testified he stopped having an office at Scripps Highland in 2013.

In April 2016, respondent changed his main office address to 16787 Bernardo Center Drive, #6, San Diego, CA 92128; the mailing address to his residence address and his name from Shuaib Mohammad Azizi to Shoaib Azizzi. As to his name change, respondent stated his name was initially misspelled, and he legally changed the spelling to reflect what the spelling was intended to be.

31. At the hearing, respondent admitted that the addresses he maintained with the bureau were incorrect. He stated he worked for Coldwell Banker for 13 years, and he believed that its staff always reported changes in addresses to the bureau. After 13 years, respondent joined Remax and, at the time of the hearing, had worked with that company for three and one half years. Until he received correspondence from Ms. Stanbra, he believed that both Coldwell Banker and Remax staff filed change of address forms with the bureau and he had not known that his addresses on file with the bureau had not been changed.

Respondent's longtime office partner, Janet Jaghab, also worked with Coldwell Banker for a long time and moved to Remax around the time respondent did. When the issue

of his professional addresses was raised by Ms. Stanbra, respondent discussed the issue with Ms. Jaghab. Ms. Jaghab also assumed that Remax staff would file the change of address forms, and she learned then that the information she had on file with the bureau had not been updated as she believed it had been.

Respondent and Ms. Jaghab telephoned the bureau and received instructions on how to complete the change of address forms.

Respondent testified he had not intended to mislead anyone by failing to update his address on file with the bureau, and he has corrected and updated the addresses. He also pointed out that his personal residence information was always available to the bureau if they needed to contact him.

Evidence in Mitigation and of Rehabilitation

RESPONDENT'S TESTIMONY

32. Respondent testified that, but for the issues raised in the present accusation, his license has not been disciplined and none of his clients have reported him to the bureau with ethical or professional competence complaints.

33. Respondent pled guilty to one misdemeanor count of petty theft because he could not remember how the "No" box was checked on the Section 8 application, and he took responsibility for the errors that were made. He successfully completed probation, paid the assessed fines and, prior to his guilty plea, had satisfied his repayment obligation to the Housing Authority.

34. Respondent has learned from his mistakes and the experiences he has gone through. He stated that he has "paid the price" for the errors he made and has "been through hell." He recalled the day he was arrested: The police came to his house in the morning, and he was handcuffed and taken away in front of his screaming and crying wife and children. After his arrest, respondent was unable to concentrate; his health declined; he felt emotional pain and humiliation; and he had difficulty sleeping. Respondent incurred attorney fee bills of over \$100,000. The toll on his physical and emotional health caused a 50 percent drop in his business. He stated he won't forget what he has been through for the rest of his life.

Respondent said that, since the criminal case and the bureau's accusation, he double and triple checks every sentence and every word in a document. He described himself as being "much more careful." He stated that he had never had a problem filling out forms for real estate transactions. Respondent asserted that he never had a client complain about work he did for them. The majority of his work comes from referrals from satisfied clients.

35. Starting well before he was licensed, respondent has been, and continues to be, very active in his community. Each year for almost 20 years, respondent organizes "from A

to Z," a large community event for the Persian New Year. Respondent pays for the permits necessary for the event and enlists help from police and fire fighters who volunteer to perform traffic control and other necessary duties. There is no fee to attend the event, and all of the activities at the event, including a picnic, are family-oriented. There have never been any problems at the event. He and others who testified estimated that 10,000 people attend the annual event.

Respondent also helps with events sponsored by his community center in Serra Mesa to aid Afghan refugees. He is active in Helping Hands, a charitable organization that helps refugee families. Respondent works with refugees to find housing, enroll their children in school, locate doctors and provide whatever assistance is needed to help families adjust to a new culture. He translates for new families and talks to them about acclimating to America. He helps newcomers apply for government programs and to get driver's licenses. He also participates in the UCSD social association. He works with the San Diego chapter of Veterans for Peace; he donates his time and provides financial help to this organization that provides sleeping bags and other essential items to homeless veterans.

When respondent travels back to Afghanistan, he brings supplies, including backpacks and shoes to the largest orphanage in Kabul that he described as under-sourced. He hosts a concert in San Diego to raise money to send to the orphanage. Respondent provides assistance to a variety of cultural and religious organizations.

