FILED

SEP 11 2019

DEPT. OF REAL ESTATE

By [signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:	)	DRE No. H-05045 SD
ALICIA V. CAMPOS,	)	OAH No. 2019040147
Respondent.	)	

DECISION

The Proposed Decision dated August 9, 2019, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision:

Additional Documents, page 6, paragraph No. 10, line 4, "...Mr. Boyal" is amended to read "...Mr. Goyal".

The Decision suspends or revokes one or more real estate licenses.

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.

This Decision shall become effective at 12 o'clock noon on OCT 01 2019.

IT IS SO ORDERED September 6, 2019

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ALICIA V. CAMPOS, Respondent

Case No. H-05045 SD

OAH No. 2019040147

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 1, 2019, in San Diego, California.

Julie To, Staff Counsel, represented complainant Veronica Kilpatrick, Supervising Special Investigator, Department of Real Estate, State of California.

Alicia V. Campos, respondent, represented herself.

The matter was submitted on August 1, 2019.

FACTUAL FINDINGS

Background

1. On February 8, 2000, the department issued salesperson license number S/01274649 to respondent. There is no history of discipline imposed against

respondent's license. Respondent's license is set to expire on May 1, 2020, unless renewed.

2. On October 4, 2019, complainant, in her official capacity, signed the accusation. In the accusation complainant alleges that respondent's June 13, 2018, conviction for embezzlement is substantially related to the qualifications, functions, or duties of a licensee, and constitutes grounds for revoking her license. Complainant also alleges that respondent failed to disclose the conviction within 30 days as she was required to do. Complainant seeks recovery of investigation and enforcement costs.

3. Respondent timely filed a notice of defense. This hearing ensued.

Respondent's June 13, 2018, Conviction for Embezzlement

4. Respondent was originally charged on February 23, 2017, in a felony complaint with embezzlement. On February 16, 2018, in the Superior Court of California, County of Imperial, respondent pleaded no contest and was convicted of a misdemeanor violation of Penal Code section 506, embezzlement exceeding $950 in value. The court postponed sentencing for one year to allow respondent to pay restitution to the victim in the stipulated amount of $32,200. If she paid this sum, under Penal Code section 17, subdivision (b), the charge would be reduced to a misdemeanor. Before sentencing on June 13, 2018, respondent paid the restitution amount of $32,200 and the court reduced the felony embezzlement charge to a misdemeanor, placed respondent on summary probation for three years, and ordered her to pay a fine in the amount of $220 by September 11, 2018, and a revocation fine in the amount of $150. Respondent paid these fines. She remains on probation until June 13, 2021.

5. The facts and circumstances of respondent's conviction are detailed in an El Centro Police Department report and supplemental investigation report received pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448. As detailed in these reports, El Centro police responded to a complaint by Hector Loo that between February 2012 and December 2014 respondent had embezzled $53,800 from rent she obtained from his tenants. Mr. Loo told police respondent confessed to him in a July 31, 2014, email that she had stolen the rent money. After waiting for her to pay him back as she said she would, he decided to contact the police. Police obtained a search warrant for respondent's email from respondent's email account provider. The copy of the email was not attached to the police report and was not made part of the record in this matter. The email, as transcribed in the police report, stated as follows:

Good morning Hector. I want to apologize for all the stress I have put you thru with the rents. It has been my fault all this time, the truth is that your renters have been paying on time all this time, and I have been using the rent to live on, to help my husband and my parents I just meant to use a couple of months and when my deal would close, I would just get caught up and you wouldn't find out. Attached is a copy of the $8,250.00 commission I am getting on the 25th of August to cover the rents from Stacy and southwind [*sic*] and 2 for 3rd street. If you allow me to continue to collect your rents, I promise this won't happen again, and if you decide to given [*sic*] to someone else I understand and I could go to jail for this, and I don't want that to happen. I have told everyone already that no more cash at anytime [*sic*] only checks. Please let me know if you still want me to list Harlan for you, and Fabian and Irene should be able to Buy [*sic*] condo in December. And my big deal still on [*sic*], and I am proceeding with 8K today [*sic*]. Thank you Hector and please forgive me.