Respondent helps members of the Afghan community in real estate transactions. He estimated he performs 25 to 30 real estate transactions for Afghan families.

CHARACTER WITNESSES

JANNETTE JAGHAB

36. Janette Jaghab testified at the administrative hearing. She was born in Baghdad, Iraq. She came to the United States when she was eight or nine years old. She has lived in Pennsylvania, Alabama, and California. She married and moved to San Diego with her husband in 1980. She has been a real estate agent since 1999 and a broker since 2007 or 2008. Her licenses have never been subject to discipline.

37. Ms. Jaghab met respondent in 2000. They were both new agents for Coldwell Banker in the Rancho Penasquitos office. Shortly after Ms. Jaghab began to work for Coldwell Banker, she and respondent shared an office. She has worked with respondent ever since. Ms. Jaghab worked for Coldwell Banker for 12 to 13 years and then moved to work at Remax about the same time as respondent began to work there.

38. Ms. Jaghab described respondent as an excellent agent who does hundreds of real estate deals a year. She knows he is an excellent agent because she "works his files" and knows that his clients love him. She stated that respondent is an ethical real estate

professional. He will counsel his clients against making a real estate purchase if the property they propose is not a good fit for them regardless of the fact that dissuading clients in this way means a loss for himself. There are multiple parts of a real estate transaction: Finding a property to purchase; completing listing agent paperwork; and completing purchaser paperwork. Ms. Jaghab completes the purchaser paperwork and is aware that respondent never has disputes with his clients.

39. Ms. Jaghab has daily interactions with respondent and trusts him. He shared with her the circumstances underlying his criminal conviction. She is aware that, in the criminal case, respondent admitted he fraudulently received money by false representation. She is aware that respondent received rent from the Housing Authority because his relationship with Mr. and Mrs. Sharifi was not disclosed to the Housing Authority. She knows that respondent paid back the amount agreed to by the Housing Authority. Learning of his criminal conviction did not change Ms. Jaghab's opinion about respondent or cause her to have concerns about his real estate transactions

40. Ms. Jaghab was aware that respondent failed to disclose that his criminal case was pending on his license renewal application. Ms. Jaghab and respondent's licenses expire the same day each year because they took the broker's examination on the same day. They realized they needed to get the renewal applications in to the bureau so there would be time for the application to go through the system and they would obtain their renewals before their licenses expired. The day they decided to complete the renewal applications was very busy and they had multiple interruptions. It took time to complete the application; some questions were confusing, and Ms. Jaghab found the entire process to be confusing. After multiple interruptions, she and respondent quickly filled in the information requested and "pressed enter without thinking." Ms. Jaghab did not review respondent's application.

41. Respondent told Ms. Jaghab that he was in violation of California statutes and regulations because he did not notify the bureau when he changed office locations and provide them with his new business addresses. Ms. Jaghab testified that she did not recall ever providing the bureau with an address change form when she moved from one Coldwell Banker location to another. She, like respondent, believed that the brokerage firm prepared and filed the notice of a change in business address.

42. Ms. Jaghab has socialized with respondent outside of the workplace, and she has met his family. She has never seen respondent drink alcohol, and he does not take drugs. She has observed that respondent is a very good father, husband and provider. He makes time to spend with his children every day.

43. Ms. Jaghab confirmed respondent's strong connections with the Afghan community. She said that community members rely on him, trust him and call him for advice. She is aware that he is active in charity work, including donating to orphanages, and he has organized the Persian New Year event for years. She said the event is free and thousands of people attend.

Ms. Jaghab would allow respondent to handle the sale of her home. She does not believe he is a threat to the public.

ZIA NASERY

44. Zia Nasery was born in Kabul, Afghanistan. His father was a three-star general in Afghanistan. His family had to flee Afghanistan during the Russian invasion. Mr. Nasery met respondent in San Diego in 1982.

45. Mr. Nasery attested to respondent's active involvement in the Afghan community. He pointed out that life was different before social media, and it was difficult to disseminate information. Respondent made and sent flyers to the community members to let them know what was going on. Respondent will offer to help anyone who needs it. He organizes fund raisers for orphanages in Afghanistan. He is seen as a leader in the community. He spends at least one month organizing the New Year celebration, which thousands attend. Respondent attends and participates in the Afghan community center every week and has done so for more than 20 years while being involved in cultural and religious events.

Mr. Nasery knows respondent's wife and children; Mr. Naery's wife and respondent's wife are good friends, and he and his family go to respondent's home to socialize. Mr. Nasery has observed respondent spend time with his family and knows that respondent loves his family. Mr. Nasery said that, although he occasionally has an alcoholic beverage, he has never seen respondent drink alcohol.

46. Mr. Nasery understood that the bureau was seeking to suspend or revoke respondent's broker license, and he was aware of the underlying circumstances of respondent's criminal conviction. Nonetheless, Mr. Nasery described respondent as being very honest. He stated that respondent has been involved in real estate transactions with his family members, and he would trust respondent to handle a real estate transaction for him.

JAN ALLAN RUHMAN

47. Jan Allan Ruhman was a licensed real estate salesperson from 1981 until he retired in 2013. He met respondent in 2000 when they both worked for Coldwell Banker. They worked together until respondent left Coldwell Banker and joined Remax. They worked together again when Mr. Ruhman left Coldwell Banker and joined Remax, sometime after respondent and Ms. Jaghab did. Mr. Ruhman said he got to know respondent because he (Mr. Ruhman) was "an old guy" and, if new agents asked him questions, he was happy to help and share information. Mr. Ruhman stated that all of the agents congregated in the coffee room to talk and learn from each other.

Mr. Ruhman described respondent as a compassionate, soft spoken, sweet man with a heart of gold. He stated that he had opportunities to watch and hear how respondent dealt with clients in person and on the telephone. In his opinion, respondent showed a lot of

integrity, had his clients' best interests at heart, and never had disputes or exchanged harsh words with his clients. Mr. Ruhman said that he was made to feel a part of respondent's family, and they call him "Uncle J."

Mr. Ruhman served two tours in Vietnam while he was in the marines. He is now very involved charitable veteran's activities, particularly those providing essential needs for homeless veterans and helping veterans faced with deportation. Mr. Ruhman and respondent initially became close because respondent participated in helping with the veterans charities. Mr. Ruhman stated that respondent "almost single-handedly united Afghan families" in the area. Each year, Mr. Ruhman has been invited to, and has attended, the Persian New Year event.

Mr. Ruhman is familiar with the circumstances underlying respondent's criminal convictions. Despite respondent's conviction, Mr. Ruhman trusts him. He believes respondent made a mistake and "people can make mistakes." He believes the error in the Housing Authority form was inadvertent because respondent accurately checked the correct box in a subsequent form, and he would not have incriminated himself by correcting the record if he had intended to deceive the Housing Authority in the first place.

Costs

48. The bureau filed a Cost Recovery Declaration of Enforcement Costs pursuant to Business and Professions Code section 10106 seeking recovery of \$1,397.30 as costs incurred by counsel for the bureau and a Certified Statement of Investigation Costs seeking recovery of \$2,230.80 for costs incurred for the investigation of the case.

LEGAL CONCLUSIONS

Applicable Statutory and Regulatory Provisions

1. The suspension or revocation of a professional license must be based upon conduct proven by clear and convincing evidence. (*Grubb Co., Inc. v. Department of Real Estate*, (2011) 194 Cal.App.4th 1494.)

2. Business and Professions Code section 482 requires the department to "develop criteria to evaluate the rehabilitation of a person when . . . (b) considering suspension or revocation of a license under Section 490." Section 482 also requires the Department to "take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

//

3. Business and Professions Code section 490 provides in part:

(b) . . . a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

[¶] . . . [¶]

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere

4. Business and Professions Code section 493 provides in relevant part, that in a proceeding to revoke or suspend a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

5. Business and Professions Code section 10162 provides:

(a) Every licensed real estate broker shall have and maintain a definite place of business in the State of California that serves as his or her office for the transaction of business. This office shall be the place where his or her license is displayed and where personal consultations with clients are held.

(b) A real estate license does not authorize the licensee to do business except from the location stipulated in the real estate license as issued or as altered pursuant to Section 10161.8.

(c) (1) Every real estate broker and salesperson licensee shall provide to the commissioner his or her current office or mailing address, a current telephone number, and a current electronic mail address that he or she maintains or uses to perform any activity that requires a real estate license, at which the bureau may contact the licensee.