6. The police officer contacted respondent who declined to speak with him. No inference is drawn from respondent's refusal to talk to the officer. Based on the email to Mr. Loo, the police recommended that the District Attorney file charges against respondent.

Respondent's Testimony

7. Respondent's testimony is summarized as follows: She denied embezzling Mr. Loo's rent. Respondent acknowledged she managed Mr. Loo's properties and was paid for this service through commissions she earned from properties he purchased. She managed his properties from 2007 to 2017 and for one year during this time had her own real estate office to manage Mr. Loo's properties. Respondent stated Mr. Loo was "infatuated" with her but she did not want him to come to her house because she was recovering from cancer. She appeared, thus, to suggest that Mr. Loo went to the police because she changed the nature of their working relationship. Respondent said that Mr. Loo had access to her work and personal computers and had her passwords. She denied that she wrote the email to Mr. Loo that the officer transcribed in his report. She said she pleaded to the misdemeanor charge to get the charge "over with" because she was dealing with cancer, kidney failure and the loss of her father from cancer.

Respondent emphasized that she has been a department licensee for 20 years without discipline or complaints. She has worked for the same broker for ten years and never had any problems or complaints. Her broker, Jay Goyal, knows about her conviction. She said that she is no longer in property management at the real estate company where she works. She helps train other salespersons in the documents they need to complete property transactions.

Respondent did not dispute she failed to report to the department either that she was charged with a felony or that she was convicted of the misdemeanor conviction as required under Business and Professions Code section 10186.2. She said she forgot about this requirement because she was dealing with recovering from cancer and the death of her father.

8. Respondent's testimony, overall, was credible with the exception of her testimony that she did not write the July 31, 2014, email, which the officer transcribed in his report. Even taking into account that the officer's report is a transcription and a copy of the actual email was not included in his report, her testimony suggesting that Mr. Loo accessed her computer, used her passwords to access her email account and then sent the email to himself is too far-fetched to believe. Respondent did not deny at the hearing that the email address was her email address.

Respondent's Statement to the Department Regarding the Conviction

9. In a letter dated October 19, 2018, the department asked respondent to explain the facts and circumstances of her conviction in a Conviction Detail Report. Respondent completed this report and signed it on November 6, 2018. In this report she explained her conviction as follows: Mr. Loo sued her for money her son owed for a condo Mr. Loo promised to sell to her son. Respondent said Mr. Loo agreed to not require her son to pay rent for two years and would include this amount in the purchase price but Mr. Loo decided to not sell the condo to him. Mr. Loo issued checks to her written by him and tried to say they were embezzled but, per respondent, he was "proven wrong." She wrote that Mr. Loo also said that respondent kept the rent money from her husband because he was their landlord but respondent had brought cancelled checks to the criminal court, as she wrote in her report, to show Mr. Loo was wrong here.

In this report respondent further stated that she paid restitution not because she "committed the crime." She stated that she had a public defender and she pleaded no contest to the charge because she had cancer and too many medical bills.

Respondent's effort in the November 6, 2018, document she sent to the department to explain the facts and circumstances of her conviction is not understandable for purposes of assessing whether mitigating factors exist to explain her conviction. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 448-449.) It is not clear what connection her son's effort to purchase a condo owned by Mr. Loo had to do with rent monies she kept and the $32,200 in restitution she was required to pay as a condition of her sentence. Respondent did not clarify at this hearing what she meant in her statement.

Additional Documents

10. Respondent submitted a letter dated July 26, 2019, from Jay Goyal. Mr. Goyal is respondent's broker at Exit Imperial Realty. He described respondent as an exemplary real estate agent who is a mentor and teacher to new agents and a valued part of the practice. Mr. Goyal urged the department to allow respondent to keep her license.