(2) Every real estate broker and salesperson licensee shall inform the commissioner of any change to his or her office or mailing address, telephone number, or electronic mail address no later than 30 days after making the change.

6. Business and Professions Code section 10165 authorizes the commissioner to “temporarily suspend or permanently revoke” a real estate broker’s license for a violation of Business and Professions Code section 10162.

7. Business and Professions Code section 10177, subdivision (a), provides that the department can suspend or revoke the license of a real estate licensee who has “[p]rocur[ed] . . . a real estate license or license renewal . . . by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.”

8. Business and Professions Code section 10177, subdivision (b), provides in relevant part, that the department can suspend or revoke the license of a real estate licensee who has entered a plea of guilty to a felony or a crime that is “substantially related to the qualifications, functions, or duties of a real estate licensee”

9. Business and Professions Code section 10177, subdivision (d), provides that the department can suspend or revoke the license of a real estate licensee who has “[w]illfully disregarded or violated” the laws and regulations governing real estate licensees.

10. Business and Professions Code section 10177, subdivision (g), provides that the department can suspend or revoke the license of a real estate licensee who has “[d]emonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.”

11. Business and Professions Code section 10106 states in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the department, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

[¶] . . . [¶]

(c) 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.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and

prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the commissioner to increase the cost award. The commissioner may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

12. California Code of Regulations, title 10, section 2715, provides:

Every broker, except a broker acting in the capacity of a salesperson to another broker under written agreement, shall maintain on file with the commissioner the address of his principal place of business for brokerage activities, the address of each branch business office and his current mailing address, if different from the business address.

Every broker who is acting in the capacity of a salesperson to another broker under written agreement shall maintain on file with the commissioner the address of the business location where he expects to conduct most of the activities for which a license is required and his current mailing address.

A real estate salesperson shall maintain on file with the commissioner his current mailing address, and when applicable, the address of the principal business office of the broker to whom the salesperson is at the time licensed.

Whenever there is a change in the location or address of the principal place of business or of a branch office of a broker, he shall notify the commissioner thereof not later than the next business day following the change.

This section shall apply to the holder of a real estate license who fails to renew it prior to the period for which it was issued and who is otherwise qualified for such license as set forth in Section 10201 of the Code.

13. California Code of Regulations, title 10, section 2910, in relevant part, provides:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be

substantially related to the qualifications, functions or duties of a licensee of the department within the meaning of Sections 480 and 490 of the Code if it involves:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

(2) . . . the uttering of a false statement.

[¶] . . . [¶]

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

[¶] . . . [¶]

(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.

[¶] . . . [¶]

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

14. California Code of Regulations, title 10, section 2912, provides:

The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

(a) 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 of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to

the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee.

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) 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.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(i) 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.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

Evaluation

15. Cause exists to impose discipline on respondent's broker's license because he was convicted of a crime that is substantially related to the qualifications, functions, and duties of a real estate licensee. (Bus. & Prof. Code, §§ 490; 10177, subd. (b).) By pleading guilty, respondent admitted that he committed a petty theft and fraudulently obtained money by making a false representation.

Real estate salespersons and brokers deal in complicated business and financial transactions and are often entrusted with financial, personal and confidential information about clients. They are required to complete complicated and extensive applications and other legal documents, to follow the rules and regulations governing real estate licensees, and to deal honestly in real estate transactions. They are required to comply with complex legal requirements in those transactions. Real estate salespersons must be clear-headed and law-abiding, have integrity, and use good judgment in completing real estate transactions. Real estate licensees cannot ignore unpleasant situations and must deal openly and honestly in all transactions, including those in which they have made an error that may be embarrassing or detrimental to themselves or others.

Respondent's conviction is substantially related to the qualifications, functions, and duties of a real estate licensee in that he allowed a false document to be submitted to the San Diego Housing Authority by which his sister and brother-in-law obtained rental assistance

they were not entitled to receive, and respondent received payments from the Housing Authority he was not entitled to receive.