11. Respondent also submitted a letter dated July 23, 2019, from Santa Figueroa. Ms. Figueroa stated that she has known respondent since October 2017 when respondent returned from her cancer surgery and she was her transaction coordinator and helped her improve her work as a realtor. She said respondent is very courteous, patient, very knowledgeable about real estate practice, and highly respected by other agents.

12. Both letters were admitted as administrative hearsay and are considered to the extent they supplement respondent's testimony that she has been a dedicated real estate license who is respected in her office.

Cost Recovery

13. Complainant requested cost recovery against respondent pursuant to Business and Professions Code section 10106. The declaration by complainant certified investigative costs in the amount of $588.50. Complainant's counsel submitted a declaration for prosecution costs in the amount of $218.05.

14. The evidence established that complainant's reasonable costs of investigation and enforcement totaled $806.55. The certifications that were provided complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b).

The Parties' Arguments

15. Complainant asks that respondent's license be revoked because respondent's conviction is substantially related to the functions, duties and qualifications of a real estate licensee and, further, her conviction directly relates to her work as a real estate salesperson.

Respondent requests that a restricted license be issued to her because she has no history of discipline and she does not intend to work as a property manager. Complainant opposes respondent's request for a restricted license due to the nature and severity of the crime and due to its direct relationship to the work of a department licensee.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proving that the charges in the accusation are true. (Evid. Code, § 115.) The standard of proof in an administrative action seeking to suspend or revoke a professional license is "clear and convincing evidence." (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. *Katie V. v. Sup. Ct.* (2005) 130 Cal.App.4th 586, 594.)

Relevant Statutory and Regulatory Authority

2. Business and Professions Code section 490 provides in relevant part:

> (a) In addition to any other action that a board is permitted to take against a licensee, 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.
>
> (b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or

> duties of the business or profession for which the licensee's license was issued.

3. Pursuant to Business and Professions Code section 10177, subdivision (b), the commissioner may suspend or revoke a license if the licensee has been convicted of a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate license.

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

> 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 Bureau 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.
>
> [¶] . . . [¶]
>
> (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.

Penal Code Section 506 Regarding Embezzlement

5. Penal Code section 506 provides as follows:

Every trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator, or collector, or person otherwise entrusted with or having in his control property for the use of any other person, who fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, and any contractor who appropriates money paid to him for any use or purpose, other than for that which he received it, is guilty of embezzlement, and the payment of laborers and materialmen for work performed or material furnished in the performance of any contract is hereby declared to be the use and purpose to which the contract price of such contract, or any part thereof, received by the contractor shall be applied.

Requirement to Report Charge and Conviction

6. Business and Professions Code section 10186.2 provides as follows:

> (a) (1) A licensee shall report any of the following to the department:
>
> (A) The bringing of a criminal complaint, information, or indictment charging a felony against the licensee.
>
> (B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.
>
> (C) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government.
>
> (2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, the conviction, or the disciplinary action.
>
> (b) Failure to make a report required by this section shall constitute a cause for discipline.

Cause Exists to Impose Discipline Against Respondent's License

7. Cause exists to revoke or suspend respondent's license pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b). Respondent's conviction for embezzlement is substantially related to the

qualifications, functions and duties of a real estate licensee. (Cal. Code Regs., tit. 10, § 2910, subds. (a)(1) & (8).)

8. Cause also exists to revoke or suspend respondent's license pursuant to Business and Professions Code section 10186.2, subdivisions (a)(1)(A) and (B). Respondent failed to report to the department that she was charged with a felony and that she was convicted of a misdemeanor within 30 days as required.

Appropriate Measure of Discipline

9. 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, supra*, at p. 856.)

10. California Code of Regulations, title 10, section 2912, sets forth the following criteria to be considered by the department to determine rehabilitation of a licensee who has been convicted of a crime:

> (a) The time that has elapsed since commission of the act(s) or offense(s):
>
> (1) The passage of less than two years after the most recent criminal conviction or act of the licensee that is a cause of action in the Bureau's Accusation against the licensee is inadequate to demonstrate rehabilitation.