16. Cause exists to impose discipline on respondent's broker's license because he made a false statement of material fact on his application for renewal of his license when he failed to disclose that he had a criminal case pending against him. (Bus. & Prof. Code, § 10177, subd. (a).) The fact that the bureau's investigator knew that the criminal case had been refiled does not diminish respondent's responsibility to correctly report the pending criminal complaint, nor does it negate his culpability for failing to do so. The bureau's investigator is not the individual who would approve or deny respondent's renewal application, and her knowledge of the pending criminal complaint is irrelevant to the issue. Respondent's explanation that he was busy and did not read or review the application carefully also does not diminish his culpability. Instead, his explanation raises additional concerns because respondent is tasked with reading complex documents thoroughly and carefully and, he is expected to pay close attention to the details and accuracy of information contained in those documents.

17. Cause exists to impose discipline on respondent's broker's license because he failed to inform the bureau of changes in his main office address as required by Business and Professions Code section 10162 and California Code of Regulations, title 10, section 2715.

Appropriate Level of Discipline

18. The determination as to whether respondent's real estate broker's license should be subject to revocation, suspension or restriction includes the evaluation of the circumstances of his conviction, his failure to disclose the pending criminal complaint, and his failure to update his main office address in conjunction with the application of the rehabilitation criteria enumerated in California Code of Regulations, title 10, section 2912, set forth above.

19. A two count criminal complaint was originally filed against respondent in September 2013. That complaint was dismissed in its entirety in March 2014. The criminal complaint was refiled in June 2014, again alleging two counts. Respondent filed a motion to dismiss the refiled complaint, which was denied in a hearing in November 2014, but during which the complaint was reduced to one count. Respondent pled guilty to petty theft in March 2015. The underlying conduct occurred in 2004 when respondent's sister and brother-in-law filed an application for Section 8 rental assistance. The false representation in the 2004 application was disclosed when respondent checked the correct box on a new form that was submitted to the Housing Authority in 2012, pursuant to its request to update records. Given the extended time the criminal action was pending due to a dismissal and reasonably filed motions after the action was refiled, on this record, the fact that two years have not passed since respondent's conviction does not require a finding that respondent has not been rehabilitated. It has been over three years since the original complaint was filed.

Respondent's representation that his family members received Section 8 rental assistance both before and after the error in the 2004 application was discovered was not controverted at the hearing. It is, therefore, likely that Mr. and Mrs. Sharifi would have received rental assistance had they applied to rent a different property. While this does not excuse the error in the application filed, it permits a consideration of a level of discipline of respondent's license less than revocation.

Respondent began paying restitution to the Housing Authority well before the criminal complaint was filed against him. No evidence was presented to suggest that respondent was aware a criminal complaint would be filed against him when he entered into the agreement for payment of restitution. Respondent satisfied his debt to the Housing Authority in January 2015.

Respondent successfully completed criminal probation, including the payment of all fines, and his conviction was expunged in June 2016. There was no evidence that respondent has had any other involvement with the criminal justice system, either before or after the criminal complaint at issue here.

20. Respondent's failure to disclose the pending criminal complaint in his renewal application is most troubling. His explanation for the misrepresentation casts doubt on his ability to devote the time and attention required in completing and reviewing complex purchase and sale documents. In mitigation, no disciplinary charges have been filed relating to respondent's competence as a real estate broker. Further, respondent testified that the experiences of the criminal case and disciplinary action have taught him to take the time to read every document more carefully.

21. Respondent's failure to be aware of, and comply with, the laws and regulations requiring him to update bureau records, including his business office address, also calls into question respondent's knowledge and attention to important matters. In mitigation, the address on file with the bureau was respondent's residence, and he could have been contacted through that address. Additionally, respondent and Ms. Jaghab both testified that they were accustomed to having Coldwell Banker's administrative staff file change of address forms, and they believed Remax would do the same.

22. By all accounts, respondent has a stable and loving family. In fact, his problems began by a sincere and altruistic desire to help his disabled sister and her husband, which he did at a loss of potential profit to himself. Respondent is, and was before his conviction, a very active community leader who is trusted and respected by many. Respondent devotes significant personal time to religious and cultural charitable activities. The witnesses who testified at the hearing were highly complimentary of respondent and spoke earnestly of him and the many good deeds and activities in which he was engaged.

23. No evidence was presented that respondent's real estate transactions were questioned by the bureau. Character references lauded respondent's professionalism and trustworthiness as a real estate licensee. In fact, credible evidence was presented that

respondent assisted clients in making decisions that were for their best interest, even if those decisions resulted in a loss of income for respondent. But for the 2015 conviction, respondent's performance of his duties as a real estate licensee in the past 16 years have been free from question or criticism.

24. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Respondent's conduct, particularly in failing to disclose the pending criminal complaint, is concerning. However, on this record, including evidence of mitigation and rehabilitation, discipline in excess of placing respondent on a restricted license with a period of actual suspension is not warranted; instead, issuance of a restricted license with a suspension will serve to protect the interests of the public. Upon consideration of the entirety of the facts and the application of the rehabilitation criteria, protection of the public is achieved by revoking respondent's license, authorizing respondent to obtain a restricted license, and imposing an actual suspension of the restricted license for 30 days.

The Reasonable Costs of Investigation and Prosecution

25. Under Business and Professions Code section 10106, complainant may request that an administrative law judge "direct a licentiate found to have committed a violation . . . to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." "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." (Bus. & Prof. Code, § 10106, subd. (a) and (c).)

26. The Office of Administrative Hearings has enacted regulations for use when evaluating the bureau's request for costs. (Cal. Code Regs., tit. 1, § 1042.) Under the regulations, a cost request must be accompanied by a declaration or certification of costs that "contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs . . ." (Cal. Code Regs., tit. 1, § 1042, subd. (b).) For services provided by a person who is a regular agency employee, the declaration must be executed by the agency or its designee and describe the general tasks performed, the time spent on each task, and the method of calculating the cost. (Cal. Code Regs., tit. 1, § 1042, subd. (b)(1).)

The bureau sought \$1,397.30 in attorney costs. The Declaration of Enforcement Costs submitted by Real Estate Counsel was vague and, in most cases, did not designate the time spent on each task. For example, under the category "Phone Calls," eleven dates were listed with one lump sum amount for "Time Spent." Other categories of costs claimed, i.e. "Hearing Date and Continuances," are so indefinite that they do not sufficiently describe the general task performed. The reasonableness of some of the costs claimed in this manner

cannot be ascertained and cannot be awarded to the bureau. Of the costs claimed by counsel, \$756.50 has been adequately described and supported and is reasonable.

The bureau sought \$2,230.80 for the costs of the investigation by Ms. Stanbra. Although some of the descriptions of tasks performed were vague, i.e., "Deputy Review," the Certified Statement of Investigation Costs signed by Ms. Kilpatrick contained sufficient descriptions of the general tasks performed, the time spent on each task on each day and the method used to calculate the costs. The costs claimed for investigative tasks are reasonable.

27. Another consideration in determining costs is *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32. In *Zuckerman*, the California Supreme Court decided, in part, that in order to determine whether the reasonable costs of investigation and enforcement should be awarded or reduced, the Administrative Law Judge must decide: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate to the alleged misconduct.

The reasonable and sufficiently supported costs are \$2,987.30. In this case, the scope of the investigation was appropriate to the alleged misconduct and the 2015 conviction was established. Respondent maintained a good faith belief in the merits of his position, and he presented evidence justifying a period of suspension and the issuance of a restricted license, which, while serious, was a lesser disciplinary order than that sought by complainant. Respondent did not present evidence of financial challenges that will affect his ability to pay the full amount of reasonable costs. After an appropriate consideration of *Zuckerman*, it is determined that the costs should be reduced by 10 percent, and respondent should pay investigation and enforcement costs in the amount of \$2,688.60.

ORDER

All licenses and licensing rights of respondent Shoaib Azizzi, aka, Shuaib Mohammad Aziz under the Real Estate Law, including his real estate broker license, are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. Any restricted real estate license issued to respondent pursuant to this Decision shall be suspended for 30 days from the date of issuance of said restricted license.

2. 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.

3. 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.

4. 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.

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, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the bureau including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

7. Respondent shall report in writing to the Bureau of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which the respondent engaged during the period covered by the report.

8. Respondent shall, prior to the issuance of the restricted license and as a condition of the issuance of said restricted license, make payment to the Commissioner the amount of \$2,688.60 as reimbursement for reasonable costs of investigation and prosecution of the Accusation.

9. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: November, 9, 2016

DocuSigned by:
Susan J. Boyle
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SUSAN J. BOYLE
Administrative Law Judge
Office of Administrative Hearings