(2) Notwithstanding subdivision (a)(1), above, the two year period may be increased based upon consideration of the following:

(A) The nature and severity of the crime(s) and/or act(s) committed by the licensee.

(B) The licensee's history of criminal convictions and/or license discipline that are "substantially related" to the qualifications, functions, or duties of a real estate licensee.

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee, or escheat to the State of these monies or other properties if the victim(s) cannot be located.

(c) Expungement of the conviction(s) 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 and/or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance and/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 and/or other evidence of rehabilitation submitted by the licensee.

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

(3) Evidence from probation or parole officers and/or law enforcement officials competent to testify as to licensee'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 convictions, misdemeanor convictions, or other conduct that provides grounds to discipline a real estate licensee, which reflect an inability to conform to societal rules when considered in light of the conduct in question.

11. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Evidence of good conduct during a period of supervision such as parole or probation is an important factor in rehabilitation, but good behavior normally expected of someone who is under supervision of the criminal justice system.

(*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Thus, evidence of good behavior while someone is still on parole or probation diminishes the weight of his or her alleged good conduct.

12. After applying the criteria listed in California Code of Regulations, title 10, section 2912, it is concluded that respondent failed to prove that she is sufficiently rehabilitated to warrant a penalty less than revocation. This conclusion is reached for these reasons: less than two years have passed since respondent was convicted of the crime. Her crime was serious and directly related to her work as a real estate licensee. Respondent was in a position of trust where she collected rents from Mr. Loo's tenants and violated this trust relationship when she diverted these payments to herself. The amount of money at issue, as measured by the restitution she was required to pay, was significant. Respondent took no responsibility for the conduct that led to the conviction. Her effort to disown at the hearing her admission in the July 31, 2014, email she sent to Mr. Loo and her November 6, 2018 statement to the department reflect her belief that she did nothing wrong. Her testimony that she did not write the email was not credible.

13. Consideration has been given to the serious health problems respondent faced at the time, the personal problems she faced due to the loss of her father, her history as a licensee without discipline, the fact that she paid restitution in full and has complied with the terms of her probation,[1] she does not intend to manage properties,

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[1] Compliance with the law while one is on court ordered probation "does not necessarily prove anything but good sense." (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473.) When a person is on criminal probation or parole, rehabilitation efforts are accorded less weight "[s]ince persons under the direct

and her reputation as a dedicated and professional licensee. But these factors do not warrant allowing respondent to retain her license even on a restricted basis pursuant to Business and Professions Code section 10156.5 considering the serious nature of the crime she was convicted of committing and for the other stated reasons.

Costs of Investigation and Enforcement

14. Complainant is seeking recovery of the reasonable costs of investigation and prosecution. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5, which is similar to Business and Professions Code section 10106, did not violate due process. But it was incumbent on the board in that case to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not "deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing." (*Ibid.*)

The Supreme Court set forth five factors to consider in deciding whether to reduce or eliminate costs: Whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; whether the licensee had a "subjective" good faith belief in the merits of his or her position; whether the licensee raised a "colorable challenge" to the proposed discipline; whether the licensee had the financial ability to make payments; and whether the scope of the investigation was appropriate in light of the alleged misconduct. The reasoning of *Zuckerman* applies to Business and Professions Code

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supervision of correctional authorities are required to behave in exemplary fashion..." (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

section 10106 since the language in the cost recovery regulation at issue in *Zuckerman* and section 10106 are substantially the same.

Because respondent's license is revoked, she will not be ordered to pay costs at this time. However, the department may order respondent to pay costs in the amount of $806.55 as a condition for reinstatement or issuance of a new license.

ORDER

1. All licenses and licensing rights of respondent Alicia V. Campos under the Real Estate Law are revoked.

2. If respondent petitions to have her license reinstated, or applies for the issuance of a new license, and if the department grants the petition or application, the department may order respondent to pay $806.55 in costs as a condition of reinstatement or licensure.

DATED: August 9, 2019

DocuSigned by:
Abraham Levy
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ABRAHAM M. LEVY
Administrative Law Judge
Office of Administrative Hearings